

AN ACT in relation to labor, constituting chapter thirty-one of the consolidated laws.

Became a law March 9, 1921, with the approval of the Governor. Passed, three-fifths being present.

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

CHAPTER 31 OF THE CONSOLIDATED LAWS.

LABOR LAW.

- Article 1. Short title; definitions. (§§ 1-4)
2. The department of labor. (§§ 10-44)
3. Administrative and judicial review. (§§ 100-104)
4. Employment of minors. (§§ 130-145)
- 4-A. Employment and education of child performers.
(§§ 150--154-a)
5. Hours of labor. (§§ 160--170)
6. Payment of wages. (§§ 190--199-a)
7. General provisions. (§§ 200-219-d)
8. Public work. (§§ 220--224-g)
- 8-A. Grade crossing elimination work; hours, wages, employment and general requirements. (§§ 225-227)
9. Prevailing wage for building service employees.
(§§ 230--239-a)
10. Building construction, demolition and repair work.
(§§ 240-242)
11. Factories. (§§ 255-316)
12. Fair wages task force. (§§ 330-334)
- 12-A. Special task force for the apparel industry.
(§§ 340--349-a).
13. Industrial homework. (§§ 350-363)
14. Mercantile and other establishments. (§§ 376-392)
15. Mines and tunnels; quarries; compressed air.
(§§ 400-437)
16. Explosives. (§§ 450-465)
17. Public safety. (§§ 470-475)
18. Unemployment insurance law. (§§ 500-643)
19. Minimum wage act. (§§ 650-665)
- 19-A. Minimum wage standards and protective labor practices for

- farm workers. (§§ 670-683)
- 19-B. Domestic workers and household employees. (§§ 690-694)
- 19-C. Representation of child care providers. (§§ 695-a-695-g)
- 19-D. Minimum wage rates for covered airport workers. (§§ 696-a--696-h)
- 20. New York state labor relations act. (§§ 700-718)
- 20-A. Labor and management improper practices act. (§§ 720-732)
- 20-B. Psychological stress evaluators and employment. (§§ 733-739)
- 20-C. Retaliatory action by employers. (§§ 740-741)
- 21. New York call center jobs act. (§§ 770-776)
- 21-A. Warehouse worker protection act. (§§ 780-789)
- 21-B. Protection of call center workers from displacement. (§§ 790-793).
- 22. Boards of inquiry in labor disputes. (§§ 800-805)
- 22-A. Injunctions in labor disputes. (§§ 807-808)
- 23. Apprenticeship training. (§§ 810-819)
- 23-A. New York state manpower training act. (§§ 820-823)
- 23-B. Displaced homemakers act. (§§ 825-831)
- 24. Worker Adjustment Act. (§§ 835-849)
- 24*. Comprehensive employment and training act allocation review board. (§§ 850-852)
- 24-A. New York state workforce investment act. (§§ 850-853)
- 25. New York state job retention board. (§§ 856-857)
- 25-A. New York state worker adjustment and retraining notification act. (§§ 860--860-i)
- 25-B. The New York state construction industry fair play act. (§§ 861--861-g)
- 25-C. The New York state commercial goods transportation industry fair play act. (§§ 862--862-e)
- 26. Safety in skiing. (§§ 865-868)
- 27. Carnival, fair and amusement park safety. (§§ 870-a--870-o)
- 28. Toxic Substances. (§§ 875-883)
- 29. Training and education program on occupational safety and health. (§§ 884-887)

30. Asbestos or products containing asbestos; licensing. (§§ 900-910)
31. New York professional employer act. (§§ 915-924)
32. Licensing of mold inspection, assessment and remediation specialists and minimum work standards. (§§ 930-948)
33. Elevators and other conveyances; licensing. (§§ 950-957)
34. Certification of public service employment. (§§ 1000-1002)
35. New York youth jobs connector program. (§§ 1005-1008)
36. New York state fashion workers act. (§§ 1030-1039)
37. Trapped at work act. (§§ 1050-1055)
40. When to take effect. (§ 1200)

ARTICLE 1.

SHORT TITLE: DEFINITIONS.

Section 1. Short title.

2. Definitions.

3. Prohibited employment.

4. Work for a factory.

Section 1. Short title. This chapter shall be known as the "Labor Law."

§ 2. Definitions. Whenever used in this chapter:

1. "Department" means the department of labor of the state of New York.

2. "Commissioner" means the commissioner of labor of the state of New York.

3. "Board," as determined by the context, shall mean either the workmen's compensation board or the industrial board of appeals of the state of New York.

4. "Rule" means any rule or regulation made by the industrial commissioner and any amendment or repeal thereof.

5. "Employee" means a mechanic, workingman or laborer working for another for hire.

6. "Employer" means the person employing any such mechanic, workingman or laborer, whether the owner, proprietor, agent, superintendent, foreman or other subordinate.

7. "Employed" includes permitted or suffered to work.

8. "Person" includes a corporation or a joint-stock association.

8-a. "Agent" of a corporation includes, but is not limited to, a manager, superintendent, foreman, supervisor or any other person employed acting in such capacity.

9. "Factory" includes a mill, workshop or other manufacturing establishment where one or more persons are employed at manufacturing, including making, altering, repairing, finishing, bottling, canning, cleaning or laundering any article or thing, in whole or in part, and includes all buildings, sheds, structures or other places used for or in connection therewith, except (a) dry dock plants engaged in making repairs to ships and (b) power houses, generating plants and other structures owned or operated by a public service corporation or a municipal corporation other than construction or repair shops, subject to the jurisdiction of the public service commission and (c) structures, operated as refrigerated warehouses for the handling, packing, refrigeration and storage of fruits and vegetables and which are subject to the jurisdiction of or licensed by the department of agriculture and markets, also structures used in cleaning or packing celery. The provisions of this chapter affecting structural changes and alterations shall not apply to factories or to any buildings, sheds or other places used for or in connection therewith where less than six persons are employed at manufacturing except as otherwise prescribed by the rules.

10. "Factory building" means a building, shed or structure which, or any part of which, is occupied by or used for a factory, and in which at least one-tenth or more than twenty-five of all the persons employed in the building are engaged in work for a factory, but shall not include a building in a city having a population of more than one million, used exclusively by one employer and in which not more than one-tenth of all the persons employed therein are engaged in work for a factory and which, except for such factory work, would be classified as a mercantile establishment. The provisions of this chapter shall apply to any part of a building occupied or used as a factory, except as otherwise provided by this subdivision.

11. "Mercantile establishment" means a place where one or more persons are employed in which goods, wares or merchandise are offered for sale and includes a building, shed or structure, or any part thereof, occupied in connection with such establishment. The provisions of this chapter affecting structural changes and alterations shall not apply to mercantile establishments where less than six persons are employed except as otherwise prescribed by the rules.

12. "Place of public assembly" shall include (1) a theatre, (2) moving picture house, (3) assembly halls maintained or leased for pecuniary gain where one hundred or more persons may assemble for amusement or recreation, except (a) halls owned by churches, religious organizations, granges, and public association and free libraries as defined by section two hundred fifty-three of the education law, and (b) hotels having fifty or more rooms.

13. "Public building" shall include a factory building, an office building, a mercantile building, a hotel building, a theatre building, a warehouse building, an apartment building, a state or municipal building, a school, a college or university building, a building containing a place of public assembly maintained or leased for pecuniary gain, or any other building more than one story high except a dwelling house less than three stories high or occupied by less than three families.

14. All references to male employees in this chapter shall be deemed to include female employees.

15. "Minor" means any person who has not attained the age of eighteen years.

16. "Domestic worker" shall mean a person employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose. "Domestic worker" does not include any individual (a) working on a casual basis, (b) who is engaged in providing companionship services, as defined in paragraph fifteen of subdivision (a) of section 213 of the fair labor standards act of 1938, and who is employed by an employer or agency other than the family or household using his or her services, or (c) who is a relative through blood, marriage or adoption of: (1) the employer; or (2) the person for whom the worker is delivering services under a program funded or administered by federal, state or local government.

17. All references to labor law, chapter, article or section shall be deemed to include any rule, regulation or order promulgated thereunder or related thereto.

18. "Farm laborer" shall mean any individual who works on a farm and is an employee under article nineteen of this chapter. Members of an employer's immediate family who are related to the third degree of consanguinity or affinity shall not be considered to be employed on a farm if they work on a farm out of familial obligations and are not paid wages, or other compensation based on their hours or days of work.

§ 3. Prohibited employment. Whenever the provisions of this chapter prohibit the employment of a person in certain work or under certain conditions the employer shall not permit such person to so work, with or without compensation, and in a prosecution or action therefor lack of consent by the employer shall be no defense.

§ 4. Work for a factory. Work shall be deemed to be done for a factory whenever it is done at any place upon the work of a factory or upon any of the materials entering into the product of the factory, whether under contract or arrangement with any person in charge of or connected with such factory directly or indirectly through one or more contractors or other third persons.

ARTICLE 2

THE DEPARTMENT OF LABOR

Section 10. Department of labor; commissioner of labor.

10-a. Domestic violence policy.

10-b. Domestic violence employee awareness and assistance.

10-c. Workforce guidance and information for women initiative.

11. Deputy commissioner.

12. Transmission of labor market information.

12-c. Passenger tramway advisory council.

12-d. Advisory council on farm labor safety.

13. Oaths of office.

14. Offices of the department.

15. Seal.

16. Vacancies and removals.

17. Expenses.

18. Officers and employees.

18-c. Sick leave for per diem employees.

20. Divisions or bureaus.

21. General powers and duties of commissioner.

21-a. (Enacted without section heading).

21-b. Power of the industrial commissioner to make agreements for federal reimbursement to the state of certain expenses in connection with veterans' training.

21-c. Power of commissioner to enter into agreements relating to certain federal acts.

21-d. Power of commissioner to enter into agreement relating to information obtained by the state directory of new hires.

- 21-e. Powers of the commissioner to prepare and issue a notice to be posted at worksite.
- 21-f. Job transition plan for certain climate risk-related and energy transition projects.
- 23. Administrative regulations.
- 24. Delegation of powers by commissioner.
- 25. Power to enter and inspect premises.
- 25-a. Power to administer the New York youth jobs program tax credit.
- 25-b. Power to administer the workers with disabilities tax credit program.
- 25-c. Power to administer the empire state apprenticeship tax credit program.
- 26. Examination of books and papers.
- 27. Safety and health standards.
- 27-a. Safety and health standards for public employees.
- 27-b. Duty of public employers to develop and implement programs to prevent workplace violence.
- 27-c. Preparation of public employers for state disaster emergencies involving public health.
- 27-d. Workplace safety committees.
- 27-e. Prevention of retail workplace violence.
- 27-f. Requiring first aid materials in a workplace to include an opioid antagonist.
- 29. Procedure for issuing safety and health rules.
- 30. Variations.
- 31. Duty to furnish information and facilitate inspections.
- 32. Interference with officer or employee of department prohibited.
- 33. Service of notice.
- 34. Department to keep record and publish bulletin of licenses.
- 35. Maintenance of records.
- 36. Destruction of old records.
- 37. Department's process to be in its name.
- 38. Oaths and affidavits.
- 39. Hearings and subpoenas.

40. Proceedings before officers or employees.
41. Rules governing hearings.
42. Youth education, employment and training program.
43. Transfer of funds to the unemployment insurance occupational training fund.
44. Workplace fatality registry; construction.

§ 10. Department of labor; commissioner of labor. There shall continue to be in the state government a department of labor. The head of the department shall be the commissioner of labor. The commissioner of labor shall be appointed by the governor, by and with the advice and consent of the senate and hold office until the end of the term of the governor by whom he was appointed, and until his successor is appointed and has qualified. The present commissioner of labor shall be the head of such department and shall hold office until the expiration of his present term and until his successor is appointed and has qualified, subject to the provisions of the public officers law. Whenever the industrial commissioner is referred to or designated in any law, rule, regulation, contract or document heretofore or hereafter enacted, adopted or executed, such reference or designation shall be deemed to refer to the commissioner of labor.

§ 10-a. Domestic violence policy. The commissioner shall study the issue of employees separated from employment due to acts of domestic violence as referred to in and qualified by section four hundred fifty-nine-a of the social services law. The commissioner shall consult with the New York state office for the prevention of domestic violence and its advisory council, the department of social services, the division of women and members of the public in preparing such study. Such study shall include a review of case histories in which unemployment compensation was sought and an analysis of the policies in other states. A copy of such study shall be transmitted to the temporary president of the senate and the speaker of the assembly on or before January fifteenth, nineteen hundred ninety-six and shall contain policy recommendations.

§ 10-b. Domestic violence employee awareness and assistance. The commissioner shall assist the office for the prevention of domestic violence in the creation, approval and dissemination of the model domestic violence employee awareness and assistance policy as further defined in subdivision nine of section five hundred seventy-five of the executive law. Upon completion and approval of the model plan as outlined in subdivision nine of section five hundred seventy-five of the executive law, the commissioner shall assist in the promotion of the model policy to businesses in New York state.

§ 10-c. Workforce guidance and information for women initiative. 1. The department shall provide guidance to local workforce investment boards and staff, to enable them to better educate and inform both women and men about higher paying jobs and careers including jobs traditionally dominated by men. Such guidance shall promote program services for job seekers that provide:

(a) current information about compensation for jobs and careers that offer high earning potential including jobs that are traditionally dominated by men;

(b) counseling, skills development and training that encourage both women and men to seek employment in such jobs;

(c) referrals to employers offering such jobs; and

(d) current local labor market information regarding the gender wage gap and specific self-sufficiency rates for families living and working in that local labor market.

2. The commissioner shall prepare and submit to the governor, the temporary president of the senate, and the speaker of the assembly an annual evaluation report of the initiative no later than January first, two thousand eighteen, and every year thereafter. The report shall include:

(a) how many women were referred to counseling or skills development and training for jobs and careers that offer high earning potential, including jobs traditionally dominated by men;

- (b) how many women were referred to such jobs;
- (c) the ratio of women to men in such jobs and any change in that ratio from the previous year; and
- (d) any other information the commissioner deems relevant.

§ 11. Deputy commissioner. There shall be a deputy commissioner, who shall be appointed by and removed at the pleasure of the commissioner.

§ 12. Transmission of labor market information. 1. For the purposes of this section:

- a. Department means the department of labor of the state of New York.
- b. Commissioner means the industrial commissioner of the state of New York.
- c. Education department means the education department of the state of New York.
- d. Labor market information is defined to include, but not be limited to, industry and occupational projections for those standard metropolitan statistical areas for which the department compiles such information and for the state of New York, "Applications and Openings" publication, and the "New York State Annual Planning Report", providing, however, that the commissioner shall have the power to include additional publications, projections and other data to this definition of labor market information.
- e. Forward-facing employment data is defined to include, but not be limited to, current and projected employment opportunities in the state of New York, and shall include, but not be limited to, factors such as geographical location or required training and experience for such opportunities.

2. When it is jointly determined by the department and the education

department that labor market information or forward-facing employment data prepared by the department is adequate in this prepared form, the department shall transmit a copy of such information and data to: every school district in the state of New York maintaining approved career education programs, with a list of such school districts to be furnished to the department by the education department; every board of cooperative educational services maintaining approved career education programs, with a list of such boards of cooperative educational services to be furnished to the department by the education department; and every community college and agricultural and technical institute in the state of New York maintaining approved career education programs, with a list of such colleges and institutes to be furnished to the department by the education department. The education department shall regularly update such lists to keep them current and transmit changes to the department expeditiously.

3. The commissioner shall transmit to those school districts, boards of cooperative educational services and community colleges and agricultural and technical institutes located within a particular labor market area, labor market information or forward-facing employment data compiled for that area.

4. (a) The transmission of labor market information shall occur as frequently as such labor market information is compiled or published by the department, and in as expeditious a manner as possible following such compilation or publication.

(b) The transmission of forward-facing employment data shall occur bi-monthly, and in as expeditious a manner as possible following such compilation or publication.

5. If a publication noted by title in this section shall be discontinued by the department, the department shall transmit, pursuant to the provisions of this section, the publication published by the department which, in its opinion, provides the information most similar to that information which had previously been provided by the discontinued publication.

6. If a publication noted by title in this section shall have such title changed, the department shall continue to transmit such publications with its new title.

7. When the department and the education department jointly determine that labor market information or forward-facing employment data prepared by the department, to be transmitted pursuant to this section, requires an explanatory analysis to be utilized to its fullest potential, the education department shall provide an analysis of the information or data, written in clear, concise and easily understandable language. Such analysis shall consider, but not be limited to a consideration of, the following: instructions for the proper use of such information or data by individuals involved in the planning and development of career education, the proper use of such information or data by individuals involved in vocational and educational guidance, and the proper use of such information or data by current and prospective career education pupils in the selection of career education programs likely to offer the greatest potential for employment upon graduation.

8. To effectuate the purposes of this section, the commissioner and the commissioner of education, or their authorized designees, shall meet on a regular basis which shall not be less than once a month, excepting July and August when such meeting shall be discretionary.

9. It shall be the responsibility of such school districts, boards of cooperative educational services, and community colleges and agricultural and technical institutes in receipt of such publications and sources of labor market information or forward-facing employment data enumerated in this section to provide copies of such labor market information or forward-facing employment data to those individuals responsible for vocational and educational guidance at such school districts, boards of cooperative educational services, community colleges and agricultural and technical institutes.

§ 12-c. Passenger tramway advisory council. 1. To advise the commissioner of labor in relation to his duties and responsibilities

under the provisions of section two hundred two-c and article twenty-six of this chapter, there shall be in the department an advisory council, to be known as the passenger tramway advisory council, consisting of seven members to be appointed by the governor, by and with the advice and consent of the senate, and one of whom shall be designated as chairman by the governor. Each of four members of the council shall be an officer or employee of a ski center, and three members of the council shall be representatives of the public and shall not be, nor within five years immediately preceding appointment have been an officer or employee of a ski center.

2. The term of each member of such advisory board shall be for five years, or until a successor is appointed. Any member of the board chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Any member of the council may be removed by the governor for misconduct, incompetence or neglect of duty after being given a written statement of the charges and an opportunity to be heard thereon.

3. Each member of the advisory council shall serve without salary or other compensation, but shall be allowed necessary and actual transportation expenses incurred in the performance of his or her duties, and when in travel status shall receive an additional fifty-five dollars and when in travel status in a county or a city with a population in excess of seven hundred thousand an additional seventy-five dollars.

4. The advisory council shall consider all matters in connection with ski tows, other passenger tramways and downhill skiing referred to it by the commissioner and advise him with respect thereto, and on its own initiative, or upon the suggestion of others, may make such recommendations to the commissioner in connection with ski tows, other passenger tramways and downhill skiing as, after consideration by it, may be deemed necessary.

5. The commissioner shall designate an officer or employee of the department to act as secretary of the advisory council, who shall not be

a member of such council and who shall not receive any additional compensation therefor.

6. The advisory council may adopt rules and regulations to govern its own proceedings. The secretary shall keep a complete record of all proceedings of the advisory council which shall show the names of the members present at each meeting and every matter considered by the advisory council and the action taken thereon. Such records shall be filed in the office of the department.

*** § 12-d. Advisory council on farm labor safety.** 1. There is hereby established in the department of labor an advisory council on farm labor safety to make a study and investigation of the problems of providing adequate protection to farm workers against injuries arising out of their employment. Such study and investigation shall include: (a) the unique and special conditions involved in farm safety; (b) the need for education and training programs for the protection of farm workers against accidents; (c) the identification of areas where existing educational and training programs are insufficient to provide adequate protection to farm workers against accidents; (d) the methods of encouraging farmers and farm groups to establish such education and training programs; and (e) all matters and approaches for the protection of farm workers against accidents referred by the industrial commissioner.

2. The advisory council shall consist of ten members appointed by the industrial commissioner. The members shall be representative of farmers, growers, farm workers and other persons and groups concerned with agricultural safety. One of the members shall be designated as chairman by the industrial commissioner. The chairman of the board of standards and appeals, the commissioner of agriculture and markets, the commissioner of education, and the dean of the college of agriculture at Cornell University, or their designated representatives, shall be additional members of the council, who shall serve by virtue of their positions, without voting power.

The industrial commissioner shall designate an officer or employee of the department of labor to act as secretary of the advisory council, who shall not be a member of such council and who shall not receive any additional compensation therefor.

3. The advisory council may take testimony, subpoena witnesses, and require the production of books, records and papers, and hold public or private hearings.

4. The advisory council may request and shall receive such assistance, service and data from any agency of the state or from any political subdivision thereof as will enable it properly to carry out its activities hereunder and effectuate the purposes herein set forth.

5. The advisory council shall, from time to time, but not less frequently than on December first of each year, submit a report to the industrial commissioner, and shall submit a final report on or before March thirty-first, nineteen hundred seventy-two. Such reports may include such recommendations as the council finds appropriate on the basis of its studies and investigations.

6. The appointed members of the advisory council shall receive no compensation for their services but shall receive in lieu of expenses incurred in the performance of their duties the sum of sixty dollars for each day or part thereof spent in attendance at meetings or otherwise in the work of the council, but no member shall receive in excess of twelve hundred dollars during any one fiscal year.

7. The advisory council may adopt rules and regulations to govern its own proceedings. The secretary shall keep a record of all proceedings of the council, which shall show the name of each member present at the meetings and every matter considered by the council and the action taken thereon. Such records shall be filed in the office of the secretary of the department of labor.

* NB Expired March 31, 1972

§ 13. Oaths of office. The industrial commissioner, members of the industrial board of appeals and the deputy commissioner shall, before entering upon the duties of their office, take and subscribe the constitutional oath of office. Such oaths shall be filed in the office of the department of state.

§ 14. Offices of the department. The principal office of the department shall be in the city of Albany in rooms designated by the commissioner of general services as provided by law. There shall be a branch office in the city of New York and other branch offices may be established and maintained by the department in such places as the industrial commissioner may determine and for which appropriations are made by the legislature. The industrial commissioner may, with the commissioner of commerce and the commissioner of transportation, develop and institute a procedure for the uniform collection of employment and economic data within the state for use in connection with the scheduling of public works projects.

§ 15. Seal. The commissioner may adopt a seal of the department and require that it be used for the authentication of orders and proceedings and for such other purpose as he may prescribe.

§ 16. Vacancies and removals. If a vacancy shall occur or exist in the office of the industrial commissioner it shall be filled by appointment by the governor, by and with the advice and consent of the senate, for a term expiring with that of the governor by whom the appointment was made. The governor may remove the commissioner in the manner provided by the public officers law.

§ 17. Expenses. The commissioner shall devote his entire time to the duties of his office. The reasonable and necessary expenses of the department and the reasonable and necessary traveling and other expenses of the commissioner, deputy commissioner and other officers and

employees of the department, while actually engaged in the performance of their duties, outside of the city of Albany, or if any such officer or employee be in charge of or actually employed at a branch office of the department, the reasonable and necessary traveling and other expenses outside of the place in which such branch office is located, shall be paid from the state treasury upon the audit and warrant of the comptroller, upon vouchers approved by the commissioner.

§ 18. Officers and employees. The officers, deputy commissioners and employees of the department of labor in office when this section takes effect shall continue in office subject to the power of removal or the appointment of their successors as provided in this chapter. There shall be in such department and the commissioner may appoint such heads of divisions or bureaus and such inspectors, investigators, statisticians and other assistants and employees as he shall deem necessary for the exercise of the powers and the performance of the duties of the department.

The commissioner may transfer officers or employees from their positions to other positions in the department, or abolish or consolidate such positions. The commissioner may remove from office any officer or employee in the department. All such transfers, removal of employees or officers and abolishment or consolidation of positions shall be made in accordance with the provisions of the civil service law.

§ 18-c. Sick leave for per diem employees. A per diem officer or employee holding a position in the competitive, non-competitive or labor class of the civil service of the state whose compensation or salary is on a per diem basis may be granted a sick leave with pay of not more than thirty days in each year by the head of the department, bureau, commission, agency, board or council of said state. The provisions of this section shall not apply to any employee who is subject to the rules governing sick leave, vacation and other time allowances adopted by the state civil service commission pursuant to law.

§ 20. Divisions or bureaus. Existing divisions or bureaus in the department shall continue until changed, consolidated or abolished pursuant to this section. The commissioner may establish such divisions or bureaus as may be necessary for the administration and operation of the department, under this chapter, and may change, consolidate or abolish divisions or bureaus. Each division and bureau shall be subject to the supervision and direction of the commissioner, and shall have jurisdiction of such matters, exercise such powers and perform such duties as may be assigned to it by the commissioner.

§ 21. General powers and duties of commissioner. The commissioner shall be the administrative head of the department and shall have, notwithstanding any provision of law to the contrary, general administrative supervision over the several divisions, boards, commissions, bureaus, and agencies thereof whether established under the provisions of this chapter or the workmen's compensation law and in connection therewith, the commissioner:

1. Shall enforce all the provisions of this chapter and may issue such orders as he finds necessary directing compliance with any provision of this chapter, except as in this chapter otherwise provided;

2. Shall cause proper inspections to be made of all matters prescribed by this chapter;

3. Shall cause investigations to be made of the condition of women in industry;

- * 3-a. Shall prepare and submit to the governor, the temporary president of the senate and the speaker of the assembly on or before the thirtieth day of September an annual report on the status of older workers including those over the age of sixty-five in New York state. Such report shall describe in detail the employment needs of such older workers and the ability of existing state employment services to deal with the problems of older workers. The report shall consider the need

for affirmative action, training, counseling, development of alternative work schedules, job development activities within the public and private sector, and the need for improved use by older workers of publicly funded programs for employment and employment-related services. The report shall also consider the economic impact of unemployment among older workers and shall contain recommendations, including the associated costs, for improved programs or for changes in statutes or regulations to provide increased employment opportunities for older workers.

* NB Expired October 1, 1981

4. Shall inquire into and report on the causes of all strikes, lockouts and other industrial controversies or labor disputes, and may appoint boards of inquiry for that purpose;

5. Shall institute methods and procedures for the establishment of a program for voluntary compliance by employers and employees with the requirements of this act and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this article;

6. Shall provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable, inappropriate, or unnecessary working conditions at the workplace and of stimulating employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

7. May provide for the establishment and maintenance of public employment offices for the purpose of securing employment for men, women and children;

8. May make investigations, collect and compile statistical information and report upon the conditions of labor generally and upon all matters relating to the enforcement and effect of the provisions of this chapter and of the rules thereunder;

9. May enforce any lawful municipal ordinance, by-law or regulation relating to any place affected by the provisions of this chapter, not in conflict with provisions of this chapter;

10. May investigate the condition of noncitizens relative to their employment in industry;

11. May issue such regulations governing any provision of this chapter as he finds necessary and proper.

12. Shall compile and publish, on an annual basis, a list of all regulations and notices required to be posted by employers for the benefit of their employees pursuant to this chapter, the workers' compensation law and any other state or federal law, rule or regulation.

13. Shall adopt regulations prescribing the methodology for establishing an ongoing monthly statewide cost of labor index and an annual county or appropriate multi-county labor market composite wage rate, in consultation with the commissioner of education, for the purpose of computation of building aid to school districts, as required by subparagraph one of paragraph a of subdivision six of section thirty-six hundred two of the education law.

14. Shall do all things necessary for the operation of the New York state data center established in the department in cooperation with the United States bureau of the census; to cooperate with other state agencies, universities, regional organizations, boards, commissions, and other entities in the dissemination of socio-economic information and data through the New York state data center program; in relation to such information and data, to provide technical assistance to other state agencies, universities, regional organizations, boards, commissions and other entities; and to prepare estimates and the official projections of population, households and other characteristics of the state for use by all state agencies. All employees transferred to the department shall be transferred without further examination or qualification to the same or similar titles and shall remain in the same collective bargaining units and shall retain their respective civil service classifications, status

and rights pursuant to their collective bargaining units and collective bargaining agreements.

15. Shall establish and maintain an online database to catalogue and make available information on workforce development funding programs. Such catalogue shall be updated no less than annually. For purposes of this subdivision, the term "workforce development funding program" shall mean a program that funds or provides targeted educational, occupational or training services for the purpose of effecting the employability of the participant, provides training or employment services, supports an economic development activity by enhancing the skills of the state's workforce, prepares individuals for employment, improves opportunities for individuals to become employed, or promotes understanding of the state labor force market through statistical studies, including but not limited to programs that fund or provide English as a second language and adult literacy. For each workforce development funding program, the online database shall include, but not be limited to, the following information for each funding program:

- (i) the name of the funding program and the agency administering the funding program;
- (ii) a description of the purpose of the funding program;
- (iii) a specific program Uniform Resource Locator ("URL"), if any;
- (iv) the year the program was established;
- (v) a catalog of federal domestic assistance numbers, if any;
- (vi) the legal authority, including statute and regulation citations;
- (vii) the program and fiscal contact information including agency name, telephone number, and email address;
- (viii) all eligibility requirements;
- (ix) any program and special restrictions;
- (x) any action or actions required to receive aid; and
- (xi) a description of aid which shall include, but not be limited to, the flow of funds between entities, the type of aid formula used, any matching requirements and any maintenance of effort.

16. Beginning on December first, two thousand twenty-four, and every December first thereafter, the department shall prepare a report of the catalogue of workforce development funding programs established pursuant

to subdivision fifteen of this section comprised of analysis conducted by the agency or entity responsible for each workforce development funding program on the outcomes and effectiveness of such funding programs and the number of persons served by such funding. Such analysis must be submitted to the department by a date specified by the department each year. Such report shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly and shall be made publicly available on the department's website.

*** § 21-a. The industrial commissioner is hereby authorized to enter into agreements with the appropriate agencies of the United States, whereby, in** accordance with a law of the United States, the commissioner shall cooperate with such appropriate agencies of the United States in the administration and operation of programs of vocational training or retraining, or the development of job skills, authorized by such law. The commissioner shall cooperate with other departments, divisions and agencies of the state in connection with any such programs and perform such acts and exercise such powers as may be necessary to entitle the state to receive benefits under such agreement. The commissioner is further authorized to receive and disburse funds from the United States or any agency thereof, in accordance with any such agreement.

* NB Enacted without section heading.

§ 21-b. Power of the industrial commissioner to make agreements for federal reimbursement to the state of certain expenses in connection with veterans' training. The industrial commissioner is hereby authorized to enter into agreements with the United States veterans' administration to reimburse the state for expenses heretofore incurred or hereafter to be incurred in connection with the administration of the training of veterans and in the rendition of other services by the state as provided for under title two of the "Servicemen's Readjustment Act of 1944" as now in force or as it may hereafter be amended, except with respect to payments by the federal government for tuition, and other fees and charges incidental thereto, of veterans attending state

educational institutions.

§ 21-c. Power of commissioner to enter into agreements relating to certain federal acts. The commissioner is hereby authorized and empowered to take such steps, not inconsistent with law, as may be necessary or desirable for the purpose of procuring for the people of this state all of the benefits and assistance, financial or otherwise in connection with or provided or to be provided for by or pursuant to, the federal farm labor contractor registration act of nineteen hundred sixty-three, the federal economic opportunity act of nineteen hundred sixty-four, as amended, the federal fair labor standards act of nineteen hundred thirty-eight, as amended, and the occupational safety provisions of any federal act. The commissioner may enter into agreements with appropriate agencies of the United States, and with any political subdivision of the state, as may be necessary or required to receive such benefits and assistance. The commissioner is further authorized to receive and disburse such funds from the United States or any agency thereof, or from any political subdivision of the state, in accordance with the terms of any such agreement. The commissioner shall cooperate with other departments, divisions, agencies, and political subdivisions of the state in connection with any such agreement.

§ 21-d. Power of commissioner to enter into agreement relating to information obtained by the state directory of new hires. The department, through the commissioner, shall enter into the agreement provided for in section one hundred seventy-one-h of the tax law, and shall take such other actions as may be necessary to carry out the agreement provided for in such section for matching beneficiary records of workers' compensation and state employment security programs with information provided by employers to the state directory of new hires for the purposes of verifying eligibility for such benefits and for administering workers' compensation and state employment security programs.

§ 21-e. Powers of the commissioner to prepare and issue a notice to be posted at worksite. 1. The commissioner is hereby authorized to prepare and issue a notice to be posted at the worksite of each and every apparel or garment manufacturer or contractor known to the department in this state. Such notice shall be in English, Spanish, Chinese and Korean, be printed in at least ten point type and shall clearly state:

(a) The duties of employers with regard to the rights of employees to the receipt and payment of wages;

(b) A toll free number at the department to which employees may direct questions or register complaints concerning an employer's failure to pay wages or the conditions of employment; and

(c) The address of the regional department to file a complaint.

2. The notice required pursuant to subdivision one of this section shall be distributed to employers in the apparel and garment industries to be posted in a visible and prominent location within the worksite.

§ 21-f. Job transition plan for certain climate risk-related and energy transition projects. 1. The commissioner, in consultation with labor organizations, shall develop a comprehensive plan to transition, train, or retrain employees that are impacted by climate risk-related and energy transition projects funded from the New York climate action fund climate investment account established pursuant to section ninety-nine-qq of the state finance law. This plan shall include a method of allowing displaced and transitioning workers, including affected labor organizations, to notify the commissioner of the loss of employment, their previous title, and previous wage rates including whether they previously received medical benefits, retirement benefits, and/or other benefits. The plan shall require employers to notify the commissioner of workers laid off or discharged due to climate risk-related and energy transition projects funded from the New York climate action fund climate investment account established pursuant to section ninety-nine-qq of the state finance law.

2. Funding shall be made available for worker transition and retraining, which shall include funding as provided by subdivision

twenty-seven-d of section one thousand five of the public authorities law.

3. The commissioner shall create a program pursuant to which, where applicable and feasible, newly created job opportunities shall be offered to a pool of transitioning workers who have lost their employment or will be losing their employment in the energy sector due to climate risk-related and energy transition projects funded from the New York climate action fund climate investment account established pursuant to section ninety-nine-qq of the state finance law. Such program shall include a method for the commissioner to communicate names and contact information for displaced or transitioning workers to public entities that may have job opportunities for such workers every ninety days.

§ 23. Administrative regulations. The commissioner may make, amend and repeal regulations necessary for the internal administration of the department, and not in conflict with the rules adopted by the workmen's compensation board or the industrial board of appeals pursuant to this chapter for the enforcement of the labor law. Such regulations shall not be deemed rules within the meaning of this chapter unless the context otherwise requires.

§ 24. Delegation of powers by commissioner. The commissioner may by order filed in the department delegate any of his powers to or direct any of his duties to be performed by the deputy commissioner or a head of a division or bureau of such department.

§ 25. Power to enter and inspect premises. The commissioner or the officers and employees of the department shall inspect every place which is, or which they have reasonable cause to believe is, affected by the provisions of this chapter, and they may in the discharge of their duties enter any such places.

§ 25-a. Power to administer the New York youth jobs program tax credit.

(a) The commissioner is authorized to establish and administer the program established under this section to provide tax incentives to employers for employing at risk youth in part-time and full-time positions. There will be ten distinct pools of tax incentives. Program one will cover tax incentives allocated for two thousand twelve and two thousand thirteen. Program two will cover tax incentives allocated in two thousand fourteen. Program three will cover tax incentives allocated in two thousand fifteen. Program four will cover tax incentives allocated in two thousand sixteen. Program five will cover tax incentives allocated in two thousand seventeen. Program six will cover tax incentives allocated in two thousand eighteen. Program seven will cover tax incentives allocated in two thousand nineteen. Program eight will cover tax incentives allocated in two thousand twenty. Program nine will cover tax incentives allocated in two thousand twenty-one. Program ten will cover tax incentives allocated in two thousand twenty-two. Program eleven will cover tax incentives allocated in two thousand twenty-three. Program twelve will cover tax incentives allocated in two thousand twenty-four. Program thirteen will cover tax incentives allocated in two thousand twenty-five. Program fourteen will cover tax incentives allocated in two thousand twenty-six. Program fifteen will cover tax incentives allocated in two thousand twenty-seven. The commissioner is authorized to allocate up to twenty-five million dollars of tax credits under program one, ten million dollars of tax credits under program two, twenty million dollars of tax credits under program three, fifty million dollars of tax credits under each of programs four and five, and forty million dollars of tax credits under programs six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen.

(b) Definitions. (1) The term "qualified employer" means an employer that has been certified by the commissioner to participate in the program established under this section and that employs one or more qualified employees.

(2) The term "qualified employee" means an individual:

(i) who is between the age of sixteen and twenty-four;

(ii) who resides in a city with a population of fifty-five thousand or

more or a town with a population of four hundred eighty thousand or more;

(iii) who is low-income or at-risk, as those terms are defined by the commissioner;

(iv) who is unemployed prior to being hired by the qualified employer; and

(v) who will be working for the qualified employer in a full-time or part-time position that pays wages that are equivalent to the wages paid for similar jobs, with appropriate adjustments for experience and training, and for which no other employee has been terminated, or where the employer has not otherwise reduced its workforce by involuntary terminations with the intention of filling the vacancy by creating a new hire.

(3) For programs four and five, the tax credit under each program shall be allocated as follows: (i) thirty million dollars of tax credit for qualified employees; and (ii) twenty million dollars of tax credit for individuals who meet all of the requirements for a qualified employee except for the residency requirement of subparagraph (ii) of paragraph two of this subdivision, which individuals shall be deemed to meet the residency requirements of subparagraph (ii) of paragraph two of this subdivision if they reside in New York state.

(4) For programs six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen the tax credit under each program shall be allocated as follows: (i) twenty million dollars of tax credit for qualified employees; and (ii) twenty million dollars of tax credit for individuals who meet all of the requirements for a qualified employee except for the residency requirement of subparagraph (ii) of paragraph two of this subdivision, which individuals shall be deemed to meet the residency requirements of subparagraph (ii) of paragraph two of this subdivision if they reside in New York state.

(c) A qualified employer shall be entitled to a tax credit equal to (1) seven hundred fifty dollars per month for up to six months for each qualified employee the employer employs in a full-time job or three hundred seventy-five dollars per month for up to six months for each qualified employee the employer employs in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, (2) fifteen hundred dollars for

each qualified employee who is employed for at least an additional six consecutive months by the qualified employer in a full-time job or seven hundred fifty dollars for each qualified employee who is employed for at least an additional six consecutive months by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, and (3) an additional fifteen hundred dollars for each qualified employee who is employed for at least an additional year after the completion of the time periods and satisfaction of the conditions set forth in paragraphs one and two of this subdivision by the qualified employer in a full-time job or seven hundred fifty dollars for each qualified employee who is employed for at least an additional year after the completion of the time periods and satisfaction of the conditions set forth in paragraphs one and two of this subdivision by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full time. The tax credits shall be claimed by the qualified employer as specified in subdivision thirty-six of section two hundred ten-B and subsection (tt) of section six hundred six of the tax law.

(d) To participate in the program established under this section, an employer must submit an application (in a form prescribed by the commissioner) to the commissioner after January first, two thousand twelve but no later than November thirtieth, two thousand twelve for program one, after January first, two thousand fourteen but no later than November thirtieth, two thousand fourteen for program two, after January first, two thousand fifteen but no later than November thirtieth, two thousand fifteen for program three, after January first, two thousand sixteen but no later than November thirtieth, two thousand sixteen for program four, after January first, two thousand seventeen but no later than November thirtieth, two thousand seventeen for program five, after January first, two thousand eighteen but no later than November thirtieth, two thousand eighteen for program six, after January first, two thousand nineteen but no later than November thirtieth, two thousand nineteen for program seven, after January first, two thousand twenty but no later than November thirtieth, two thousand twenty for program eight, after January first, two thousand twenty-one but no later than November thirtieth, two thousand twenty-one for program nine, after

January first, two thousand twenty-two but no later than November thirtieth, two thousand twenty-two for program ten, after January first, two thousand twenty-three but no later than November thirtieth, two thousand twenty-three for program eleven, after January first, two thousand twenty-four but no later than November thirtieth, two thousand twenty-four for program twelve, after January first, two thousand twenty-five but no later than November thirtieth, two thousand twenty-five for program thirteen, after January first, two thousand twenty-six but no later than November thirtieth, two thousand twenty-six for program fourteen, and after January first, two thousand twenty-seven but no later than November thirtieth, two thousand twenty-seven for program fifteen. The qualified employees must start their employment on or after January first, two thousand twelve but no later than December thirty-first, two thousand twelve for program one, on or after January first, two thousand fourteen but no later than December thirty-first, two thousand fourteen for program two, on or after January first, two thousand fifteen but no later than December thirty-first, two thousand fifteen for program three, on or after January first, two thousand sixteen but no later than December thirty-first, two thousand sixteen for program four, on or after January first, two thousand seventeen but no later than December thirty-first, two thousand seventeen for program five, on or after January first, two thousand eighteen but no later than December thirty-first, two thousand eighteen for program six, on or after January first, two thousand nineteen but no later than December thirty-first, two thousand nineteen for program seven, on or after January first, two thousand twenty but no later than December thirty-first, two thousand twenty for program eight, on or after January first, two thousand twenty-one but no later than December thirty-first, two thousand twenty-one for program nine, on or after January first, two thousand twenty-two but no later than December thirty-first, two thousand twenty-two for program ten, on or after January first, two thousand twenty-three but no later than December thirty-first, two thousand twenty-three for program eleven, on or after January first, two thousand twenty-four but no later than December thirty-first, two thousand twenty-four for program twelve, on or after January first, two thousand twenty-five but no later than December thirty-first, two thousand twenty-five for program thirteen, on or after January first,

two thousand twenty-six but no later than December thirty-first, two thousand twenty-six for program fourteen, and on or after January first, two thousand twenty-seven but no later than December thirty-first, two thousand twenty-seven for program fifteen. As part of such application, an employer must:

(1) agree to allow the department of taxation and finance to share its tax information with the commissioner. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law, and

(2) allow the commissioner and its agents and the department of taxation and finance and its agents access to any and all books and records of employers the commissioner may require to monitor compliance.

(e) If, after reviewing the application submitted by an employer, the commissioner determines that such employer is eligible to participate in the program established under this section, the commissioner shall issue the employer a preliminary certificate of eligibility that establishes the employer as a qualified employer. The preliminary certificate of eligibility shall specify the maximum amount of tax credit that the employer may be allowed to claim and the program year under which it may be claimed. The maximum amount of tax credit the employer is allowed to claim shall be computed as prescribed in subdivision (c) of this section.

(e-1)(1) To receive an annual final certificate of tax credit, the qualified employer must annually submit, on or before January thirty-first of the calendar year subsequent to the payment of wages paid to an eligible employee, a report to the commissioner, in a form prescribed by the commissioner. The report must demonstrate that the employer has satisfied all eligibility requirements and provided all the information necessary for the commissioner to compute an actual amount of credit allowed.

(2) After reviewing the report and finding it sufficient, the commissioner shall issue an annual final certificate of tax credit. Such certificate shall include, in addition to any other information the commissioner determines is necessary, the following information:

(i) The name and employer identification number of the qualified employer;

(ii) The program year for the corresponding credit award;

(iii) The actual amount of credit to which the qualified employer is entitled for that calendar year or the fiscal year in which the annual final certificate is issued, which actual amount cannot exceed the amount of credit listed on the preliminary certificate but may be less than such amount; and

(iv) A unique certificate number identifying the annual final certificate of tax credit.

(e-2) In determining the amount of credit for purposes of the annual final certificate of tax credit, the portion of the credit described in paragraph one of subdivision (c) of this section shall be allowed for the calendar year in which the wages are paid to the qualified employee, the portion of the credit described in paragraph two of subdivision (c) of this section shall be allowed for the calendar year in which the additional six consecutive month period ends, and the portion of the credit described in paragraph three of subdivision (c) of this section shall be allowed for the calendar year in which the additional year of consecutive employment ends after the completion of the time periods and satisfaction of the conditions set forth in paragraphs one and two of subdivision (c) of this section. If the qualified employer's taxable year is a calendar year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the calendar year return for which the annual final certificate of tax credit was issued. If the qualified employer's taxable year is a fiscal year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the return for the fiscal year that encompasses the date on which the annual final certificate of tax credit is issued.

(e-3) The commissioner shall establish guidelines and criteria that specify requirements for employers to participate in the program including criteria for certifying qualified employees, and issuing the preliminary certificate of eligibility and annual final certificate of tax credit. Such requirements may include the types of industries that the employers are engaged in. The commissioner may give preference to employers that are engaged in demand occupations or industries, or in regional growth sectors, including but not limited to those identified by the regional economic development councils, such as clean energy, healthcare, advanced manufacturing and conservation. In addition, the

commissioner shall give preference to employers who offer advancement and employee benefit packages to the qualified individuals.

(f) The commissioner shall annually publish a report. Such report must contain the names and addresses of any employer issued a preliminary certificate of eligibility under this section, the amount of New York youth works tax credit allowed to the qualified employer as specified on an annual final certificate of tax credit and any other information as determined by the commissioner.

§ 25-b. Power to administer the workers with disabilities tax credit program. (a) The commissioner is authorized to establish and administer the workers with disabilities tax credit program to provide tax incentives to employers for employing individuals with developmental disabilities. The commissioner is authorized to allocate up to six million dollars of tax credits annually.

(b) Definitions. (1) The term "qualified employer" means an employer that has been certified by the commissioner to participate in the workers with disabilities tax credit program and that employs one or more qualified employees.

(2) The term "qualified employee" means an individual:

(i) who is deemed to have a developmental disability, as that term is defined in subdivision twenty-two of section 1.03 of the mental hygiene law and who is certified by the education department or the office for people with developmental disabilities as a person with a disability which constitutes or results in a substantial handicap to employment; and

(ii) who is a current employee of a sheltered workshop, which for purposes of this subdivision is defined as an organization or environment that employs people with disabilities segregated from others; or who was unemployed for at least three months prior to January first, two thousand fifteen; and

(iii) who has worked for the qualified employer in a full-time or part-time position that pays wages that are equivalent to the wages paid for similar jobs, with appropriate adjustments for experience and training, and for which no other employee has been terminated, or where the employer has not otherwise reduced its workforce by involuntary

terminations with the intention of filling the vacancy by creating a new hire; and

(iv) who has not worked for an entity related to the qualified employer in the past twenty-four months; and

(v) is employed in New York at a location in New York state.

(c) A qualified employer shall be entitled to a tax credit. The tax credits shall be claimed by the qualified employer as specified in subdivision forty-eight of section two hundred ten-B and subsection (zz) of section six hundred six of the tax law.

(d) To participate in the workers with disabilities tax credit program, an employer must submit an application (in a form prescribed by the commissioner) to the commissioner. The commissioner shall establish guidelines that specify requirements for employers to participate in the program including criteria for certifying qualified employees. Any regulations that the commissioner determines are necessary may be adopted on an emergency basis notwithstanding anything to the contrary in section two hundred two of the state administrative procedure act. Such requirements may include the types of industries that the employers are engaged in.

(e) If, after reviewing the application submitted by an employer, the commissioner determines that such employer is eligible to participate in the workers with disabilities tax credit program, the commissioner shall issue the employer a preliminary certificate of eligibility that establishes the employer as a qualified employer. The certificate of eligibility shall specify the maximum amount of workers with disabilities tax credit that the employer will be allowed to claim. At the end of the taxable year, a qualified employer must obtain a final certificate of eligibility from the commissioner to file with a return claiming the credit. The final certificate must contain the certificate's taxable year to which the credit applies, the maximum amount of the credit allowed, the qualified employer's name and employer identification number, the employer's business address where the claimed employees were employed, the social security numbers of claimed employees and their hire and termination dates, verification that the claimed employees have met the statutory definition of "qualified employee", and each employee's total hours worked each quarter, hourly wage, and full-time or part-time status.

(f) The tax credits provided under this program shall be applicable to taxable periods beginning before January first, two thousand twenty-nine.

§ 25-c. Power to administer the empire state apprenticeship tax credit program. (a) The commissioner is authorized to establish and administer the empire state apprenticeship tax credit program to provide tax incentives to certified employers for employing qualified apprentices pursuant to an apprenticeship agreement registered with the department pursuant to paragraph (d) of subdivision one of section eight hundred eleven of this chapter. The commissioner is authorized to allocate up to ten million dollars of tax credits annually, beginning in two thousand eighteen and ending before two thousand twenty-eight. Any unused annual allocation of the credit shall be made available in each of the subsequent years before two thousand twenty-eight.

(b) Definitions. (1) The term "qualified apprenticeship agreement" means an apprenticeship agreement as defined by section eight hundred sixteen of this chapter that has been registered with, and approved by, the commissioner, for a trade other than a construction trade.

(2) The term "qualified employer" means an employer that has or participates in a commissioner approved registered apprenticeship program.

(3) The term "construction" means constructing, reconstructing, altering, maintaining, moving, rehabilitating, repairing, renovating, fabricating, servicing, or demolition of any building, structure, or improvement, or component, or relating to the excavation of or other development or improvement to land.

(4) The term "participating employer" means a qualified employer that has applied to participate in the empire state apprenticeship tax credit program and received a preliminary certificate of tax credit from the commissioner. The preliminary certificate shall state the maximum amount of the tax credit that the employer may be able to claim if the applicant becomes a "certified employer."

(5) The term "certified employer" means a qualified employer that has received a final certificate of eligibility from the commissioner after the commissioner has determined that the qualified employer has

fulfilled all the requisite eligibility criteria to participate in the empire state apprenticeship tax credit program established in this section. The final certificate of eligibility shall state the actual amount of tax credit that a certified employer is entitled to claim and the allocation year of the credit.

(6) The term "qualified apprentice" means an individual employed by a participating employer in a full time position for at least six months of a calendar year pursuant to a qualified apprenticeship agreement with a qualified employer. No individual employed by a qualified employer shall be deemed a qualified apprentice if such individual has not completed their apprenticeship training program within one year of their expected date of completion of their program.

(7) The term "disadvantaged youth" means an individual:

(i) who is between the ages of sixteen and twenty-four when the youth begins the apprenticeship; and

(ii) who is low-income or at-risk, as those terms are defined by the commissioner.

(8) The term "mentor" means an individual who provides instruction, guidance, and support to the apprentice on a regular basis throughout the apprentice's completion of the apprenticeship as the apprentice seeks employment in the field or industry of the apprenticeship. The goal of the mentor is to help train the apprentice in his or her trade and to help the apprentice successfully complete the apprenticeship and to secure and retain employment.

(c)(1) A certified employer shall be entitled to a tax credit against income or franchise tax for each qualified apprentice. The base credit allowed under this program shall be computed as follows:

(A) (1) two thousand dollars for each first year apprentice; (2) three thousand dollars for each second year apprentice; (3) four thousand dollars for each third year apprentice; (4) five thousand dollars for each fourth year apprentice; and (5) six thousand dollars for each fifth year apprentice. The apprentice's status as a first, second, third, fourth or fifth year apprentice will be determined on the last day of the calendar year, or if the apprentice is no longer employed by the participating employer on the last day of the calendar year, on the last day of the apprentice's employment with the participating employer; or

(B) in lieu of the credit specified in subparagraph (A) of this

paragraph, for each qualified apprentice who is considered a disadvantaged youth for each tax year: (1) five thousand dollars for each first year apprentice; (2) six thousand dollars for each second year apprentice; and (3) seven thousand dollars for each third, fourth, or fifth year apprentice. The apprentice's status as a first, second, third, fourth or fifth year apprentice will be determined on the last day of the calendar year, or if the apprentice is no longer employed by the participating employer on the last day of the calendar year, on the last day of the apprentice's employment with the participating employer. If a disadvantaged youth begins an apprenticeship before the age of twenty-five, a certified employer shall be eligible to continue to receive the tax credit for such youth under this subparagraph until that apprentice completes the apprenticeship.

(2) If an apprentice has been trained in his or her trade by a mentor for the entirety of the calendar year, the base credit amounts described in paragraph one of this subdivision shall be increased by five hundred dollars.

(3) The certified employer shall not be allowed a tax credit under this program for any apprentice, if that apprentice is the basis for any other state tax credit.

(d) Application and approval process. (1) To participate in the program established under this section, a qualified employer must submit to the commissioner an application in a form prescribed by the commissioner. As part of such application, a qualified employer must:

(A) Agree to allow the department of taxation and finance to share its tax information with the department. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the state freedom of information law.

(B) Allow the department and its agents access to any and all books and records the department may require to monitor compliance.

(2) After reviewing a qualified employer's completed application and determining that the qualified employer will meet the eligibility conditions set forth under this section and any applicable regulations promulgated by the commissioner, the commissioner may admit the applicant into the program as a participating employer and provide the applicant with a preliminary certificate of eligibility establishing the qualified employer as a participating employer and stating the maximum

amount of credit for which the applicant may be eligible.

(3) To receive a final certificate of tax credit, the participating employer must annually submit a final report to the commissioner, in a form prescribed by the commissioner. The report must demonstrate that the applicant has satisfied all eligibility requirements and provided all the information necessary for the commissioner to compute an actual amount of credit allowed for that calendar year, notwithstanding the fact that a participating employer's taxable year may be a fiscal year, as defined in subdivision ten of section two hundred eight of the tax law.

(4) After reviewing the final report and finding it sufficient, the commissioner shall certify the participating employer as a certified employer and issue a final certificate of tax credit. Such certificate shall include, but not be limited to, the following information:

(A) The name and employer identification number of the certified employer;

(B) The actual amount of credit to which the certified employer is entitled for that calendar year, which actual amount cannot exceed the amount of credit listed on the preliminary certificate but may be less than such amount;

(C) The allocation year of the credit.

(5) If a certified employer's taxable year is a fiscal year, it shall be entitled to claim the credit on the return for the fiscal year that includes the last day of the calendar year covered by the final certificate of tax credit.

(e) The commissioner shall establish guidelines and criteria that specify requirements for qualified employers to participate in the program including criteria for certifying qualified apprentices. Any regulations that the commissioner determines are necessary and are consistent with the purpose of this article may be adopted on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedure act. The commissioner may give preference to qualified employers that hire and train disadvantaged youth through qualified apprenticeship agreements, and qualified employers that are engaged in demand occupations or industries, or in regional growth sectors, including those identified by the department, such as clean energy, health care, technology, including software engineering and web

development, advanced manufacturing and conservation. In addition, the commissioner may give preference to employers that employ apprentices in newly established apprenticeship programs. The commissioner also may take the following factors into consideration when evaluating whether to approve an application in a year subsequent to the year in which a qualified employer was determined to be a certified employer:

(1) the length of the qualified apprenticeship agreement the employer has entered into;

(2) how many apprentices have graduated from the apprenticeship program to which the qualified apprentice employed by the employer belongs;

(3) how many apprentices in the apprenticeship program the qualified employer has hired; and

(4) any other factors the commissioner deems relevant.

(f) The commissioner shall annually publish a report. Such report must contain the names and addresses of any certified employer issued a final certificate of eligibility under this section, the work location of each apprentice generating credit, the amount of empire state apprenticeship tax credit allowed to the certified employer as specified on such final certificate of eligibility, and the number of each of the first year apprentices, second year apprentices, third year apprentices, fourth year apprentices, and fifth year apprentices, and how many of each of those types are considered disadvantaged youth. The commissioner shall include in such report the relevant industries of certified employers and recommendations for legislative or other action to further the intent and purpose of the empire state apprenticeship tax credit program.

(g) The commissioner shall promote, publish and disseminate information concerning the empire state apprenticeship tax credit and other available funding, particularly targeting industries and fields of business not currently taking advantage of apprenticeships.

§ 26. Examination of books and papers. All papers, books, records or other documents required to be kept by the provisions of this chapter or of the industrial code shall at all times be open for the inspection of the commissioner and the officers and employees of the department, and

the persons in charge thereof shall afford every reasonable facility for their examination and permit copies to be made when required by the commissioner.

§ 27. Safety and health standards. 1. Application. Notwithstanding any other provision in this chapter, a safety or health standard promulgated under this section shall apply only to employees not covered by a federal occupational safety or health standard promulgated under section six of the United States Occupational Safety and Health Act of 1970 (Public Law, 91-596). Provided, however, that no standard promulgated under this section shall apply to employees of the state, its political subdivisions and of any other governmental agency or instrumentality, to whom section twenty-seven-a of this chapter is applicable.

2. Standards. a. The commissioner shall by rule adopt, amend or repeal safety and health standards which provide reasonable and adequate protection to the lives, safety or health of employees and of persons lawfully frequenting a place of employment.

b. The commissioner may require licenses as a condition of carrying on any industry, trade, occupation or process which the commissioner finds contains special elements of danger to the lives, safety or health of employees to whom this section is applicable or of persons lawfully frequenting the place of employment of such employees. The commissioner may establish a schedule of fees for such licenses, require medical inspection and supervision of persons so employed or applying for such employment, and may prescribe other appropriate requirements.

c. Any person who may be adversely affected by a standard issued under this section may at any time within sixty days after the effective date of such standard, commence a proceeding for judicial review pursuant to article seventy-eight of the civil practice law and rules.

d. The safety and health standards promulgated under this section shall for all purposes have the full force and effect of law and shall

be enforced in the same manner as the provisions of this article.

e. Any provision of this chapter and any rule or regulation issued under the provisions of this chapter relating to the protection of the safety or health of employees to whom this section is applicable and of persons lawfully frequenting the place of employment of such persons which is in effect on the date that this act becomes effective shall be deemed to be a safety and health standard issued under this section, with all provisions of this article applicable, and shall continue in effect until superseded by a corresponding safety and health standard issued on or after the effective date of this act.

f. The provisions of this section shall supersede any other provision of this chapter which is inconsistent or in conflict therewith.

3. Regulations. The commissioner may promulgate such regulations as he shall consider necessary and proper to effectuate the purposes and provisions of this section.

§ 27-a. Safety and health standards for public employees. 1.

Definitions. As used in this section:

* a. "Employer" means the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof.

* NB Effective until enactment of legislation by the state of New Jersey

* a. "Employer" means the state, any political subdivision of the state, a public authority, a bi-state authority utilizing its own police officers or firefighters or any other governmental agency or instrumentality thereof.

* NB Effective upon enactment of legislation by the state of New Jersey

b. "Employees" means persons permitted to work by an employer.

c. "Authorized employee representative" means an employee authorized

by the employees or the designated representative of an employee organization recognized or certified to represent the employees pursuant to article fourteen of the civil service law.

* d. "Public employee" means any employee of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality.

* NB Effective until enactment of legislation by the state of New Jersey

* d. "Public employee" means any employee of the state, any political subdivision of the state, a public authority, a bi-state authority utilizing its own police officers or firefighters or any other governmental agency or instrumentality.

* NB Effective upon enactment of legislation by the state of New Jersey

e. "System components" means life safety harness, belts, ascending devices, carabiners, descent control devices, rope grab devices and snap-links.

2. Application. A safety or health standard promulgated under the provisions of this section shall apply to every public employee and the commissioner shall have exclusive authority to enforce such standard in accordance with the provisions of this chapter, notwithstanding any other safety or health standard or any other provision in this chapter or in any other general, local or special law or charter. However, this section shall not supersede any inconsistent provision of the education law, as applied to any school building certified by the commissioner of education as being in compliance with such law, and the regulations promulgated pursuant thereto, on the effective date of this section, or as applied to any application for certification which is pending before the effective date of this section.

3. Duties. a. Every employer shall: (1) furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees;

and (2) comply with the safety and health standards promulgated under this section. In applying this paragraph, fundamental distinctions between private and public employment shall be recognized.

b. Every employee shall comply with the safety and health standards and all rules, regulations and orders issued pursuant to this section which are applicable to his own actions and conduct.

c. The state shall promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and employees, in accordance with section eighteen (b) of the United States Occupational Safety and Health Act of 1970 (Public Law 91-596) which provides: "(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement."

4. Safety and health standards. a. The commissioner shall by rule adopt all safety and health standards promulgated under the United States Occupational Safety and Health Act of 1970 (Public Law, 91-596) which are in effect on the effective date of this section, in order to provide reasonable and adequate protection to the lives, safety and health of public employees and shall promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to such act or pursuant to paragraph b of this subdivision.

b. Notwithstanding the provisions of paragraph a of this subdivision, the commissioner, in consultation with the state occupational safety and health hazard abatement board, shall promulgate rules and regulations recommended to him by such board which establish standards whenever such board finds (i) that no federal standard exists for the particular condition being addressed and that such a standard is necessary for the protection of the public employees at risk, or (ii) a federal standard exists, but conditions in public workplaces in this state require a

different standard, and such state standard will be at least as effective in providing safe and healthful places of employment as the federal standard.

c. Except for an employer located in a city with a population of over one million, any employer who employs a firefighter determined to be at risk of entrapment at elevations pursuant to regulations promulgated by the commissioner, shall provide emergency escape systems for use by such firefighter. The commissioner shall by rule identify the codes, standards and recommended practices of the National Fire Protection Association and other appropriate standards approved by the commissioner as are appropriate to the nature of the risk to which the firefighter shall be exposed and shall, at a minimum, include in such rule language requiring employers to (1) identify whether firefighters employed by them would be exposed to the hazard of entrapment at elevated surfaces; (2) identify those firefighters who would be exposed to the hazard; and (3) determine the appropriate emergency escape systems to address the hazard. Such emergency escape systems shall be adequate to protect the health and safety of the firefighter. The employer shall ensure that the firefighter is instructed in the proper use of the emergency escape systems. As used in this subdivision, the term "entrapment at elevations" shall mean a situation where a fire or other emergency conditions require a firefighter inside a structure to immediately exit the structure but where such conditions make the normal route of exit unusable, thereby requiring the firefighter to exit the structure from an opening that is not designed as an exit and is above the ground floor or at an elevation above the surrounding terrain that would reasonably be expected to cause injury to a firefighter exiting by means of this opening without any emergency escape systems. As used in this subdivision, the term "emergency escape system" shall mean safety ropes and system components and any other system that (1) is compliant with the codes, standards and recommended practices of the National Fire Protection Association or other appropriate standard identified by the commissioner through regulation, as a means of emergency self-rescue from an above grade, immediately hazardous environment, (2) has been certified by a nationally recognized safety testing and certification organization, and (3) the commissioner has recognized through

regulation.

In order to ensure the adequacy of the emergency escape systems, the employer must routinely inspect and ensure that:

- (1) Existing emergency escape systems meet the codes, standards and recommended practices adopted by the commissioner.
- (2) Existing emergency escape systems still perform their function and to identify any of their limitations such as but not limited to:
 - (i) Checking the labels or stamps on the equipment; and
 - (ii) Checking any documentation or equipment specifications; and
 - (iii) Contacting the supplier or the approval agency;
- (3) Firefighters are informed of the limitations of emergency escape systems;
- (4) Firefighters are not allowed or required to use any emergency escape systems beyond their limitations;
- (5) Existing and new emergency escape systems have no visible defects that limit their safe use;
- (6) Emergency escape systems are used, cleaned, maintained and stored according to manufacturer's instructions;
- (7) The firefighter is instructed in identifying to the employer any defects that the firefighter may find in emergency escape systems; and
- (8) Any identified defects are corrected or immediate action is taken by the employer to eliminate the use of this equipment.

d. Any person who may be adversely affected by a standard issued under this section may, within thirty days after the effective date of such standard, commence a proceeding for judicial review pursuant to article seventy-eight of the civil practice law and rules.

5. Inspections. a. Any employee or representative of employees who believes that a violation of a safety or health standard exists, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of such violation or danger. Such notice and request shall be in writing, shall set forth with reasonable particularity the grounds for the notice, shall be signed by such employee or representative of employees, and a copy shall be provided by the commissioner to the employer or the person in charge no later than the

time of inspection, except that on the request of the person giving such notice, his name and the names of individual employees or representatives of employees shall be withheld. Such inspections shall be made forthwith.

b. A representative of the employer and an authorized employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

c. The authority of the commissioner to inspect a premises pursuant to such an employee complaint shall not be limited to the alleged violation contained in such complaint. The commissioner may inspect any other area of the premises in which he has reason to believe that a violation of this section exists.

d. No employee who accompanies the commissioner on an inspection shall suffer any reduction in wages.

e. The commissioner may, upon his own initiative, conduct an inspection of any premises occupied by a public employer if he has reason to believe that a violation of this section has occurred or if he has a general administrative plan for the enforcement of this section, including general schedule inspections, which provide a rational administrative basis for such inspecting. Within ninety days of enactment of this paragraph the commissioner shall publish the general administrative plan and shall adopt regulations on the conduct of inspections in locker rooms and other areas involving the personal property and privacy rights of public employees.

f. Any information obtained by the commissioner under this section shall be obtained with a minimum burden upon the employers.

5-a. Notwithstanding any other provisions of law, when a request for an inspection has been made in a situation where there is an allegation

of an imminent danger such that an employee would be subjecting himself or herself to serious injury or death because of the hazardous condition in the workplace, the inspection shall be given the highest priority by the department and shall be carried out immediately.

6. Enforcement procedures. a. If the commissioner determines that an employer has violated a provision of this section, or a safety or health standard or regulation promulgated under this section, he or she shall with reasonable promptness issue to the employer an order to comply which shall describe particularly the nature of the violation including a reference to the provision of this section, standard, regulation or order alleged to have been violated, shall fix a reasonable time for compliance and may establish the penalty to be assessed for failure to correct the violation by the time fixed for compliance. An employer who fails to correct a non-serious violation by the time fixed for compliance may be assessed a civil penalty of up to fifty dollars per day until the violation is corrected. An employer who fails to correct a serious violation by the time fixed for compliance may be assessed a civil penalty of up to two hundred dollars per day until the violation is corrected. Pursuant to section 18(k) of the United States Occupational Safety and Health Act of 1970 (Public Law, 91-596), a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. A non-serious violation shall be defined as any violation that does not fall under the definition of serious violation. The commissioner shall not assess a penalty against an employer for failure to correct a violation of a standard which is the subject of an application for a temporary order granting a variance or a violation which is the subject of a petition to modify an order to comply, provided however, that upon issuance by the commissioner of a determination denying such variance or petition to modify, or upon expiration of a temporary variance or modified compliance period, the time fixed for compliance shall recommence and the employer become

liable for the penalties provided herein.

b. Where the commissioner issues to an employer an order to comply, the employer shall post such order or a copy thereof in a conspicuous place at or near each place of violation cited in the order, where it is clearly visible to affected employees. The commissioner shall make such order available to employee representatives.

c. Any employer, or other party affected by a determination of the industrial commissioner issued pursuant to this section may petition the industrial board of appeals for review of such determination in accordance with section one hundred one of this chapter. Judicial review of the decision of the industrial board of appeals may be obtained by any party affected by such decision by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules within sixty days after such decision is issued.

d. If the time for compliance with an order of the commissioner issued pursuant to this section has elapsed, and the employer has not complied with the provisions of the order, the commissioner shall seek judicial enforcement of such order by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules. Where an employer has complied with an order in all respects other than the payment of a penalty imposed pursuant to this subdivision, the commissioner may file with the county clerk of the county where the employer has its place of business the order of the commissioner continuing the amount of civil penalty found to be due. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6-a. Form of complaints. The department shall establish a dedicated webpage through which any public employee under the jurisdiction of this section may report alleged or believed violations of any state law, regulation, rule or guidance related to occupational health and safety involving a communicable disease, including but not limited to the novel

coronavirus COVID-19. Such webpage shall allow individuals to report alleged or believed violations anonymously.

7. Injunction proceedings. a. The supreme court of the state shall have jurisdiction, upon petition of the industrial commissioner, pursuant to the civil practice law and rules to restrain any conditions or practices in any place of public employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the abatement procedures otherwise provided for by this section. Such proceeding shall be brought in the county in which the violation is alleged to exist. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. The employer may contest such order pursuant to the civil practice law and rules.

b. Whenever and as soon as an inspector concludes that conditions or practices described in paragraph a of this subdivision exist in any place of public employment, he shall inform the affected employees and employers of the danger and that he is recommending to the industrial commissioner that relief be sought.

c. If the industrial commissioner fails to seek relief under this section within forty-eight hours of being notified of such condition, any employee who may be injured by reason of such failure, or the authorized employee representative of such employees, may seek injunctive relief as provided in paragraph a of this subdivision.

8. Variances. a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision

thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph b of this subdivision and establishes that (1) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (2) he is taking all available steps to safeguard employees against the hazards covered by the standard, and (3) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this subdivision shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice so long as the requirements of this subdivision are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than one hundred and eighty days.

b. An application for a temporary variance order shall contain: (1) a specification of the standard or portion thereof from which the employer or owner seeks a variance; (2) a representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor; (3) a statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard; (4) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to come into compliance with the standard; and (5)

a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing. The commissioner is also authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

c. Any affected employer may apply to the commissioner for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, any employee or employee representative, or by the commissioner on his own motion, in the manner prescribed for its issuance under this subdivision at any time after six months from its issuance.

d. Any person, who may be adversely affected by a rule or order issued under this subdivision may challenge the validity or applicability of such rule or order by commencing, within sixty days, a proceeding pursuant to article seventy-eight of the civil practice law and rules.

9. Recordkeeping. a. In accordance with the commissioner's regulations, each employer shall make, keep and preserve, and make available to the commissioner such records regarding his activities relating to this section as the commissioner deems necessary or appropriate for developing information regarding the causes and prevention of occupational accidents and illness. Such regulations may include provisions requiring employers to conduct periodic inspections. The commissioner shall also issue regulations requiring that employers, through posting of notices, training or other appropriate means, keep their employees informed of their protections.

b. The commissioner shall prescribe regulations requiring employers to maintain accurate records and to make public periodic reports of work-related deaths, and injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve lost time from work, medical treatment, loss of consciousness, restriction of work or motion or transfer to another job.

c. The commissioner shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which the regulation requires to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring and have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any safety and health standard promulgated under this section, and shall inform any employee who is being exposed of the corrective action being taken and the time limit for correction.

10. Discrimination against employees. a. No person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to

be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others of any right afforded by this section.

b. Any employee who believes that he has been discharged, disciplined, or otherwise discriminated against by any person in violation of this subdivision may, within thirty days after such violation occurs, file a complaint with the commissioner alleging such discrimination. Upon receipt of such complaint, the commissioner shall cause such investigation to be made as he deems appropriate, and shall, if requested withhold the name of the complainant from the employer. If upon such investigation, the commissioner determines that the provisions of this subdivision have been violated, he shall request the attorney general to bring an action in the supreme court against the person or persons alleged to have violated the provisions of this subdivision. In any such action the supreme court shall have jurisdiction, for cause shown, to restrain violations of this subdivision and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with all back pay.

c. Within ninety days of this receipt of a complaint filed under this subdivision the commissioner shall notify the complainant and his representative by registered mail of his determination.

d. Nothing in this subdivision shall be deemed to diminish the rights of any employee under any law, rule or regulation or under any collective bargaining agreement.

11. Wherever notice is required to be given to an authorized employee representative under this section, notice shall be given to all organizations representing employees at the worksite in question. Notice should be given to the office of the employee representative as well as to the representative at the worksite. Representatives who wish this dual notice must inform the department of the person who is to be notified. Such notice shall be in writing unless the inspection is being conducted under subdivision five-a of this section.

12. The commissioner may initiate voluntary compliance programs, including, but not limited to, a public employee consultation program to provide on-site consultation to public employers desiring such services as an adjunct to the commissioner's inspections pursuant to this section. Whenever an on-site consultation is performed under this subdivision, a report shall be issued of any findings of noncompliance with the regulations promulgated under this section and the report shall be made public.

13. Regulations. The commissioner may promulgate such procedural regulations as he shall consider necessary and proper to effectuate the purposes and provisions of this section.

14. A commission to report on the operation and effect of this section is hereby established. a. Such commission shall examine the incidence of work related injuries, the incidence of injuries to the public, and the effect of this section upon insurance costs of public employers. Such commission shall be empowered to recommend additional or corrective legislation to advance the purposes of this section.

b. Such commission shall be composed of three members, one of whom shall be chosen by the speaker of the assembly, one of whom shall be chosen by the temporary president of the senate, and one of whom shall be chosen by the governor.

c. Members of the commission shall serve without compensation, except for expenses reasonably incurred in the discharge of their duties under this subdivision.

d. The commission shall issue an interim report to the legislature and the governor, which report shall be issued one year after the effective date of this section. A final report shall be issued two years after such effective date.

15. New York state occupational safety and health hazard abatement board; creation and procedure. a. The New York state occupational safety

and health hazard abatement board is hereby created to have and exercise the powers, duties and prerogatives provided by the provisions of this subdivision.

b. The membership of the board shall consist of five persons appointed by the governor of whom one shall be upon the recommendation of the temporary president of the senate, one upon the recommendation of the speaker of the assembly, and one upon the recommendation of the state comptroller. Members shall serve at the pleasure of the governor, and the governor may replace any member in accordance with the provisions contained herein for the appointment of members.

The governor shall designate one of the members to serve as chairman. The board shall act by a majority vote of its members, and a quorum to conduct business shall consist of three members. Any determination of the board shall be evidenced by a certification thereof executed by all the members present and voting. Each member of the board shall be entitled to designate a representative to attend meetings of the board in his place, and to vote or otherwise act on his behalf in his absence. Such representative shall not be authorized to delegate any of his duties or functions to any other person. Notice of such designation shall be furnished in writing to the board by the designating member. A representative shall serve at the pleasure of the designating member during the member's term of office.

c. No elected public officer or public employee shall be eligible for appointment as a member of the board.

d. The members of the board and their representatives shall serve without salary or per diem allowance but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties pursuant to this section, provided however that such members and representatives are not, at the time such expenses are incurred, public employees or public officers otherwise entitled to such reimbursement.

e. The board shall meet at least four times a year with at least one

meeting in each calendar quarter. The chairman shall designate the days of meeting, and shall provide each member with at least three weeks written notice of the date of such meeting.

f. Staff services for the board shall be performed insofar as practicable, by personnel of the department of labor. Additional professional and technical services may be secured from other state departments or agencies, with the consent of the head of such department or agency.

16. New York state occupational safety and health hazard abatement board; powers and duties. (A) a. The board created pursuant to subdivision fifteen of this section shall have the power, and it shall be its duty to receive, review and act upon applications for funding of capital projects designed to abate occupational safety and health hazards which have been found by the commissioner to violate the provisions of this section or which have been identified in a report of the public employee consultation program. The board shall fund seventy-five percent of the cost of any capital abatement project necessary to comply with an order issued by the commissioner pursuant to the provisions of this section or with a recommendation for hazard abatement issued by the public employee consultation program.

b. In determining the order in which applicants shall receive grants from the fund, and the amount of such funding, the board shall consider the following factors:

(1) the degree of possible physical harm which the hazard to be abated could inflict on the public employees and other citizens at risk;

(2) the imminent nature of the possible infliction of harm;

(3) the number of public employees and other citizens at risk;

(B) a. The board shall have the power, and it shall be its duty to receive, review, and act upon applications for funding for programs designed to provide occupational safety and health training and education for employees pursuant to the provisions of article twenty-nine of this chapter.

b. The board shall, by the promulgation of rules and regulations,

establish procedures and criteria that are necessary and appropriate to carry out the provisions of article twenty-nine of this chapter, which shall include criteria for the evaluation and selection of applications for grants and the auditing of performance thereunder.

(C) a. The board may require as part of such applications made pursuant to the provisions of this subdivision such information as it deems necessary and shall act upon such applications within a reasonable time. The board shall furnish the state budget director, state industrial commissioner, state comptroller, temporary president of the senate and speaker of the assembly with a copy of each application within three days following receipt thereof by the board.

b. That a employer has applied for funds pursuant to the provisions of this subdivision shall not relieve that employer of the obligation to correct any violation of this section by variance or other means.

(D) a. The board, in the formulation of standards pursuant to paragraph b of subdivision four of this section, shall have the power to conduct public hearings, administer oaths and take sworn or unsworn testimony at such hearings. The board may, by subpoena issued by the chair, compel the attendance of witnesses and the production of all books, records and other evidence relative to any matter under inquiry in the formulation of such standards.

b. The board may contract with occupational health professionals and industrial safety engineers to provide expert assistance in the formulation of standards pursuant to paragraph b of subdivision four of this section.

c. The board is authorized, after public hearings, to recommend standards to the commissioner. The board, in addition to acting on its own initiative, shall review, consider and make recommendations regarding requests for new standards presented to such board by public employers, employees or authorized employee representatives.

§ 27-b. Duty of public employers to develop and implement programs to prevent workplace violence. 1. Purpose. The purpose of this section is

to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees.

2. Definitions. For the purposes of this section:

a. "Employer" means: (1) the state; (2) a political subdivision of the state; (3) a public authority, a public benefit corporation, or any other governmental agency or instrumentality thereof; and (4) an authorized agency as defined in paragraph (a) of subdivision ten of section three hundred seventy-one of the social services law that accepts children adjudicated delinquent under article three of the family court act.

b. "Employee" means a public employee working for an employer.

c. "Workplace" means any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by an employer.

d. "Supervisor" means any person within an employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits written notice.

e. "Retaliatory action" means the discharge, suspension, demotion, penalization, or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

3. Risk evaluation and determination. Every employer shall evaluate its workplace or workplaces to determine the presence of factors or situations in such workplace or workplaces that might place employees at risk of occupational assaults and homicides. Examples of such factors shall include, but not limited to:

a. working in public settings (e.g., social services or other governmental workers, police officers, firefighters, teachers, public transportation drivers, health care workers, and service workers);

b. working late night or early morning hours;

c. exchanging money with the public;

d. working alone or in small numbers;

e. uncontrolled access to the workplace; and

f. areas of previous security problems.

4. Written workplace violence prevention program. Every employer with at least twenty full time permanent employees shall develop and implement a written workplace violence prevention program for its workplace or workplaces that includes the following:

a. a list of the risk factors identified in subdivision three of this section that are present in such workplace or workplaces;

b. the methods the employer will use to prevent incidents of occupational assaults and homicides at such workplace or workplaces, including but not limited to the following:

(1) making high-risk areas more visible to more people;

(2) installing good external lighting;

(3) using drop safes or other methods to minimize cash on hand;

(4) posting signs stating that limited cash is on hand;

(5) providing training in conflict resolution and nonviolent self-defense responses; and

(6) establishing and implementing reporting systems for incidents of aggressive behavior.

5. Employee information and training. a. Every employer with at least twenty permanent full time employees shall make the written workplace

violence prevention program available, upon request, to its employees, their designated representatives and the department.

b. Every employer shall provide its employees with the following information and training on the risks of occupational assaults and homicides in their workplace or workplaces at the time of their initial assignment and annually thereafter:

(1) employees shall be informed of the requirements of this section, the risk factors in their workplace or workplaces, and the location and availability of the written workplace violence prevention program required by this section; and

(2) employee training shall include at least: (a) the measures employees can take to protect themselves from such risks, including specific procedures the employer has implemented to protect employees, such as appropriate work practices, emergency procedures, use of security alarms and other devices, and (b) the details of the written workplace violence prevention program developed by the employer.

6. Application. a. Any employee or representative of employees who believes that a serious violation of a workplace violence protection program exists or that an imminent danger exists shall bring such matter to the attention of a supervisor in the form of a written notice and shall afford the employer a reasonable opportunity to correct such activity, policy or practice. This referral shall not apply where imminent danger or threat exists to the safety of a specific employee or to the general health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

b. If following a referral of such matter to the employee's supervisor's attention and after a reasonable opportunity to correct such activity, policy or practice the matter has not been resolved and the employee or representative of employees still believes that a violation of a workplace violence prevention program remains, or that an imminent danger exists, such employee or representative of employees may request an inspection by giving notice to the commissioner of such violation or danger. Such notice and request shall be in writing, shall

set forth with reasonable particularity the grounds for the notice, shall be signed by such employee or representative of employees, and a copy shall be provided by the commissioner to the employer or the person in charge no later than the time of inspection, except that on the request of the person giving such notice, such person's name and the names of individual employees or representatives of employees shall be withheld. Such inspection shall be made forthwith.

c. A representative of the employer and an authorized employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety in the workplace.

d. The authority of the commissioner to inspect a premises pursuant to such an employee complaint shall not be limited to the alleged violation contained in such complaint. The commissioner may inspect any other area of the premises in which he or she has reason to believe that a serious violation of this section exists.

d-1. No employee who accompanies the commissioner on an inspection, participates in a risk evaluation and determination inspection, or participates in an annual program review shall suffer any reduction in wages.

e. No employer shall take retaliatory action against any employee because the employee does any of the following:

- (1) makes an application pursuant to paragraph a of this subdivision;
- (2) requests an inspection as authorized in paragraph b of this subdivision;
- (3) accompanies the commissioner as authorized in paragraph c of this subdivision;

f. The commissioner may, upon his or her own initiative, conduct an inspection of any premises occupied by an employer if he or she has reason to believe that a violation of this section has occurred or if he

or she has a general administrative plan for the enforcement of this section, including a general schedule of inspections, which provide a rational administrative basis for such inspecting. Within one hundred twenty days of the effective date of this paragraph the commissioner shall adopt rules and regulations implementing the provisions of this section.

g. Any information obtained by the commissioner pursuant to this subdivision shall be obtained with a minimum burden upon the employers.

h. When a request for an inspection has been made in a situation where there is an allegation of an imminent danger such that an employee would be subjecting himself or herself to serious injury or death because of the hazardous condition in the workplace, the inspection shall be given the highest priority by the department and shall be carried out immediately.

§ 27-c. Preparation of public employers for state disaster emergencies involving public health. 1. Definitions. For the purposes of this section:

a. "Personal protective equipment" shall mean all equipment worn to minimize exposure to hazards, including gloves, masks, face shields, foot and eye protection, protective hearing devices, respirators, hard hats, and disposable gowns and aprons.

b. "Public employer" or "employer" shall mean the state of New York, a county, city, town, village or any other political subdivision or civil division of the state, a public authority, commission or public benefit corporation, or any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of this state, provided, however, that this subdivision shall not include any employer as defined in section twenty-eight hundred one-a of the education law.

c. "Essential" shall refer to a designation made that a public

employee is required to be physically present at a work site to perform his or her job. Such designation may be changed at any time in the sole discretion of the employer.

d. "Non-essential" shall refer to a designation made that a public employee is not required to be physically present at a work site to perform his or her job. Such designation may be changed at any time in the sole discretion of the employer.

e. "Communicable disease" shall mean an illness caused by an infectious agent or its toxins that occurs through the direct or indirect transmission of the infectious agent or its products from an infected individual.

f. "Retaliatory action" shall mean the discharge, suspension, demotion, or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

2. Each public employer in the state of New York shall prepare a plan for the continuation of operations in the event that the governor declares a state disaster emergency involving a communicable disease. Such plans shall follow the provisions for review and publication as prescribed in subdivision four of this section.

3. The operations plan required by this section shall include, but not be limited to:

a. A list and description of the types of positions considered essential in the event of a state-ordered reduction of in-person workforce.

b. A description of protocols the employer will follow for non-essential employees to telecommute including, but not limited to, facilitating or requesting the procurement, distribution, downloading and installation of any needed technology, including software, data, and the transferring of office phone lines to work or personal cell phones

as practicable or applicable to the workplace, and may include devices.

c. A description of how the employer will, to the extent possible, stagger work shifts of essential employees in order to reduce overcrowding on public transportation systems and at worksites.

d. A description of the protocol the employer will implement in order to procure the appropriate personal protective equipment for essential employees, based upon the various tasks and needs of such employees in a quantity sufficient to provide personal protective equipment to each essential employee during any given work shift. Such description shall also include a plan for storage of such equipment to prevent degradation and permit immediate access in the event of an emergency declaration.

e. A description of the protocol in the event an employee is exposed to a known case of the communicable disease that is the subject of the state disaster emergency, exhibits symptoms of such disease, or tests positive for such disease in order to prevent the spread or contraction of such disease in the workplace. Such protocol shall also detail actions to be taken to immediately and thoroughly disinfect the work area of any employee known or suspected to be infected with the communicable disease as well as any common area surface and shared equipment such employee may have touched, and the employer policy on available leave in the event of the need of an employee to receive testing, treatment, isolation, or quarantine. Such protocol shall not involve any action that would violate any existing federal, state, or local law, including regarding sick leave or health information privacy.

f. A protocol for documenting hours and work locations, including off-site visits, for essential employees. Such protocol shall be designed only to aid in tracking of the disease and to identify the population of exposed employees in order to facilitate the provision of any benefits which may be available to certain employees on that basis.

g. A protocol for how the public employer will work with such employer's locality to identify sites for emergency housing for essential employees in order to further contain the spread of the

communicable disease that is the subject of the declared emergency, to the extent applicable to the needs of the workplace.

h. Any other requirements determined by the department of health such as contact tracing or testing, social distancing, hand hygiene and disinfectant, or mask wearing.

4. Once drafted, each public employer shall present the plan described in this section to all applicable duly recognized or certified representatives of the employer's employees, who shall then be granted an opportunity to review the plan and make recommendations, if any, provided that nothing shall preclude such representatives from making such recommendations prior to the draft being completed. The employer must consider and respond to such recommendations in writing within a reasonable timeframe. A copy of the final version of such plan shall then be published in a clear and conspicuous location, and in the employee handbook, to the extent that the employer provides such handbook to its employees, and in a location accessible on either the employer's website or on the internet accessible by employees. No employer shall take retaliatory action or otherwise discriminate against any employee for making recommendations regarding the content of the plan.

5. The department shall establish procedures to allow for public employees to contact and inform the department of any alleged violations of any of the provisions described in this section.

6. Nothing in this section shall be deemed to impede, infringe, diminish or impair the rights of a public employee or employer under any law, rule, regulation or collectively negotiated agreement, or the rights and benefits which accrue to employees through collective bargaining agreements, or otherwise diminish the integrity of the existing collective bargaining relationship.

§ 27-d. Workplace safety committees. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Employer" shall mean any person, entity, business, corporation, partnership, limited liability company, or an association employing at least ten employees. The term shall not include the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

(b) "Employee" shall include all employees in the state, except for employees of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

2. Employers shall permit employees to establish and administer a joint labor-management workplace safety committee, but not more than one committee per worksite, provided however that an employer that already has a workplace safety committee that is otherwise consistent with the requirements of this section, shall be exempted from creating an additional safety committee under this section. Each workplace safety committee shall be composed of employee and employer designees, provided at least two-thirds are non-supervisory employees. Employee members of the committee shall be selected by, and from among, non-supervisory employees. Committees shall be co-chaired by a representative of the employer and non-supervisory employees. Where there is a collective bargaining agreement in place, the collective bargaining representative shall be responsible for the selection of employees to serve as members of the committee. Committees representing geographically distinct worksites may also be formed as necessary.

3. No employer shall interfere with the selection of employees who shall serve on such committee or who serve as the workplace safety designee or with such employees' performance of the duties authorized under this section.

4. Each workplace safety committee and workplace safety designee shall be authorized to perform the following tasks, including but not limited to:

(a) Raise health and safety concerns, hazards, complaints and violations to the employer to which the employer must respond.

(b) Review any policy put in place in the workplace required by any provision of this chapter relating to occupational safety and health and

provide feedback to such policy in a manner consistent with any provision of law.

(c) Review the adoption of any policy in the workplace in response to any health or safety law, ordinance, rule, regulation, executive order, or other related directive.

(d) Participate in any site visit by any governmental entity responsible for enforcing safety and health standards unless otherwise prohibited by law.

(e) Review any report filed by the employer related to the health and safety of the workplace in a manner consistent with any provision of law.

(f) Regularly schedule a meeting during work hours at least once a quarter that shall last no longer than two hours.

5. Employers shall permit safety committee designees to attend a training of no longer than four hours, without suffering a loss of pay, on the function of worker safety committees, rights established under this section, and an introduction to occupational safety and health.

6. Any employee who participates in the activities or establishment of a workplace safety committee shall not be subject to retaliation for any actions taken pursuant to their participation. Violations of this subdivision shall be deemed to be a violation of paragraph (a) of subdivision one of section two hundred fifteen of this chapter and the civil penalties and remedies of paragraph (b) of subdivision one and paragraphs (a) and (b) of subdivision two of section two hundred fifteen of this chapter shall be applicable to this subdivision.

7. 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, provided that for such waiver to be valid, it shall explicitly reference this section.

8. The commissioner shall adopt and amend rules and regulations to effectuate the provisions and purposes of this section.

9. (a) An employer must recognize within fifteen business days the establishment of a workplace safety committee created pursuant to this section. Violations of this subdivision shall result in a civil penalty of not less than fifty dollars per day until the violation is remedied.

(b) The commissioner may also order other appropriate relief including enjoining the conduct of any person or employer in addition to any other remedies permitted by this section.

§ 27-e. Prevention of retail workplace violence. 1. Definitions. For the purposes of this section:

a. "Employer" means any person, entity, business, corporation, partnership, limited liability company, or an association employing at least ten retail employees. The term shall not include the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

b. "Retail employee" means an employee working at a retail store for an employer.

c. "Workplace" means any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of their employment by an employer.

d. "Retail store" means a store that sells consumer commodities at retail and which is not primarily engaged in the sale of food for consumption on the premises.

2. Written workplace violence prevention policy. The department shall create and publish a model retail workplace violence prevention guidance document and retail workplace violence prevention policy that employers may utilize in their adoption of a retail workplace violence prevention policy required by this section. Such model retail workplace violence prevention policy shall be publicly available and posted on the website of the department.

a. Such model retail workplace violence prevention policy shall:

(i) outline a list of factors or situations in the workplace that might place retail employees at risk of workplace violence, including but not limited to:

(A) working late night or early morning hours;

(B) exchanging money with the public;

(C) working alone or in small numbers; and

(D) uncontrolled access to the workplace;

(ii) outline methods that employers may use to prevent incidents of workplace violence, including but not limited to establishing and implementing reporting systems for incidents of workplace violence;

(iii) include information concerning the federal and state statutory provisions concerning violence against retail workers and remedies available to victims of violence in the workplace and a statement that there may be applicable local laws; and

(iv) clearly state that retaliation against individuals who complain of workplace violence or the presence of factors or situations in the workplace that might place retail employees at risk of workplace violence, or who testify or assist in any proceeding under the law is unlawful.

b. Every employer shall adopt the model retail workplace violence prevention policy promulgated pursuant to this subdivision, or establish a workplace violence prevention policy that equals or exceeds the minimum standards provided by such model retail workplace violence prevention policy. Such retail workplace violence prevention policy shall be provided to all employees in writing upon hire and annually thereafter pursuant to paragraph a of subdivision four of this section.

3. Employee information and training. a. The department, in consultation with relevant groups as deemed necessary by the department, shall produce a model workplace violence prevention training program. Every employer shall utilize the model workplace violence prevention training program pursuant to this subdivision or establish a workplace violence prevention training program that equals or exceeds the minimum standards provided by such model training program. The department's model training program shall be interactive and shall include, but not

be limited to:

- (i) information on the requirements of this section;
- (ii) examples of measures retail employees can use to protect themselves when faced with workplace violence from customers or other coworkers;
- (iii) de-escalation tactics;
- (iv) active shooter drills;
- (v) emergency procedures; and
- (vi) instruction on the use of security alarms or buttons, and other related emergency devices.

b. The department shall include information in such model workplace violence prevention training program addressing conduct by supervisors and any additional responsibilities for such supervisors, including ways to address workplace specific emergency procedures, and training on areas of previous security problems.

c. As part of this training, every employer shall communicate to each employee a site-specific list of emergency exits and meeting places in case of emergency. Such workplace violence prevention training shall be provided to all retail employees upon hire and on an annual basis thereafter. Employers covered under this section employing fewer than fifty retail employees shall provide such workplace violence prevention training upon hire and once every two years thereafter.

4. Notice of policy. a. Every employer shall provide their retail employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring and at every annual workplace violence prevention training provided pursuant to subdivision three of this section, a notice containing such employer's retail workplace violence prevention policy and the information presented at such employer's workplace violence prevention training program.

b. The commissioner shall prepare templates of the model retail workplace violence prevention policy created and published pursuant to subdivision two of this section and the model workplace violence

prevention training program produced pursuant to subdivision three of this section. The commissioner shall determine, in their discretion, which languages to provide in addition to English, based on the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau and published online by the New York state office of language access.

c. When an employee identifies as their primary language a language for which a template is not available from the commissioner, the employer shall comply with this subdivision by providing that employee an English-language notice.

d. An employer shall not be penalized for errors or omissions in the non-English portions of any notice provided by the commissioner.

* 5. Retail worker requests for assistance. a. Every employer of five hundred or more retail employees statewide shall provide every retail employee with a silent response button to request immediate assistance from a security officer, manager, or supervisor while the employee is working at the employee's location in case of an emergency. Such silent response button may be a device that is installed in an easily accessible location in the workplace, or a wearable or mobile phone-based button.

b. Mobile phone-based silent response buttons may only be installed on employer-provided equipment, and wearable and mobile phone-based silent response buttons shall not be used to track employee locations except when the silent response button is triggered.

* NB Effective January 1, 2027

6. Rules and regulations. The commissioner may adopt rules and regulations necessary to implement the provisions of this section.

7. Evaluation of policy. Beginning in the year two thousand twenty-seven and every succeeding four years thereafter, the department shall evaluate, using the criteria within this section, the impact of the current model retail workplace violence prevention guidance document

and retail workplace violence prevention policy. Upon the completion of each evaluation the department shall update the model retail workplace violence prevention guidance document and retail workplace violence prevention policy as needed.

*** § 27-f. Requiring first aid materials in a workplace to include an opioid antagonist.** 1. All employers that are federally mandated by the United States Occupational Safety and Health Act of 1970 (Public Law, 91-596) and safety and health standards promulgated thereunder to have first aid supplies readily available for the treatment of all injured employees must have an opioid antagonist available for use in providing first aid or emergency treatment at the workplace.

2. For the purposes of this section, the following terms shall have the following meanings:

(a) "Employer" includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business, or service. The term "employer" shall not include the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof.

(b) "Opioid antagonist" means the same as defined in section thirty-three hundred nine of the public health law.

3. Administering an opioid antagonist pursuant to this section shall be considered first aid or emergency treatment for purposes of section three thousand-a of the public health law.

4. The commissioner shall promulgate regulations, in coordination with the commissioner of health, to address the appropriate number of opioid antagonists for workplaces based on the size of the workplace; the training of personnel and use of such opioid antagonists; and any other matter deemed necessary by such commissioner to effectuate this section.

* NB Effective December 12, 2026

§ 29. Procedure for issuing safety and health rules. Before any rule

is adopted, amended or repealed there shall be a public hearing thereon, notice of which shall be published at least once, not less than ten days prior thereto, in such newspaper or newspapers as the commissioner may prescribe. The commissioner may appoint committees composed of employers, employees and experts to suggest rules or changes therein. Every rule adopted and every amendment or repeal thereof shall be promptly published in such newspaper or newspapers as the commissioner may prescribe. The rules and all amendments and repeals thereof shall, unless otherwise prescribed by the commissioner, take effect twenty days after the first publication thereof and certified copies thereof shall be filed in the office of the department of state.

§ 30. Variations. 1. If there shall be practical difficulties or unnecessary hardship in carrying out the provisions of this chapter relating to safety or health standards, or an order requiring compliance with such provisions of this chapter, or in carrying out an order of the commissioner requiring compliance with the state building construction code, the commissioner may make a variation from such requirements or order if the spirit of the provision, rule or code shall be observed and public safety secured. Applications for permanent variations shall be accompanied by a non-refundable fee of three hundred fifty dollars payable to the commissioner.

2. Any person affected by such provision, rule, code, or order, or his agent, may petition the commissioner, in accordance with such rules as he shall prescribe, for such variation stating the grounds therefor. If a petition relates to an order requiring compliance with the state building construction code, the commissioner shall give prompt notice of the filing of such petition to the state building code council. If, in the opinion of the council, it is necessary or desirable that it intervene in any proceeding in connection therewith, it shall be permitted to do so as a matter of right. The commissioner shall fix a day for a hearing on such petition and give notice thereof to the petitioner and to such other persons as he may determine. If the commissioner shall permit a variation he may impose such conditions as he may deem necessary or advisable to assure public safety. The

variation shall apply to the petitioner and shall recite the conditions under which the variation shall be permitted.

3. Except for variations concerning provisions, rules, codes, orders or any other matter affecting asbestos projects, mold projects or safety and health standards for public employees, including but not limited to projects covered by article thirty and section twenty-seven-a and subdivision ten of section two hundred forty-one of this chapter;

a. any person who petitions the commissioner for a variation as provided by this section shall:

(1) post a copy of the petition at the site to be affected by the variation in a location that is reasonably accessible to the public and the employees at the site;

(2) provide a listing, in the petition, of the designated representatives (if any) of all employee organizations recognized or certified pursuant to the national labor relations act (29 U.S.C. sections 151 et. seq.), article fourteen of the civil service law or article twenty of this chapter to represent employees at the site affected by the variation; such listing shall provide the names and addresses of all such representatives;

(3) mail by certified mail, return receipt requested, a copy of the petition to the designated representatives listed as required by subparagraph two of this paragraph within three days of sending the petition to the commissioner; and

(4) affirm in the petition that the petition has been posted as required by subparagraph one of this paragraph or that it will be posted within one week of sending the petition to the commissioner and that the petitioner has mailed by certified mail, return receipt requested, a copy of the petition to all designated representatives, as required by subparagraph three of this paragraph.

b. The commissioner shall send a copy of his or her determination on the petition to the petitioner and any designated representatives listed on the petition pursuant to subparagraph two of paragraph a of this subdivision.

4. Whenever a petition is filed for a variation, except for a variation relating to an order requiring compliance with the state building construction code, or upon the commissioner's own motion, the commissioner may make a general variation which shall apply to all buildings, installations, or conditions where the facts are substantially the same as those set forth in the resolution, by whomever the same may be owned, possessed or controlled and wherever the same may be or will thereafter be found within the state of New York with the same force and effect as if a variation were duly granted upon separate petition and for the use and benefit of every person affected by the statutory provision or code rule from which the said general variation was made.

5. Any variation may be amended or terminated by the commissioner for any of the following reasons:

a. The variation or any of its conditions was or is not wholly complied with;

b. The variation does not continue to secure public safety;

c. The difficulties or hardship prevailing at the time of the making of the variation have ceased to exist;

d. The labor law provision or rule from which the variation was made has been amended, or a new rule governing the subject has been adopted; or

e. A finding by the commissioner that other substantial grounds exist warranting the amendment or termination of the variation.

6. The commissioner may publish such variations as he may deem necessary. A properly indexed record of all variations shall be kept in the office of the department and open to public inspection.

7. Notwithstanding any other law, rule or regulation to the contrary, as of the effective date of sections two hundred ninety-one through two

hundred ninety-four of chapter one hundred ninety of the laws of nineteen hundred ninety, the fee requirements set forth in this section and article thirty of this chapter shall continue to apply to all public and private entities, including, but not limited to, the state, any subdivision of the state, any government agency or instrumentality thereof, including any entity created by one or more states or subdivisions thereof, any public authority, any public or private corporation, any person, company, unincorporated association, firm, or partnership and any owner or operator thereof.

§ 31. Duty to furnish information and facilitate inspections. The owner, operator, manager or lessee of any place affected by the provisions of this chapter or his agent, superintendent, subordinate or employee, and any person employing or directing any labor affected by such provision shall, when requested by the commissioner or board, furnish any information in his possession or under his control which the commissioner or board is authorized to require; shall answer truthfully all questions authorized to be put to him; shall admit the commissioner, a deputy commissioner, or other officer or employee of the department, to any place which is affected by the provisions of this chapter for the purpose of making inspection or enforcing the provisions thereof, and shall render assistance necessary for a proper inspection.

§ 32. Interference with officer or employee of department prohibited. No person shall interfere with, obstruct or otherwise hinder any officer or employee of the department in the performance of his duties.

§ 33. Service of notice. 1. Notwithstanding any other law, rule, or regulation, whenever the commissioner or board or any person affected by the provisions of this chapter is required to give notice in writing to any person, such notice may be given by mailing it in a letter addressed to the last known place of business of such person, by delivering it to the person personally, or by electronic communication with the consent of the person in accordance with subdivision two of this section. Notice

to a partnership may be given to any of the partners, notice to a corporation may be given to any officer or agent thereof, and notice to a limited liability company may be given to any member or agent thereof, upon whom a summons may be served as provided by the civil practice law and rules, or by electronic communication with the consent of the entity in accordance with subdivision two of this section. Consent for any entity may be provided by a partner, officer, agent, member, owner, or other similar individual. Whenever an order or demand of the department is required to be served it shall be served in the manner hereinbefore provided for the service of a notice, by delivering it to any person of suitable age and discretion in charge of the premises affected by such order or demand, or by electronic communication with the consent of the person in accordance with subdivision two of this section, or if no person is found in charge by affixing a copy thereof conspicuously upon the premises.

2. For the purposes of this section, a person or entity shall be deemed to have consented to electronic communication if, having been advised conspicuously that enrollment or registration is voluntary and that they may continue to receive notices by mail or personal service as provided in this section, they instead affirmatively choose to receive notices by electronic communications only.

§ 34. Department to keep record and publish bulletin of licenses. The department shall keep records of all licenses, permits or certificates issued, revoked or amended by it and publish lists thereof at such times and in such forms as it may determine.

§ 35. Maintenance of records. 1. The department is authorized and empowered to use electronic storage technology to record and maintain public records, papers, documents or matters required by law to be recorded. Such records shall be capable of being copied, photographed, or microphotographed by a process which accurately reproduces the original thereof in all details.

2. The copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification, or certified copy of the original.

3. The department shall have the power to dispose of or destroy its records, subject only to receiving the consent of the commissioner of education as may be required by article fifty-seven of the arts and cultural affairs law.

§ 36. Destruction of old records. All statistics and other documentary matter filed with the department may be destroyed by the commissioner after the expiration of six years from the filing thereof.

§ 37. Department's process to be in its name. All notices or orders shall be given by and in the name of the department by the commissioner, by the industrial board of appeals or a member thereof, or by the deputy commissioner or other officer or employee thereunto duly authorized.

§ 38. Oaths and affidavits. The commissioner, a member of the unemployment insurance appeal board, the deputy commissioner, a referee and any other officer or employee of the department if duly authorized by the commissioner, may administer oaths and take affidavits in matters relating to the provisions of this chapter.

§ 39. Hearings and subpoenas. The commissioner, the members of the unemployment insurance appeal board, the deputy commissioner, referees and any other officer of the department designated by the commissioner, shall have power:

1. To issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents and other

evidence;

2. To hear testimony and take or cause to be taken depositions of witnesses residing within or without this state in the manner prescribed by law for like depositions in civil actions in the supreme court. Subpoenas and commissions to take testimony shall be issued under the seal of the department.

§ 40. Proceedings before officers or employees. 1. Any investigation, inquiry or hearing which the commissioner has power to undertake or to hold may by authorization be undertaken or held by or before any officer or competent employee of the department.

§ 41. Rules governing hearings. The commissioner shall not be bound by technical rules of evidence and shall conduct all hearings according to procedure prescribed by him.

§ 42. Youth education, employment and training program. This program shall provide services to economically disadvantaged in-school and out-of-school youth fourteen to twenty-one years of age and shall be subject to the following provisions of this section:

1. The goals of this program shall be entry into post-secondary education, enrollment in vocational or skills training programs, or the attainment of favorable employment and career opportunities. To obtain program goals, local projects shall include one or more of the following objectives: retention in high school, improvement in basic academic and vocational skills and, when attainable, the acquisition of a high school diploma or its equivalent.

2. For the purpose of this section, the following terms shall have the following meanings: "local project" shall mean the specific plan or proposal for support and/or direct client services at the local level as specified in a contractual agreement with employment and training

providers pursuant to this section; and "economically disadvantaged" shall be defined as set forth in regulations promulgated by the state education department pursuant to sections sixty-four hundred fifty-one and sixty-four hundred fifty-two of the education law or as set forth in the federal job training partnership act, public law 97-300 or its successor program or in the absence of such, as defined by the commissioner. Moneys to fund the program may be used for projects in which up to ten percent of the participants enrolled, on a project by project basis, are youth who are not economically disadvantaged if such youth have been identified as at risk of dropping out of school or have barriers to employment.

3. Subject to the limits of available moneys for this program and the approval of the director of the budget, the commissioner, in consultation with the commissioner of education, shall select and make contracts with preference to employment and training providers who have demonstrated effectiveness in serving disadvantaged youth for the purpose of conducting local projects. Such moneys may be used for contractors selected on a competitive basis consistent with executive order number one hundred twenty-seven which expedites and simplifies contracting with not-for-profit agencies. Such employment and training providers shall only include not-for-profit community based organizations, boards of cooperative educational services, post-secondary educational agencies, grant recipients or administrative entities of the service delivery areas (hereinafter referred to as SDAs), as may be defined by the Federal Job Training Partnership Act (hereinafter referred to as JTPA) or its successor program or in the absence of such, as defined by the commissioner, joint apprentice committees, labor organizations, and public and private employers. Preference in selection of such contractors shall be given to qualified and experienced community based organizations with proven ability to administer such programs.

4. Moneys for this program shall be apportioned in a manner that ensures a distribution of funds to projects operating in communities which have high rates of youth unemployment, significant drop-out rates among high school-aged youth, large numbers of youth living in poverty,

and a high proportion of households receiving public assistance benefits.

5. Such moneys may not be used for an SDA as an employment and training provider for local projects for out-of-school youth unless it has been determined by the commissioner that no other employment and training provider is available in the area which this program is designed to serve.

6. Notwithstanding any other provisions of law to the contrary, the educational opportunity centers (hereinafter referred to as EOCs) operated by the state university and educational centers operated by the units of the city university of New York are hereby authorized to contract with employment and training providers funded pursuant to this section for provision of services authorized under this section and to receive reimbursement for services provided. For the purpose of this program, all participants eligible for services pursuant to this section shall be deemed to be eligible for services provided by the EOCs.

7. Allowable activities under this section may include tutoring, basic skills remediation, occupational/vocational training, vocational exploration, on-the-job and supervised worksite training, counseling, and support services. Local projects shall integrate such allowable activities, as fully as possible.

8. Participants in programs under this section may be granted a stipend if such youth are not participating in a paid work experience. On an individual participant basis, the local project operator may extend tutorial services, basic skills remediation, and counseling beyond one program year, provided the participant continues to meet the other eligibility requirements of this program.

9. Pursuant to a memorandum of agreement, the education department shall be responsible for the approval of the educational component of local projects under this section predicated upon a review of each local project proposal. Such educational component shall include programs of instruction, remedial activities, and services designed to improve

participants' performance in reading, writing, communication, math, and science. Academic credit may be made available to qualifying participants for their involvement and performance in this program. Local projects shall be evaluated for credit and recommendations shall be made to local schools by the education department.

10. As a condition of participating in programs under this section, each employment and training provider shall establish cooperative relationships for improving linkages with local educational agencies and SDAs which insure that school-based educational activities are integrated with the educational component of the local project as fully as possible.

11. Up to ten percent of the program funds allocated to local projects for direct client services may be expended for support services, provided that such support services are not available from other federal, state, local, or private resources. Such support services shall include day care which meets state standards, transportation, meal allowances, and clothing allowances.

12. No moneys shall be allocated to the department for support and/or direct client services unless the following conditions have been met: a memorandum of agreement has been signed with the education department pursuant to this section; and, regulations governing the selection and implementation of local projects have been issued. Further, no liabilities shall be assumed or moneys expended for support and/or direct client services unless such funding is specified in a contractual agreement with employment and training providers and the educational component of such contract has been approved by the education department.

13. Of the total funds made available for the payment of local projects for in-school youth and out-of-school youth, no more than one million three hundred forty-nine thousand dollars shall be allocated for local projects administered by service delivery areas. Provided further that as a condition of funding under such appropriation, a fifty percent match for the amount made available for local projects for in-school

youth shall be required from employment and training providers out of in-kind services or moneys received through other local, private, or federal resources; except that a match of those funds designated for payment of participant wages and fringe benefits shall not be required. However, fifty percent of the payment of wages and fringe benefits to participants in approved vocational exploration or trial work experience in local projects for in-school youth administered by SDAs and funded under such appropriations shall be subsidized by the SDA out of moneys received through JTPA or its successor program, except that no JTPA or successor program subsidization of trial work experience shall be required if the SDA shall have otherwise obligated all moneys received through JTPA or its successor program, in which case the SDA may meet its obligation to subsidize from moneys received from any available source other than such appropriation. Further, no more than twenty-five percent of the payment of wages and fringe benefits to participants in on-the-job training in local projects for in-school youth administered by SDAs shall be paid from funds made available pursuant to such appropriation and any such funds so used shall be matched by the SDA out of moneys received through JTPA or its successor program, unless the SDA shall have otherwise obligated all moneys received through JTPA or its successor program.

14. As a condition of receipt of moneys for payments for local projects for in-school youth and out-of-school youth local projects for out-of-school youth shall give preference to youth who are homeless and to adolescent parents, provided such youth meet other eligibility requirements of this program. Employment and training providers under this appropriation shall not be required to match moneys made available for local projects for out-of-school youth.

15. Notwithstanding any other law, rule or regulation to the contrary, the department shall prepare and submit to the governor, the temporary president of the senate, the speaker of the assembly and the chair of the legislative commission on skills development and vocational education, an annual evaluation report of this program no later than October thirty-first following the end of the program year. The report shall include a statement of program objectives which identifies

outcomes and indicators of the effectiveness of the program. It shall represent the extent to which program activities meet program objectives including, but not limited to, improvements in participants' educational competencies and employability skills as measured by accepted testing tools. The basic measures of performance for projects for in-school youth shall be: high school retention, attainment of a high school diploma, enrollment in a post-secondary educational program or vocational skills training program, or attainment of unsubsidized employment. The basic measure of performance for projects for out-of-school youth shall be: improvement in basic academic and vocational skills, return to high school, attainment of a high school equivalency diploma, enrollment in a post-secondary educational program or vocational skills training program, or attainment of unsubsidized employment. The report shall include a separate count of participants who have participated in the same program model through more than one program cycle. A methodology shall be prescribed which requires collection of post-program information on program participants including, but not limited to, whether a participant receives a high school degree or its equivalent and subsequent labor market experience for one year following termination from the program, and the extent to which the participant achieved outcomes as defined by the certified program model. The report shall also describe the types of support services provided, levels of expenditure, and demonstrate how such support services improve participant involvement in local projects.

16. Notwithstanding any other law, rule, or regulation to the contrary, including the provisions of the social services law, wages and income earned by the participants of this program who are receiving assistance under the temporary assistance for needy families block grant shall be exempt and disregarded when determining the need for such assistance in accordance with federal law and regulations or pursuant to waiver of such law and regulations. Wages and income earned by participants in this program, who are receiving assistance pursuant to the safety net assistance program, or under the temporary assistance for needy families block grant, or the veterans assistance program, shall be exempt and disregarded when determining the need for such assistance. Such income and wage exemptions and disregards shall be allowed, if, and

as long as, federal financial participation is available.

17. Notwithstanding any other law, rule or regulation to the contrary, employment and training providers funded through this program shall be designated no later than June first of each year. Failure of providers to submit required monthly or fiscal reports to the department without waiver for reasonable or unanticipated circumstances shall cause forfeit of the program contract effective after sixty days notification to providers.

§ 43. Transfer of funds to the unemployment insurance occupational training fund. Notwithstanding any other law, rule or regulation to the contrary, subject to approval by the director of the budget, the state comptroller is hereby authorized and directed to transfer funds from other state operations and aid to localities appropriations to the unemployment insurance occupational training fund in the department to meet requirements for payment of the state share of individual and family grants awarded pursuant to the federal disaster relief act of 1974, public law 93-288.

§ 44. Workplace fatality registry; construction. 1. Registry. The department shall create and maintain a registry of workplace fatalities in the construction industry, which shall include information regarding all incidents under which a worker performing construction work suffers a work-related fatal injury in the workplace. Such registry shall include the information reported to the department pursuant to subdivisions three and four of this section, in addition to any information deemed pertinent by the commissioner as a result of any investigation, hearing, or other proceedings of the department.

2. Definitions. For the purposes of this section:

a. "Worker" shall include, but not be limited to, direct employees, contracted employees, subcontracted employees, independent contractors, temporary or contingency workers, apprentices, interns, volunteers, or

any other persons who perform duties at the direction and discretion of a contractor or who provide services pursuant to a contract in the workplace.

b. "Contractor" shall include a direct employer, contractor, or subcontractor. In the absence of a formal hiring agreement, the person who directs or provides compensation to the worker shall be considered the contractor unless such person is also directed and compensated by another. In such cases, the persons successively above the worker in the employment chain shall be considered the contractor. In the instance of the death of an intern or volunteer, the entity directing such intern or volunteer in his or her duties as such shall be considered the contractor.

c. "Workplace" shall include, but not be limited to, any location where a worker performs any work-related duty in the course of his or her employment, or any other site where the worker may be as a result of contractor direction.

d. "Construction" shall include, but not be limited to, any work involving the construction, reconstruction, alteration, rehabilitation, repair, renovation, demolition, or installation of any building, structure, or improvement, or in relation to the excavation of or other development or improvement to any land.

3. Seventy-two-hour reports. a. Each county coroner, medical examiner or other authorized official whose role is to register deaths, when making the determination as to the cause and manner of death, shall determine whether such death was the result of a work-related fatal injury in the workplace and report all such workplace fatalities in the construction industry to the department within seventy-two hours of such determination.

b. Information to be reported within seventy-two hours shall include, but not be limited to:

- (i) the name of the worker;
- (ii) the age of the worker;

- (iii) the cause of death;
- (iv) the manner of death;
- (v) the location of death;
- (vi) the name of the contractor;
- (vii) the business address of the contractor;
- (viii) the name of the official or medical personnel making the declaration of death;

- (ix) the name of the person or persons charged with making the determination of the cause and manner of death; and

- (x) contact information for the office making notification to the department, including contact information for the person or persons making the declaration of death, the person or persons determining the cause of death, and the person or persons determining the manner of death.

4. Ninety-day reports. a. Upon receiving a report pursuant to subdivision three of this section, the department shall notify the contractor that such death was determined to be the result of a work-related fatal injury in the workplace and shall require the contractor to submit additional information regarding such workplace fatality. The contractor shall provide such information to the department no later than ninety days after receiving such notification.

b. Information to be reported within ninety days shall include, but not be limited to:

- (i) the name of the contractor;
- (ii) the business address of the contractor;
- (iii) the stated business purpose or industry of the contractor;
- (iv) the name and age of the worker;
- (v) the ethnicity of the worker, if known;
- (vi) the nationality of the worker, if known;
- (vii) the immigration status of the worker, if known;
- (viii) the craft, trade or occupation of the worker; and
- (ix) the union status of the worker.

5. Investigation. The department in its sole discretion may also:

a. conduct an investigation into any work-related fatal injury in the workplace involving a worker performing construction work;

b. request additional information from a contractor in relation to such worker or such workplace fatality; and

c. request information as to whether criminal or civil charges have been filed against the contractor in the death of the worker, including:

(i) the details of such criminal or civil charges including the charging officer or agency; and

(ii) the actual criminal or civil charge or charges.

6. Reporting system. The department shall establish a reporting system for the information required to be reported pursuant to subdivisions three and four of this section.

7. Failure to report. Failure by any contractor to report the information required pursuant to subdivision four of this section within ninety days of notification by the department that such death was the result of a work-related fatal injury in the workplace shall be subject to a fine of not less than one thousand dollars nor more than two thousand five hundred dollars per failure to make such report.

8. Accessibility of registry. The department shall establish and maintain an online database to make available all information and data regarding all workplace fatalities in the construction industry reported to the registry pursuant to this section. Such information shall be provided in the aggregate and shall be electronically accessible and searchable to the public, provided however, that in no event shall a worker's name or other personal identifying information be included in such database. The department shall update the database with the information reported to the registry pursuant to this section within five business days of the receipt of such reports by the department.

ARTICLE 3

ADMINISTRATIVE AND JUDICIAL REVIEW

Section 100. Industrial board of appeals.

101. Review by industrial board of appeals.

102. Review by court.

103. Limited review of provisions of chapter and of rules, regulations and orders.

104. Corporate instruments; inquiry by board.

§ 100. Industrial board of appeals. 1. There is hereby created in the department of labor a board, to be known as the industrial board of appeals, which shall be composed of five members, at least one of whom shall be a lawyer. Of the first members of the board, two shall be designated by the governor from among the members of the board of standards and appeals in office on the day preceding the effective date of this act, who shall serve for terms expiring on December thirty-first, nineteen hundred seventy-seven, and three shall be appointed by the governor, with the advice and consent of the senate, two of whom shall be appointed for terms expiring on December thirty-first, nineteen hundred seventy-six, and one of whom shall be appointed for a term expiring on December thirty-first, nineteen hundred seventy-eight. Their successors shall be appointed by the governor, with the advice and consent of the senate, for terms of six years, except that if a vacancy occurs otherwise than by expiration of term, it shall be filled for the unexpired term. The governor shall designate one member to serve as chairman of the board. The governor may remove a member of the board for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges and an opportunity of being publicly heard in person or by counsel on not less than ten days notice. If a member of the board be removed the governor shall file with the department of state a record of his proceedings in respect of such removal and his findings therein.

2. The members of the board shall receive compensation as determined by the governor within the limits of the appropriation made therefor. The chairman shall devote his entire time to the duties of his office and shall not hold any other public office nor engage in any other business, vocation or employment. The reasonable and necessary traveling

and other expenses of the members of the board and other officers and employees of the board, while actually engaged in the performance of their duties shall be paid from the state treasury upon the audit and warrant of the comptroller, upon vouchers approved by the chairman.

3. The industrial commissioner shall detail to the board such employees as shall be reasonably necessary to perform the duties of the board and shall fix their compensation within the limits of the appropriation made therefor.

4. The principal office of the board shall be in the county of Albany, but it may meet and exercise any or all of its powers at any other place within the state.

5. (a) The board shall not be bound by technical rules of procedure and evidence and shall conduct all hearings according to procedure prescribed by the board.

(b) The board may designate one or more of its members or competent employees to hold a hearing or investigation relating to any matter pertaining to the execution of its functions, and to report to the board.

(c) The board by one or more members shall have the power:

(1) To administer oaths and take affidavits in matters relating to the performance of its functions under this chapter;

(2) To issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents and other evidence;

(3) To hear testimony and take or cause to be taken depositions of witnesses residing within or without this state in the manner prescribed by law for like depositions in civil actions in the supreme court. Subpoenas and commissions to take testimony shall be issued under the seal of the department.

8. Notwithstanding any other provision of this chapter or any other law, neither the industrial commissioner nor any board or other agency of the department of labor shall in any way direct, review, modify or reverse any decision or finding of the board, nor shall the industrial

commissioner or any board or other agency of the department of labor supervise or control the board in the exercise of any powers or in the performance of its duties or functions under this chapter.

§ 101. Review by industrial board of appeals. 1. Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any rule, regulation or order made by the commissioner under the provisions of this chapter. Such petition shall be filed with the board no later than sixty days after the issuance of such rule, regulation or order.

2. The petition shall be filed with the board in accordance with such rules as the board shall prescribe, and shall state the rule, regulation, or order proposed to be reviewed and in what respects it is claimed to be invalid or unreasonable. Any objections to the rule, regulation or order not raised in such appeal shall be deemed waived. The board may join in one proceeding all petitions alleging invalidity or unreasonableness of substantially similar rules, regulations or orders. Except as otherwise prescribed by any provision of this chapter or any other law, the filing of such petition may, in the discretion of the board, operate to stay all proceedings against the petitioner under such rule, regulation or order until the determination of such petition.

3. If the board finds that the rule, regulation or order, or any part thereof, is invalid or unreasonable it shall revoke, amend or modify the same.

§ 102. Review by court. 1. The decision of the board in a proceeding under section one hundred one of this chapter shall be final except that such decision shall be subject to appeal by an aggrieved party in a proceeding under article seventy-eight of the civil practice law and rules for judicial review, if such proceeding is commenced within sixty days after the decision is issued.

2. The commissioner shall be considered a party entitled, if aggrieved, to seek judicial review under this section.

§ 103. Limited review of provisions of chapter and of rules, regulations and orders. 1. Every provision of this chapter and of the rules and regulations made in pursuance thereof, and every order directing compliance therewith, shall be valid unless declared invalid in a proceeding brought under the provisions of this chapter. Except as otherwise provided in this chapter, no court shall have jurisdiction to review or annul any such provision, rule, regulation or order or to restrain or interfere with its enforcement.

2. Every such provision, rule, regulation or order shall in a prosecution or action to impose a penalty for its violation be deemed valid unless prior thereto such provision, rule, regulation or order has been revoked or modified by the board or annulled by a court, or unless a proceeding under this article is pending, in which case the prosecution or action shall be stayed by the court pending the final determination thereof. If any such prosecution or action is commenced against a defendant who has not previously been served with an order to comply with such provision, rule, regulation or order or who has been served with such an order but has not had a reasonable opportunity to comply therewith, and if within five days the defendant commences proceedings under the provisions of this article, the prosecution or action shall be stayed as if such proceeding were pending at the time it was commenced. The provisions in this subdivision relating to court stays shall be subject to any provision in any other section of this chapter relating to stays of proceedings or actions.

§ 104. Corporate instruments; inquiry by board. Whenever any corporate instrument is submitted to the board for approval in accordance with the requirements of any statute, the board shall make such inquiry as it may deem advisable, and shall order a hearing, if necessary, in accordance with such rules as it shall prescribe, to determine whether or not the purposes of the proposed corporation are in all respects consistent with

public policy and the labor law, and whether the corporate name is in all respects consistent with its purposes and activities or tends to be misleading. Notice of the time and place of such hearing shall be given to the applicant and to such other persons as the board may determine.

ARTICLE 4

EMPLOYMENT OF MINORS

- Section 130. Employment of minors under fourteen years of age.
- 131. Employment of minors fourteen or fifteen years of age.
 - 132. Employment of minor sixteen or seventeen years of age.
 - 133. Prohibited employments of minors.
 - 134. Placement of minors by employment agencies.
 - 135. Database for employment of minors; employee registration; minor employment certificates.
 - 136. Employment of minors fourteen to eighteen years of age under physical disability.
 - 138. Employment of persons apparently under eighteen years of age.
 - 140. Enforcement of violations relating to child performers and child models.
 - 141. Civil penalties.
 - 142. Hours of work for minors fourteen and fifteen years of age.
 - 143. Hours of work for minors sixteen and seventeen years of age.
 - 144. Posting of hours.
 - 145. Criminal penalties.

§ 130. Employment of minors under fourteen years of age. 1. No minor under fourteen years of age shall be employed in or in connection with any trade, business, or service, except as otherwise provided in this section.

2. Exceptions: Nothing in this section shall be construed to prohibit the employment of:

a. A minor under fourteen years of age as a child performer in compliance with section 35.01 of the arts and cultural affairs law and article four-A of this chapter.

b. A minor under fourteen years of age as a child model in compliance with section 35.05 of the arts and cultural affairs law.

* c. A minor eleven years of age as a newspaper carrier in compliance with section thirty-two hundred twenty-eight of the education law.

* NB Repealed May 9, 2027

d. A minor twelve or thirteen years of age by his parents or guardians, either on the home farm or at other outdoor work not connected with or for any trade, business, or service, when attendance upon instruction is not required by the education law.

e. A minor over twelve years of age who presents a farm work permit, in assisting in the hand work harvest of berries, fruits and vegetables, for a period of four hours in any work day when attendance upon instruction is not required by the education law between the hours of nine o'clock in the forenoon and four o'clock in the afternoon between the first day after Labor Day through and the twentieth day of June, and seven o'clock in the forenoon and seven o'clock in the evening between the twenty-first day of June and Labor day of the same calendar year, and the minor is accompanied by a parent or has presented the written consent of a parent or party with whom he or she resides to the employer.

f. A minor pursuant to section seven hundred fifty-eight-a or 353.6 of the family court act.

g. A minor twelve or thirteen years of age who assists a parent, aunt, uncle, grandparent or guardian in the sale of produce of a farm that is owned or leased by the minor's parent, aunt, uncle, grandparent or guardian, at a farm stand or farmer's market stand that is owned or leased by the minor's parent, aunt, uncle, grandparent or guardian, at times when school is not in session and the minor is accompanied by the parent or guardian or has presented the written consent of the parent or

guardian.

h. A minor twelve or thirteen years of age as a bridge caddie at a bridge tournament when attendance upon instruction is not required by the education law.

*** § 131. Employment of minors fourteen or fifteen years of age.** 1. No minor fourteen or fifteen years of age shall be employed in or in connection with any trade, business, or service when attendance upon instruction is required by the education law.

2. When attendance upon instruction is not required by the education law, a minor fourteen or fifteen years of age may be employed if he presents an employment certificate or permit issued in accordance with the education law; provided, however, that no minor fourteen or fifteen years of age shall be employed in or in connection with a factory.

3. Exceptions:

a. When attendance upon instruction is not required by the education law, a minor fourteen or fifteen years of age may be employed without an employment certificate or permit in the following occupations:

(1) Caddy service on a golf course;

(2) Service as a baby sitter staying with and at the home of a younger child or children with or without the presence at such home of such child's or children's parents or guardians;

(3) Casual employment consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery;

(4) Assisting a parent, aunt, uncle, grandparent or guardian in the sale of produce of a farm that is owned or leased by the minor's parent, aunt, uncle, grandparent or guardian, at a farm stand or farmer's market stand that is owned or leased by the minor's parent, aunt, uncle, grandparent or guardian, at times when school is not in session and the minor is accompanied by the parent or guardian or has presented the written consent of the parent or guardian.

(5) Caddie service at a bridge tournament;

(6) Work for his parents or guardians either on the home farm or at other outdoor work not connected with or for any trade, business, or service.

b. Nothing in this section shall be construed to prohibit the employment of a minor fourteen or fifteen years of age as a child performer in compliance with section 35.01 of the arts and cultural affairs law and article four-A of this chapter.

c. Nothing in this section shall be construed to apply to the employment of a minor fourteen or fifteen years of age as a child model in compliance with section 35.05 of the arts and cultural affairs law.

d. Nothing in this section, or the hours of work requirements of this chapter, shall apply to a newspaper carrier in compliance with section thirty-two hundred twenty-eight of the education law. The picking up of newspapers at a newspaper plant shall not be construed to be employment in or in connection with a factory if there is provided a place for the picking up of such newspapers, which place does not contain any dangerous machinery or equipment and does not afford access to space in which any such dangerous machinery or equipment is located.

e. Nothing in this section shall prohibit the employment of a minor fifteen years old who is found to be incapable of profiting from further instruction available and who presents a special employment certificate issued in accordance with the education law. Such employment certificate shall not be valid for work in or in connection with a factory.

f. A minor fourteen or fifteen years of age may be employed in farm service, when attendance upon instruction is not required by the education law, provided such minor presents a farm work permit issued in accordance with the education law. Such permit shall be valid only when signed by the employer and it shall not be valid for work in or in connection with a factory.

g. Nothing in this section shall prohibit the employment of a minor

fourteen or fifteen years of age during the school lunch period in a school cafeteria at the school which the minor attends if the minor presents an employment certificate issued in accordance with the education law.

4. Employment in delivery and clerical employments:

a. Nothing contained in this article shall be deemed to prohibit the employment of a minor fourteen or fifteen years of age for whom a student non-factory employment certificate has been issued in accordance with the provisions of the education law, in delivery and clerical employments:

(1) in an office of a factory, provided that such office is enclosed and separate from the place where manufacturing is carried on, and provided that the minor is not engaged in any manufacturing operation or process; or

(2) in or in connection with dry cleaning stores, tailor shops, shoe repair shops and similar service stores which clean, press, alter, repair or dye articles or goods belonging to the ultimate consumer, provided that such employment does not involve the use of dangerous machinery or equipment, or chemical processes.

b. The commissioner may promulgate rules and regulations which he deems necessary to carry out the provisions of this subdivision.

5. Nothing in this section shall be construed to permit the employment of a minor fourteen or fifteen years of age in any occupation prohibited by section one hundred thirty-three of this chapter.

6. Nothing in this section shall prevent the rendering of services for the public good by a minor of fourteen or fifteen years pursuant to section seven hundred fifty-eight-a or 353.6 of the family court act.

* NB Effective until May 9, 2027

* § 131. Employment of minors fourteen or fifteen years of age. 1. No minor fourteen or fifteen years of age shall be employed in or in connection with any trade, business, or service when attendance upon instruction is required by the education law.

2. When attendance upon instruction is not required by the education law, a minor fourteen or fifteen years of age may be employed if they present an employment certificate or permit issued in accordance with the education law; provided, however, that no minor fourteen or fifteen years of age shall be employed in or in connection with a factory.

3. Exceptions:

a. When attendance upon instruction is not required by the education law, a minor fourteen or fifteen years of age may be employed without an employment certificate or permit in the following occupations:

(1) Caddy service on a golf course;

(2) Service as a baby sitter staying with and at the home of a younger child or children with or without the presence at such home of such child's or children's persons in parental relation;

(3) Casual employment consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery;

(4) Assisting a person in parental relation as defined in section thirty-two hundred twelve of the education law, aunt, uncle, or grandparent in the sale of produce of a farm that is owned or leased by the minor's person in parental relation, aunt, uncle, or grandparent, at a farm stand or farmer's market stand that is owned or leased by the minor's person in parental relation, aunt, uncle, or grandparent, at times when school is not in session and the minor is accompanied by the person in parental relation or has presented the written consent of the person in parental relation.

(5) Caddie service at a bridge tournament;

(6) Work for their person in parental relation either on the home farm or at other outdoor work not connected with or for any trade, business, or service.

b. Nothing in this section shall be construed to prohibit the employment of a minor fourteen or fifteen years of age as a child performer in compliance with section 35.01 of the arts and cultural affairs law and article four-A of this chapter.

c. Nothing in this section shall be construed to apply to the employment of a minor fourteen or fifteen years of age as a child model in compliance with section 35.05 of the arts and cultural affairs law.

d. A minor fourteen or fifteen years of age may be employed in farm service, when attendance upon instruction is not required by the education law, provided such minor presents a farm work permit issued in accordance with the education law. Such permit shall be valid only when signed by the employer and it shall not be valid for work in or in connection with a factory.

e. Nothing in this section shall prohibit the employment of a minor fourteen or fifteen years of age during the school lunch period in a school cafeteria at the school which the minor attends if the minor presents an employment certificate issued in accordance with the education law.

4. Employment in delivery and clerical employments:

a. Nothing contained in this article shall be deemed to prohibit the employment of a minor fourteen or fifteen years of age for whom a student non-factory employment certificate has been issued in accordance with the provisions of the education law, in delivery and clerical employments:

(1) in an office of a factory, provided that such office is enclosed and separate from the place where manufacturing is carried on, and provided that the minor is not engaged in any manufacturing operation or process; or

(2) in or in connection with dry cleaning stores, tailor shops, shoe repair shops and similar service stores which clean, press, alter, repair or dye articles or goods belonging to the ultimate consumer, provided that such employment does not involve the use of dangerous machinery or equipment, or chemical processes.

b. The commissioner may promulgate rules and regulations which they deem necessary to carry out the provisions of this subdivision.

5. Nothing in this section shall be construed to permit the employment of a minor fourteen or fifteen years of age in any occupation prohibited by section one hundred thirty-three of this chapter.

6. Nothing in this section shall prevent the rendering of services for the public good by a minor of fourteen or fifteen years pursuant to section seven hundred fifty-eight-a or 353.6 of the family court act.

* NB Effective May 9, 2027

§ 132. Employment of minor sixteen or seventeen years of age. 1. No minor sixteen or seventeen years of age shall be employed in or in connection with any trade, business, or service when attendance upon instruction is required by the education law or in violation of the employment certificating provisions of the education law.

2. A minor sixteen or seventeen years of age may be employed if he presents an employment certificate or permit issued in accordance with the education law.

3. Exceptions:

a. When attendance upon instruction is not required by the education law, a minor sixteen or seventeen years of age may be employed without an employment certificate or permit in the following occupations:

(1) Work on a farm;

(2) Caddy service on a golf course;

(3) Service as a baby sitter staying with and at the home of a younger child or children with or without the presence at such home of such child's or children's parents or guardians;

(4) Casual employment consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery other than power-driven machinery ordinarily used in such yard work or household chores;

(5) Caddie service at a bridge tournament;

(6) Work for his parents or guardians at outdoor work not connected with or for any trade, business, or service.

b. Nothing in this section, or the hours of work requirements of this chapter, shall apply to a newspaper carrier in compliance with section thirty-two hundred twenty-eight of the education law.

c. Nothing in this section shall prohibit the employment of a minor sixteen or seventeen years of age during the school lunch period in a school cafeteria at the school which the minor attends if the minor presents an employment certificate issued in accordance with the education law.

d. Nothing in this section shall be construed to apply to the employment of a minor sixteen or seventeen years of age as a child model in compliance with section 35.05 of the arts and cultural affairs law.

e. Notwithstanding any other provision of this chapter, an employment certificate or permit shall not be required for a student sixteen years of age or over who is in attendance at a recognized institution of higher learning and who is employed by a non-profit college or university or by a college or university fraternity, sorority, student association or faculty association.

f. Nothing in this section shall be construed to prohibit the employment of a minor seventeen years of age as an election inspector or poll clerk pursuant to section 3-400 of the election law, or to require an employment certificate or permit therefor.

4. Nothing in this section shall be construed to permit the employment of a minor sixteen or seventeen years of age in any occupation prohibited by section one hundred thirty-three of this chapter.

5. Nothing contained in this section shall prevent the rendering of services for the public good by a minor of sixteen or seventeen years pursuant to section seven hundred fifty-eight-a or 353.6 of the family court act.

§ 133. Prohibited employments of minors. 1. Minors under sixteen. No minor under sixteen years of age shall be employed in or assist in:

a. painting or exterior cleaning in connection with the maintenance of a building or structure;

b. any occupation in or in connection with a factory, except as provided in subdivision four of section one hundred thirty-one of this chapter;

c. the operation of washing, grinding, cutting, slicing, pressing or mixing machinery;

d. any employment in institutions in the department of mental hygiene, provided, however, that for the purposes of this paragraph, participation in recreation and leisure activities, social skills development, companionship and/or entertainment as part of an organized volunteer program approved by the commissioner of mental hygiene, shall not constitute employment or assistance in employment and may be performed by youthful volunteers at least fourteen years of age. Nothing contained in this paragraph shall be construed to permit services prohibited in subdivisions one and two hereof.

2. Minors of any age. No minor of any age shall be employed in or assist in:

a. the care or operation of a freight or passenger elevator, except that a minor over sixteen may operate automatic push button control elevators;

b. or in connection with the manufacturing, packaging, or storing of explosives;

c. operating or using any emery, tripoli, rouge, corundum, stone, silicon carbide, or any abrasive, or emery polishing or buffing wheel,

where articles of the baser metals or iridium are manufactured;

d. penal or correctional institutions, if such employment relates to the custody or care of prisoners or incarcerated individuals;

e. adjusting belts to machinery or cleaning, oiling or wiping machinery;

f. packing paints, dry colors, or red or white leads;

g. preparing any composition in which dangerous or poisonous acids are used;

h. operating steam boilers subject to section two hundred four of this chapter;

i. any occupation at construction work, including wrecking, demolition, roofing or excavating operations and the painting or exterior cleaning of a building structure from an elevated surface;

j. any occupation involving exposure to radioactive substances or ionizing radiation, or exposure to silica or other harmful dust;

k. logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill or cooperage-stock mill;

l. any occupation in or in connection with a mine or quarry;

m. any occupation involved in the operation of power-driven woodworking, metal-forming, metal-punching, metal-shearing, bakery, and paper products machines;

n. any occupation involved in the operation of circular saws, bandsaws and guillotine shears;

o. any occupation in or about a slaughter and meat-packing establishment, or rendering plant;

p. any occupation involved in the operation of power-driven hoisting apparatus;

q. any occupation involved in the manufacture of brick, tile and kindred products;

r. as a helper on a motor vehicle;

s. as a dancer or performer in any portion of a facility open to the public wherein performers appear and dance or otherwise perform unclothed, under circumstances in which such employment would be harmful to such person in the manner defined in subdivision six of section 235.20 of the penal law.

3. a. The provisions of subdivision two of this section shall not apply to (1) an apprentice who is individually registered in an apprenticeship program which is duly registered with the commissioner in conformity with the provisions of article twenty-three of this chapter; or

(2) a student-learner who is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority, or in a course of study in a substantially similar program conducted by a private school; or

(3) a trainee in an on-the-job training program approved by the commissioner; or

(4) a minor who is employed in the occupation in which he has completed training as a student-learner as provided in subparagraph (2) of this subdivision or as a trainee as provided in subparagraph (3) of this subdivision; or

(5) a minor who is employed in the occupation in which he has completed a work training program of a non-profit organization or a training program which is publicly funded in whole or in part, and as part of such program received safety instruction and training in the use of machinery, provided that such safety program has been approved by the commissioner. As used in this paragraph the term "non-profit organization" means an organization operated exclusively for religious,

charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

b. An employment certificate required by subdivision two of section one hundred thirty-two of this article shall for the purposes of section fourteen-a of the workmen's compensation law be deemed to authorize employment under subparagraphs (3), (4) and (5) of this subdivision.

4. In addition to the cases provided for in this section, the commissioner, when it is found upon investigation that any particular trade, process of manufacture, occupation, or method of carrying on the same, is dangerous or injurious to the health of minors, may adopt rules prohibiting or regulating the employment of such minors therein. In addition to the adoption of such rules, the commissioner may also adopt such other rules and regulations as are determined necessary to carry out the purposes of this section.

5. In addition to the rulemaking authority set forth in subdivision four of this section, when it is found upon investigation that employment on a farm is dangerous or injurious to the health of minors, the commissioner may adopt rules prohibiting or regulating the employment of such minors therein, which rules shall be in accordance with and consistent with those promulgated by the United States secretary of labor in this regard.

§ 134. Placement of minors by employment agencies. No employment agency shall place a minor in any employment, or shall procure or attempt to procure for a minor, any employment, unless such employment is authorized or permitted by the provisions of this article. The term "employment agency" as used in this section means and includes any person, firm or corporation, as owner, agent, manager, employee, officer of a corporation, contractor, sub-contractor, or in any other capacity, placing in employment or procuring or attempting to procure employment for a minor, or for giving information as to where or of whom such employment may be procured.

*** § 135. Duties of employers.** 1. The employer of any minor required to have an employment certificate:

a. Shall, before employment begins, file at the place of the minor's employment such certificate so that it may be readily accessible to any person authorized by law to examine such document;

b. Shall, upon the termination of the minor's employment, return the employment certificate to the minor;

c. (i) Shall, if the employer is engaged in a business of assigning employees for temporary services at another establishment, and the employer compensates the employee for such services rendered, keep on file in his or her office the employment certificate and shall cause to be delivered to each establishment where the child will perform his or her services a true copy of such employment certificate. Such delivery shall be deemed compliance with this section and sections one hundred thirty-one and one hundred thirty-two of this article. The owner of each establishment to which the child is assigned shall keep on file in his or her office such copy of the employment certificate, which shall be deemed compliance with this section, and shall return such copy to the employer at the conclusion of the child's assignment. Such employer shall note on the original employment certificate the existence of each copy.

(ii) As used in this subdivision, the term "establishment" includes a factory, mercantile establishment, business office, restaurant, hotel, and any other trade, business or service.

2. The employer of any person claiming to be between eighteen and twenty-five years of age who does not present an employment certificate duly issued for him or her must require from such person, and furnish upon demand to the commissioner or his or her authorized representative, proof of the age of such person in the form of a driver's license or other documentation issued by the government of the United States or of any state located therein, or a certificate of age issued to such person by an employment certificating official. Such proof of age or a legible

photocopy thereof, or an employment certificate, previously issued for such person and on file in the place of his or her employment, shall be conclusive evidence that the person has reached the age certified to therein.

* NB Effective until May 9, 2027

* § 135. Database for employment of minors; employee registration; minor employment certificates. 1. Creation of database. The department, in consultation with the department of education, shall create and maintain a database for the employment of minors. Except as otherwise provided in this section, all information pertaining to any employer or minor that is submitted to the department under this section shall be confidential and shall not be accessible to the public. Nothing herein shall prevent the commissioner from sharing such information for civil or criminal law enforcement purposes.

2. Employer registration and renewal process. Any employer required to be registered under this section shall provide the department with the information set forth in this section, as well as any additional information that the department may require, in the form and manner prescribed by the department.

3. Employer registration and information. Every employer that hires, employs, or otherwise permits any minor under the age of eighteen to work for the employer within the state shall register in the database and shall provide, in the form and manner prescribed by the department, the following information:

(a) the name of the employer;

(b) the email address of the employer;

(c) any location of the employer's business operations within the state, including any location where a minor will be working;

(d) the number and names of minors who are hired, employed, or otherwise permitted to work for the employer;

(e) a certified statement from the employer that the employer is hiring, employing, or otherwise permitting minors to work only in positions for the employer as permitted by law, rule, or regulation in order to ensure their health, safety, and well-being; and

(f) any other information deemed appropriate by the commissioner.

4. Employer recordkeeping. An employer that is required to be registered under this section shall, before employment begins, file at the place of the minor's employment such employment certificate or permit so that it may be readily accessible to any person authorized by law to examine such document. An employer's electronic access to such employment certificate or permit in the database shall meet the requirements of this subdivision.

5. Minor registration. Any minor under the age of eighteen who plans to work for an employer within the state shall complete a registration in the database for any employment certificate or permit. All information pertaining to the minor shall be confidential and shall not be accessible by the public. When the minor receives a job offer from an employer, they must update their certificate or permit in the database to reflect that employer in order for the certificate or permit to be valid. If the minor plans to work for a different employer, or for an employer in addition to the employer for which the minor first registered, the minor shall update the minor's registration. The minor shall be required to submit documentation for registration in the form and manner prescribed by the department.

6. Issuance and revocation of employment certificate or permit. (a) Any employment certificate or permit issued pursuant to part one of article sixty-five of the education law shall be issued by the commissioner electronically within the database. Any application for an employment certificate or permit that is made pursuant to part one of article sixty-five of the education law shall be made by a minor on a form prescribed by the department.

(b) The chancellor in the city school district of the city of New York, and elsewhere the superintendent of schools or the district superintendent of schools within their respective jurisdictions, or a principal of a nonpublic secondary school, may request that the commissioner revoke a minor's employment certificate or permit. The requestor shall use the database to file this request and electronically upload, disclose, or otherwise provide additional information as necessary. Additional information may relate to: (i) an evaluation of

the student's overall academic performance and past academic record; (ii) an examination of the student's attendance record; (iii) the willingness of the student to participate in a cooperative education program, work study program, school to work program or any other structured program which provides a student with an opportunity to earn income while earning academic credit; (iv) such other factors as the aforementioned officials identify; and (v) any material submitted by the student. Upon review of information provided by schools or gathered on their own, the commissioner may revoke the minor's employment certificate or permit.

7. Records. The commissioner, in consultation with the commissioner of education, shall provide a method by which authorized school employees acting on behalf of a school district, board of cooperative educational services, or nonpublic school may access the database for the purpose of compliance with part one of article sixty-five of the education law. The commissioner may share information with such authorized school employees about registered minors and request information from such school authorized employees about registered minors or minors applying for a certificate or permit. Notwithstanding any law, rule, or regulation to the contrary, a school district, board of cooperative educational services, nonpublic secondary school and the education department shall provide the commissioner with such records and information as requested to fulfill the requirements of this section, provided that, as applied to student educational records, such entity shall provide all protections afforded to parents and persons in parental relationships, or students where applicable, required under the family educational rights and privacy act, 20 U.S.C. section 1232g, where applicable the individuals with disabilities education act, sections fourteen hundred, et seq. of title twenty of the United States code, and the federal regulations implementing such statutes.

8. Regulations. The commissioner may prescribe regulations necessary to carry out the provisions of this section.

* NB Effective May 9, 2027

§ 136. Employment of minors fourteen to eighteen years of age under physical disability. No employer shall employ a child whose employment certificate or permit states that the occupation in which the child may engage is limited because of his physical disability, for more than six months from the date of issuance of said certificate or permit, nor in any other occupation than that to which the employment of the child is limited by the terms of the certificate or permit.

*** § 137. Duty of commissioner to transmit information.** The commissioner shall transmit to the local superintendent of schools, on or before the tenth day of each month, on blanks furnished by the state education department, the names and home addresses of all children under eighteen years of age found illegally employed during the preceding month in the district subject to such superintendent.

* NB Repealed May 9, 2027

§ 138. Employment of persons apparently under eighteen years of age.

1. If any person apparently under eighteen years of age is employed without the certificate on file as required by law, in or in connection with any employment to which the provisions of this article apply, the commissioner may require the employer to cease employing the person or file, within ten days after demand, evidence in the form required by the education law for the issuance of such certificate that the person is over the age for which the certificate is required.

2. If the employer fails to furnish such evidence within ten days after demand, and thereafter employs the person, proof of the service of the demand and of the failure to furnish such evidence shall be prima facie evidence in any prosecution brought for a violation of this article that such person is under the age for which such certificate is required and is unlawfully employed.

*** § 139. Physical examination of employed minors; cancellation of employment certificate.** 1. A medical inspector of the department of

labor shall require any minor sixteen or seventeen years of age employed in or in connection with any trade, business, or service, to submit to a physical examination by him if in his judgment such minor is physically unfit for the work at which he is employed. The result shall be recorded on a form filed with the commissioner.

2. If such minor fails to submit to such examination or if on examination the inspector finds the minor physically unfit to be so employed, he shall so report to the commissioner with his reasons therefor and the commissioner, if he approves the report, shall then cause the employment certificate issued in accordance with the education law to be taken from the office of the employer and shall return the same to the superintendent of schools recommending its cancellation.

* NB Repealed May 9, 2027

*** § 140. Enforcement of violations relating to child performers, child models, street trades, and newspaper carriers.** The commissioner is hereby authorized and empowered to prosecute violations of section 35.01 of the arts and cultural affairs law, relating to child performers, section 35.05 of the arts and cultural affairs law, relating to child models, section thirty-two hundred twenty-seven of the education law, relating to street trades, and section thirty-two hundred twenty-eight of the education law, relating to newspaper carriers.

* NB Effective until May 9, 2027

*** § 140. Enforcement of violations relating to child performers and child models.** The commissioner is hereby authorized and empowered to prosecute violations of section 35.01 of the arts and cultural affairs law, relating to child performers, and section 35.05 of the arts and cultural affairs law, relating to child models.

* NB Effective May 9, 2027

§ 141. Civil penalties. 1. If the commissioner finds that an employer has violated any provision of this article or of a rule or regulation promulgated thereunder, the commissioner may by an order which shall describe particularly the nature of the violation, assess the employer a

civil penalty of not more than ten thousand dollars for the first such violation, at least two thousand but not more than twenty-five thousand dollars for a second violation, and at least ten thousand but not more than fifty-five thousand dollars for a third or subsequent violation. Such penalty shall be paid to the commissioner for deposit in the treasury of the state. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer to believe that its conduct was in compliance with the law, the gravity of the violation, the history of previous violations and the failure to comply with record-keeping or other requirements, provided, however, that where such violation involves illegal employment during which a minor is seriously injured or dies, such penalty shall be at least three thousand dollars but not more than thirty thousand dollars for the first such violation, at least six thousand but not more than seventy-five thousand dollars for the second violation, and at least thirty thousand dollars but not more than one hundred seventy-five thousand dollars for the third or subsequent violation. For the purposes of this subdivision, a minor shall be deemed to be seriously injured if such injury results in a permanent partial or permanent total disability as determined by the workers' compensation board.

2. Any order issued under subdivision one of this section shall be deemed a final order of the commissioner and not subject to review by any court or agency unless the employer files a petition with the industrial board of appeals for a review of the order, pursuant to section one hundred one of this chapter.

3. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner

in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

4. The civil penalty provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty provided for in this chapter.

§ 142. Hours of work for minors fourteen and fifteen years of age. 1. When school is in session. When school is in session, no minor fourteen or fifteen years of age shall be employed:

- a. More than three hours on any school day;
- b. More than eight hours on any day when school is not in session;
- c. More than eighteen hours a week;
- d. More than six days a week; or
- e. After seven o'clock in the evening or before seven o'clock in the morning.

2. When school is not in session. When school is not in session, no minor fourteen or fifteen years of age shall be employed:

- a. More than eight hours a day;
- b. More than six days a week;
- c. More than forty hours a week; or
- d. After seven o'clock in the evening or before seven o'clock in the morning, except (i) between the twenty-first day of June and Labor day of the same calendar year, when no such minor shall be employed after nine o'clock in the evening or before seven o'clock in the morning; or (ii) where such minor is employed as a junior counselor or

counselor-in-training at a camp for children during the months of June, July and August.

3. Notwithstanding the provisions of subdivision one of this section, a minor fourteen or fifteen years of age, who is enrolled when school is in session in a supervised work study program approved by the commissioner of education, when such program is in session, may not be employed:

- a. More than three hours on any school day;
- b. More than eight hours on any day when school is not in session;
- c. More than twenty-three hours a week;
- d. More than six days a week; or
- e. After seven o'clock in the evening or before seven o'clock in the morning.

4. This section shall not apply to a newspaper carrier as defined in section thirty-two hundred twenty-eight of the education law whose hours of work are governed by such section, a farm laborer, a child performer whose employment is governed by section 35.01 of the arts and cultural affairs law and article four-A of this chapter, a child model whose employment is governed by section 35.05 of the arts and cultural affairs law, a bridge caddie at a bridge tournament or a baby sitter as defined in section one hundred thirty-one of this chapter.

§ 143. Hours of work for minors sixteen and seventeen years of age. 1. When school is in session, no minor sixteen or seventeen years of age enrolled in a daytime school, other than a part-time or continuation school, shall be employed:

- a. (i) More than four hours on any day preceding a school day, other than on a Sunday or holiday; (ii) except that students enrolled in a

cooperative work experience program approved by the department of education may be employed for no more than six hours on any day preceding a school day, other than on a Sunday or holiday, if such hours of employment occur solely pursuant to such program. Any hours worked by students in such programs shall be included when calculating the number of hours worked for purposes of subparagraph (i) of this paragraph;

b. More than eight hours on a Friday, Saturday, Sunday or holiday;

c. More than twenty-eight hours a week;

d. More than six days a week;

e. After ten o'clock at night on any day preceding a school day, or after midnight on any day preceding a school day provided the employer receives and maintains both the written consent of the minor's parent or guardian and a certificate which shall be provided to the employer at the end of each marking period by the minor's school which shall assert that such minor is in satisfactory academic standing according to the standards in such school district;

f. After ten o'clock at night on any day preceding a non-school day or, if the employer receives and maintains the written consent of the minor's parent or guardian, after midnight; or

g. Before six o'clock in the morning.

2. When school is not in session, no minor sixteen or seventeen years of age shall be employed:

a. More than eight hours a day, except that for the purpose of making one or more shorter work days or a holiday in a week, such persons may be employed up to ten hours on any one day of the week, and nine hours on any of four other days, but not in excess of forty-eight hours in any such week;

b. More than forty-eight hours a week;

c. More than six days a week; or

d. After twelve midnight or before six o'clock in the morning.

3. A minor sixteen or seventeen years of age who is not enrolled in a daytime school when school is in session shall be covered under subdivision two of this section.

4. This section shall not apply to a newspaper carrier as defined in section thirty-two hundred twenty-eight of the education law whose hours of work are governed by such section, a farm laborer, a child performer whose employment is governed by section 35.01 of the arts and cultural affairs law and article four-A of this chapter, a child model whose employment is governed by section 35.05 of the arts and cultural affairs law, a bridge caddie at a bridge tournament or a baby sitter as defined in section one hundred thirty-one of this chapter or a seventeen year old minor employed as a counselor, junior counselor or counselor-in-training at a camp for children during the months of June, July and August.

5. a. The provisions of paragraphs b, c and d of subdivision one and paragraphs a, b and c of subdivision two of this section shall not apply to (i) employment solely as a singer or performer in a hotel or restaurant; (ii) employment in a resort or seasonal hotel or restaurant in a rural community and in a city and village having a population of less than fifteen thousand inhabitants, excluding that portion of the population of a third class city residing outside of its corporation tax district where such city embraces the entire area of a former township. As used in this subdivision, the term "resort" applies to such hotel or restaurant which operates for not more than four calendar months and fifteen days in each year, and the term "seasonal" applies to such hotel or restaurant in which the number of employees is increased by at least one hundred percent from the slack to the busiest season; (iii) employment in or in connection with a beauty parlor in cities and villages having a population of less than fifteen thousand; (iv) employment in or in connection with a mercantile establishment during

the following periods: (A) from the eighteenth day of December to the following twenty-fourth day of December, inclusive; or (B) for any seven consecutive days during the period from the fourth day of December to the following twenty-third day of December, inclusive, selected by an employer by filing written notice with the commissioner on or before the first day of December designating the days selected. An employer may make such selection for the employer's establishment, or if there is more than one establishment, for any one or more of such establishments; and (C) for two additional periods each year, for the purpose of taking inventory, each period not to be more than one week's duration. Each period shall not exceed a total of six hours if the minor is employed on an eight-hour-day basis, or five hours if employed ten hours on one day and nine hours on any of four other days of the week, in addition to the hours permitted in this section;

b. The provisions of paragraph d of subdivision one and paragraph c of subdivision two of this section shall not apply to (i) employment as a writer or reporter in a newspaper office or (ii) employment by a duly recognized florist on the day before Easter Sunday, on Easter Sunday morning, and on the twenty-third day of December of each year;

c. The provisions of paragraph e of subdivision one and paragraph d of subdivision two of this section shall not apply to those employments listed in subparagraphs (i) and (ii) of paragraph a of this subdivision and subparagraphs (i) and (ii) of paragraph b of this subdivision nor to employment by a duly licensed airline in the maintenance of aircraft through a work study or job trainee program, under recognized state or local educational authority, or through a course of study in a substantially similar program conducted by a private school or through a training program which is publicly funded in whole or in part nor to employment as a junior counselor, counselor in training or counselor at a camp for children during the months of June, July and August.

6. The provisions of this section shall not apply to the employment of a minor seventeen years of age as an election inspector or poll clerk pursuant to section 3-400 of the election law.

§ 144. Posting of hours. 1. The employer shall make a schedule for all minors employed by the employer, setting forth the hours of beginning and stopping and the time allowed for meals, which shall be kept conspicuously posted in each establishment where such persons are employed.

A change in the schedule of hours worked by minors pursuant to the provisions of this chapter shall be allowed provided that the posted schedule reflects the change. Nothing herein shall be construed so as to affect the limitations on hours worked by such minors as set forth elsewhere in this chapter.

2. The presence of any person subject to this article at any hours other than those stated in the above notice, or the failure to post such notice, shall constitute prima facie evidence of a violation of this article.

3. Where a person is employed in two or more establishments on the same day or week, the total time of employment shall not exceed that allowed per day or week in a single establishment.

4. Exception. If the commissioner finds that because of the nature of the work in a factory it is practically impossible to fix the hours of work weekly in advance, he may upon an application stating facts showing the necessity therefor, grant a permit dispensing with the poster required by this section. In every factory operating under such a permit, a time book shall be kept in a form approved by the commissioner showing the name and addresses of all employees subject to this subdivision and the hours worked by each of them on each day. No person shall knowingly make or suffer to be made a false entry in any such time book. Such time book shall be kept for a period of six years and shall be available upon request of the commissioner at the place of employment. The permit shall be posted conspicuously in the factory, and the commissioner may revoke the permit for failure to comply with the provisions of this subdivision.

§ 145. Criminal penalties. Any person who knowingly violates any provision of this article and any officer or agent of a corporation who knowingly permits the corporation to violate any such provisions shall be guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not more than five hundred dollars or imprisonment for not more than sixty days or by both such fine and imprisonment for a first offense, or by a fine of not more than five thousand dollars or imprisonment for not more than one year, or by both such fine and imprisonment for a second or subsequent offense.

ARTICLE 4-A

EMPLOYMENT AND EDUCATION OF CHILD PERFORMERS

- Section 150. Definitions.
- 151. Employment requirements.
 - 152. Educational requirement.
 - 153. Enforcement of violations; civil penalties.
 - 154. Child performer advisory board to prevent eating disorders.
 - 154-a. Regulations.

§ 150. Definitions. For the purpose of this article:

1. "Artistic or creative services" shall include, but are not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist, runway or print model, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.

2. "Child performer" shall mean any child under the age of eighteen who (a) resides in the state of New York and who agrees to render artistic or creative services; or

(b) agrees to render artistic or creative services in the state of New York.

3. "Child performer's employer" shall mean a person or entity which employs a child performer to furnish artistic or creative services for a fee either directly or through a third-party provider (loan-out company) or an agency or service that provides artistic or creative services (casting agency).

4. "Child performer trust account" shall mean an account established for the benefit of a child performer in accordance with part seven of article seven of the estates, powers and trusts law.

5. "Gross earnings" shall mean the total compensation prior to taxes, deductions, or commissions payable to a child performer pursuant to a contract or in the case of a third-party individual or personal services corporation (loan-out company), the total compensation paid to the third-party for the services of the child performer. However, where the child performer is employed as a musician, singer, songwriter, musical producer, or arranger it means the total compensation under the contract including advances but excluding deductions to offset those advances or other expenses incurred by the employer pursuant to the contract.

6. "Permit" shall refer to the documentation issued by the department to a child performer pursuant to this article.

7. "Certificate of eligibility" shall refer to the documentation issued by the department to an employer of a child performer pursuant to this article.

8. "Employment schedule" shall mean the time that a child performer is required to be present at the actual place of employment, excluding travel.

§ 151. Employment requirements. 1. (a) Notwithstanding the provisions of section 35.01 of the arts and cultural affairs law, a child performer may be employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in subdivision one of section 35.01 of the

arts and cultural affairs law if a child performer permit has been issued in accordance with the provisions of this section.

(b) A child performer shall be required to have an employment permit. Employment permits for child performers shall be valid for one year from the date of issuance.

(c) An application for a child performer permit shall be made on a form prescribed by the department and shall contain such matters as the department may deem to be necessary, including the following:

(i) the true and stage name and the age of the child, and the name and address of his parent or guardian;

(ii) the written consent of the parent or guardian;

(iii) the evidence provided by the child performer each semester to the department demonstrating that such child is maintaining satisfactory academic performance as determined by the child performer's school of enrollment pursuant to state law.

(d) At the time a child performer applies for an employment permit, the commissioner shall inform the child performer of the child performer trust requirements. The commissioner shall provide a notice in bold twelve point type to read as follows: "NEW YORK STATE LAW REQUIRES FIFTEEN PERCENT OF A CHILD PERFORMER'S EARNINGS TO BE PLACED IN TRUST IN ACCORDANCE WITH PART 7 OF ARTICLE 7 OF THE ESTATES, POWERS AND TRUSTS LAW. THE CHILD PERFORMER'S PARENTS OR GUARDIAN MUST ESTABLISH THE CHILD PERFORMER TRUST ACCOUNT TO COMPLY WITH THIS REQUIREMENT. THE CHILD'S PARENTS OR GUARDIAN MUST PROVIDE THE CHILD PERFORMER'S EMPLOYER WITH THE INFORMATION NECESSARY TO TRANSFER THESE MONIES TO THE ACCOUNT. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL PREVENT THE DEPARTMENT OF LABOR FROM RENEWING THE CHILD'S PERMIT TO WORK AS A CHILD PERFORMER."

(e) No permit shall allow a child to participate in an exhibition, rehearsal or performance which is harmful to the welfare, development or proper education of such child. A permit may be revoked by the department for good cause.

2. Prior to employment of a child performer, every person, or agent or officer of any entity employing a child performer shall receive a certificate of eligibility to employ a child performer from the department. Each application for initial registration shall be accompanied by a fee determined by the commissioner in an amount

sufficient in the aggregate to defray the department's costs of administering the registration program, provided, that such fee shall not exceed three hundred fifty dollars for initial registration or two hundred dollars for registration renewal. Companies that operate theaters of four hundred ninety-nine seats or fewer shall pay no more than two hundred dollars for an initial and renewal certificates. An employers' certificate of eligibility shall be renewed every three years.

3. Every person, or agent or officer, employing child performers, either directly or indirectly through third persons, shall keep on file all permits and certificates, either to work or to employ, issued under this article or pursuant to the education law. The files shall be open at all times to the inspection of the school attendance and probation officers, the state board of education, and the department. No such authority shall be denied entrance to such place of employment of child performers. If such authority is denied entrance to such place of employment, or if any violations of laws relating to the employment of child performers are found to exist, such authority shall report the violation to the department. Such report shall be made within forty-eight hours and shall be in writing, setting forth the fact that he or she has good cause to believe that such laws are being violated in such place of employment and describing the nature of the violation.

4. (a) The work permit of a child performer in the entertainment industry shall not be renewed, nor shall a subsequent work permit be issued, unless the parent or guardian demonstrates to the department that a child performer trust account in accordance with part seven of article seven of the estates, powers and trusts law has been established for the benefit of the child performer.

(b) The limitation set forth in paragraph (a) of this subdivision shall not apply to the issuance of an employer's certificate of eligibility or to a child performer covered by an employer's certificate of eligibility who subsequently seeks to obtain an initial individual permit to work.

5. Failure to produce any permit or certificate either to work or to

employ is prima facie evidence of the illegal employment of any child performer whose permit or certificate is not produced. Proof that any person was the manager or superintendent of any place of employment subject to the provisions of this article at the time any child performer is alleged to have been employed therein in violation thereof, is prima facie evidence that the person employed or permitted the child performer to work. The sworn statement of the commissioner, or his or her deputy or agents, as to the age of any child performer affected by this article is prima facie evidence of the age of such child.

§ 152. Educational requirement. 1. A child performer shall fulfill educational requirements as set forth in part one of article sixty-five of the education law. If a child performer is unable to meet such educational requirements due to his or her employment schedule, the employer shall be required to comply with subdivision two of this section.

2. (a) Any person, or agent or officer employing, either directly or indirectly through a third person, a child performer certified pursuant to this article shall provide a teacher, who is either certified or has credentials recognized by the state of New York, to such child performer to fulfill educational requirements pursuant to the education law. Such child performer shall not be declared absent from school while working pursuant to the permit requirement in accordance with this article. The requirements of this section shall only be applicable when the child performer is not receiving educational instruction due to his or her employment schedule.

(b) A child performer receiving educational instruction pursuant to this subdivision, and such child's parents or guardians, shall work with the certified teacher provided to the child performer and the child's school of enrollment to fulfill such educational requirements.

3. No minor having a permit to work issued by the department and no minor under eighteen years of age, who is otherwise required by law to be enrolled and attend school, shall be without educational instruction and unemployed for a period longer than ten consecutive days while the

school of enrollment is in session.

§ 153. Enforcement of violations; civil penalties. If the commissioner finds that a child performer's employer has violated any provision of this article or of a rule or regulation promulgated thereunder, the commissioner may by an order which shall describe particularly the nature of the violation, assess such employer a civil penalty of not more than one thousand dollars for the first violation, not more than two thousand dollars for a second violation and not more than three thousand dollars for a third or subsequent violation. Such penalty shall be paid to the commissioner and placed into the child performer's protection fund established in section ninety-nine-j of the state finance law and administered by the department. Monies accredited to the child performer's protection fund shall be utilized for the purpose of this article. The department shall promulgate rules and regulations for the administration of the child performer's protection fund.

§ 154. Child performer advisory board to prevent eating disorders. 1. The commissioner, in consultation with the commissioner of health and the commissioner of mental health, shall establish a child performer advisory board for the purpose of recommending guidelines for the employment of child performers and models under the age of eighteen and preventing eating disorders such as anorexia nervosa and bulimia nervosa amongst such persons. The advisory board shall consist of at least sixteen but no more than twenty members appointed by the commissioner, and shall include: representatives of professional organizations or unions representing child performers or models; employers representing child performers or models; physicians, nutritionists and mental health professionals with demonstrated expertise in treating patients with eating disorders; at least one representative from each of the comprehensive care centers for eating disorders established pursuant to article thirty of the mental hygiene law; advocacy organizations working to prevent and treat eating disorders; and other members deemed necessary by the commissioner. In addition, the commissioner of health and the commissioner of mental health, or their designees, shall serve

on the advisory board. The members of the advisory board shall receive no compensation for their services but shall be reimbursed their actual and necessary expenses incurred in the performance of their duties.

2. The advisory board is authorized to develop recommendations to the commissioner establishing guidelines relating to the employment of child performers and models under the age of eighteen for purposes of preventing and accessing treatment for eating disorders such as anorexia nervosa and bulimia nervosa amongst such child performers and models. When developing such guidelines, the advisory board shall consider (a) body mass index standards or weight and height standards, (b) employment restrictions for persons diagnosed with or suspected of having an eating disorder, (c) requiring medical or mental health screenings, by medical or mental health professionals with demonstrated expertise in the diagnosis and treatment of eating disorders, for persons suspected of having an eating disorder, and (d) requiring referrals for treatment of eating disorders.

3. The advisory board shall further develop recommendations for educational and informational materials for such child performers and models, their parents and/or guardians and their employers regarding awareness and recognition of eating disorders, and referral and treatment information of eating disorders such as anorexia nervosa and bulimia nervosa.

4. The commissioner shall consider the recommendations developed by the advisory board, which include employment guidelines and the development of educational and informational materials pursuant to this section, when adopting, promulgating, amending and rescinding the rules and regulations necessary to carry out the provisions of this section. The advisory board shall report to the commissioner regarding its recommendations, including the guidelines, programs and findings developed pursuant to this section.

§ 154-a. Regulations. The commissioner shall promulgate such rules and regulations as shall be necessary and proper to effectuate the purposes

and provisions of this article, including but not limited to the promulgation of regulations determining the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers.

ARTICLE 5
HOURS OF LABOR

Title 1. General. (Secs. 160-170.)

TITLE 1
GENERAL

- Section 160. Hours to constitute a day's work.
- 161. One day rest in seven.
 - 162. Time allowed for meals.
 - 163. Hours of labor in brickyards.
 - 163-a. Farm laborers.
 - 164. Hours of labor on street railroads.
 - 165. Steam and other railroads.
 - 166. Signalmen.
 - 167. Restrictions on consecutive hours of work for nurses.
 - 168. Hours of labor of certain state employees.
 - 169. One day of rest for certain state employees.
 - 169-a. One day of rest for state employees.
 - 170. Hours of labor for domestic workers.

§ 160. Hours to constitute a day's work. Unless otherwise provided by law, the following number of hours shall constitute a legal day's work:

1. For street surface or elevated railroad employees as affected by section one hundred and sixty-four, ten consecutive hours, including one-half hour for dinner.

2. For employees engaged in the operation of steam or electric surface, subway or elevated railroads where the mileage system of

running trains is not in use, except those employees affected by section one hundred and sixty-six, ten hours, performed within twelve consecutive hours.

3. For all other employees, except those engaged in farm work and those affected by subdivision four of section two hundred twenty of this chapter, eight hours.

This subdivision shall not prevent an agreement for overwork at an increased compensation, except upon work by or for the state or a municipal corporation, or by contractors or subcontractors therewith, and except as otherwise provided in this chapter.

§ 161. One day rest in seven. 1. Every employer operating a factory, mercantile establishment, hotel, restaurant, or freight or passenger elevator in any building or place shall, except as herein otherwise provided, allow every person employed in such establishment or in the care, custody or operation of any such elevator, at least twenty-four consecutive hours of rest in any calendar week. Every employer operating a place in which motion pictures are shown shall allow the projectionist or operator of the motion picture machine and engineers and firemen therein at least twenty-four consecutive hours of rest in any calendar week. Every employer operating a place in which legitimate theatre productions such as dramatic and musical productions are shown or exhibited shall allow all employees, including the performers in the cast therein and engineers and firemen, at least twenty-four consecutive hours of rest in each and every calendar week, but this shall not apply to any place wherein motion pictures, vaudeville or incidental stage presentations or a combination thereof are regularly given throughout the week as the established policy of such place; except that engineers and firemen employed in such place shall be allowed at least twenty-four consecutive hours of rest in any calendar week. No employer shall operate such establishment, place or elevator on Sunday unless he shall comply with subdivision three. This section does not authorize any work on Sunday not permitted now or hereafter by law.

Every owner, lessee and operator of a dwelling, apartment, loft and office building, garage, storage place and building, wherein or whereat a watchman or watchmen or engineer or fireman are employed, shall allow such person or persons so employed at least twenty-four consecutive hours of rest in each and every calendar week.

Every owner, lessee or operator of a warehouse, storagehouse, office, dwelling, apartment, loft and any other building or structure wherein a janitor, superintendent, supervisor or manager or engineer or fireman is employed, shall allow such person or persons so employed at least twenty-four consecutive hours of rest in each and every calendar week.

Every person employed as a domestic worker as defined in subdivision sixteen of section two of this chapter, shall be allowed at least twenty-four consecutive hours of rest in each and every calendar week. No provision of this paragraph shall prohibit a domestic worker from voluntarily agreeing to work on such day of rest required by this paragraph, provided that the worker is compensated at the overtime rate for all hours worked on such day of rest. The day of rest authorized under this subdivision should, whenever possible, coincide with the traditional day reserved by the domestic worker for religious worship. In addition, after one year of work with the same employer a domestic worker shall be entitled to at least three days of rest in each calendar year at the regular rate of compensation.

Every person employed as a farm laborer shall be allowed at least twenty-four consecutive hours of rest in each and every calendar week. Twenty-four consecutive hours spent at rest because of circumstances, such as weather or crop conditions, shall be deemed to constitute the rest required by this paragraph. No provision of this paragraph shall prohibit a farm laborer from voluntarily agreeing to work on such day of rest required by this paragraph, provided that the farm laborer is compensated at an overtime rate which is at least one and one-half times the laborer's regular rate of pay for all hours worked on such day of rest. The term "farm labor" shall include all services performed in agricultural employment in connection with cultivating the soil, or in connection with raising or harvesting of agricultural commodities,

including the raising, shearing, caring for and management of livestock, poultry or dairy. The day of rest authorized under this subdivision should, whenever possible, coincide with the traditional day reserved by the farm laborer for religious worship.

2. This section shall not apply to:

a. Foreman in charge;

b. Employees in milk condenseries, milk powder factories, milk sugar factories, milk shipping stations, butter and cheese factories, ice cream manufacturing plants and milk bottling plants, where not more than seven persons are employed;

c. Employees, if the board in its discretion approves, engaged in an industrial or manufacturing process necessarily continuous, in which no employee is permitted to work more than eight hours in any calendar day;

d. Employees whose duties include not more than three hours' work on Sunday in setting sponges in bakeries, maintaining fires, or making necessary repairs to boilers or machinery.

e. Employees in resort or seasonal hotels and restaurants in rural communities and in cities and villages having a population of less than fifteen thousand inhabitants, excluding that portion of the population of a third class city residing outside of its corporation tax district where such city embraces the entire area of a former township. As used in this subdivision, the term "resort" shall apply to any establishment enumerated herein which operates for not more than four calendar months and fifteen days in each year, and the term "seasonal" shall apply to any establishment enumerated herein in which the number of employees is increased by at least one hundred per cent from the slack to the busiest season.

f. Employees in dry dock plants engaged in making repairs to ships.

3. Before operating on Sunday, every employer shall designate a day of

rest, consisting of at least twenty-four consecutive hours of rest in each and every calendar week for each employee, and shall notify each employee in advance of his or her designated day of rest. No employee shall be permitted to work on his designated day of rest.

4. Every employer shall keep a time book showing the names and addresses of his employees and the hours worked by each of them in each day.

5. If there shall be practical difficulties or unnecessary hardship in carrying out the provisions of this section or the rules promulgated hereunder, the commissioner may make a variation therefrom if the spirit of the act be observed and substantial justice done. Such variation shall describe the conditions under which it shall be permitted and shall apply to substantially similar conditions. A properly indexed record of variations shall be kept by the department.

6. In case of violation of any of the provisions of this section, the commissioner shall issue an order directing compliance therewith, and upon failure so to comply shall commence a prosecution as provided by law.

§ 162. Time allowed for meals. 1. Every person employed in or in connection with a factory shall be allowed at least sixty minutes for the noon day meal.

2. Every person employed in or in connection with a mercantile or other establishment or occupation coming under the provisions of this chapter shall be allowed at least thirty minutes for the noon day meal, except as in this chapter otherwise provided. The noon day meal period is recognized as extending from eleven o'clock in the morning to two o'clock in the afternoon. An employee who works a shift of more than six hours which extends over the noon day meal period is entitled to at least thirty minutes off within that period for the meal period.

3. Every person employed for a period or shift starting before eleven

o'clock in the morning and continuing later than seven o'clock in the evening shall be allowed an additional meal period of at least twenty minutes between five and seven o'clock in the evening.

4. Every person employed for a period or shift of more than six hours starting between the hours of one o'clock in the afternoon and six o'clock in the morning, shall be allowed at least sixty minutes for a meal period when employed in or in connection with a factory, and forty-five minutes for a meal period when employed in or in connection with a mercantile or other establishment or occupation coming under the provisions of this chapter, at a time midway between the beginning and end of such employment.

5. The commissioner may permit a shorter time to be fixed for meal periods than hereinbefore provided. The permit therefor shall be in writing and shall be kept conspicuously posted in the main entrance of the establishment. Such permit may be revoked at any time.

§ 163. Hours of labor in brickyards. No corporation owning or operating a brickyard shall require employees to work more than ten hours in any day, or to commence work before seven o'clock in the morning. But overwork and work prior to seven o'clock in the morning for extra compensation may be performed by agreement between employer and employee.

§ 163-a. Farm laborers. No person or corporation operating a farm shall require any farm laborer to work more than sixty hours in any calendar week; provided, however, that any overtime work performed by a farm laborer shall be at a rate which is at least one and one-half times the farm laborer's regular rate of pay.

§ 164. Hours of labor on street railroads. No employee engaged in the operation of a street surface or elevated railroad of whatever motive power owned or operated by a corporation whose main line or route of

travel lies principally within a city of the first or second class, shall be employed more than ten consecutive hours, including one-half hour for dinner, in any day, except that in cases of accident or unavoidable delay extra work may be performed for extra compensation.

§ 165. Steam and other railroads. 1. No person or corporation operating a steam or electric surface, subway or elevated railroad of thirty miles or more in length, wholly or partly within this state, except where the mileage system of running trains is in operation, shall permit or require a conductor, engineer, fireman, trainman, motorman or assistant motorman, engaged in or connected with the movement of any train on such railroad, to be or remain on duty for a longer period than sixteen consecutive hours. Whenever any such employee shall have been continuously on duty for sixteen hours he shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty. No such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

2. This section shall not apply to any such employee when he is prevented from reaching his terminal by casualty occurring after he has started on his trip or by accident to or unexpected delay of trains scheduled to make connection with the train on which he is serving, or when he is engaged in interstate commerce.

§ 166. Signalmen. 1. When used in this section "signalman" means:

a. A telegraph or telephone operator reporting trains to another office or to a train dispatcher;

b. A telegraph or telephone leverman who manipulates interlocking machines in railroad yards or on main tracks on the lines;

c. A train dispatcher whose duties pertain to the movement of cars,

engines or trains, by telegraph or telephone in dispatching or reporting trains or receiving or transmitting train orders.

2. When used in this section "railroad" means: any portion of a surface, subway or elevated railroad situated wholly or partly in this state and operated by a corporation or receiver on which portion at least twenty freight trains on the average or nine regular passenger trains pass each way in every twenty-four hours.

3. No signalman shall be employed on any railroad for more than eight hours in any day except in cases of extraordinary emergency caused by accident, fire, flood or danger to life or property and he shall be paid for each hour of such overtime at least one-eighth of his daily compensation.

4. Every signalman and every towerman or gateman performing duties similar to those of a signalman, who is employed for eight hours or more every day shall be allowed at least two days of rest of twenty-four hours each in every calendar month with the regular compensation, except in cases of extraordinary emergency caused by accident, fire, flood, or danger to life or property, when in addition to his regular compensation he shall be paid for every hour so employed at least one-eighth of his daily compensation.

5. The provisions of this section shall not apply to employees engaged in interstate commerce.

§ 167. Restrictions on consecutive hours of work for nurses. 1. When used in this section:

a. "Health care employer" shall mean any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services (i) in a facility licensed or operated pursuant to article twenty-eight of the public health law, including any facility operated by the state, a

political subdivision or a public corporation as defined by section sixty-six of the general construction law, or (ii) in a facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, operated or licensed pursuant to the mental hygiene law, the education law, the correction law, or section five hundred four of the executive law.

b. "Nurse" shall mean a registered professional nurse or a licensed practical nurse as defined by article one hundred thirty-nine of the education law who provides direct patient care.

c. "Regularly scheduled work hours", including pre-scheduled on-call time and the time spent for the purpose of communicating shift reports regarding patient status necessary to ensure patient safety, shall mean those hours a nurse has agreed to work and is normally scheduled to work pursuant to the budgeted hours allocated to the nurse's position by the health care employer; and if no such allocation system exists, some other measure generally used by the health care employer to determine when an employee is minimally supposed to work, consistent with the collective bargaining agreement, if any. Nothing in this section shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

2. a. Notwithstanding any other provision of law no health care employer shall require a nurse to work more than that nurse's regularly scheduled work hours, except pursuant to subdivision three of this section.

b. Nothing in this section shall prohibit a nurse from voluntarily working overtime.

3. The limitations provided for in this section shall not apply in the case of:

a. a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly

affecting the county in which the nurse is employed or in a contiguous county; or

b. a federal, state or county declaration of emergency in effect in the county in which the nurse is employed or in a contiguous county; or

c. where a health care employer determines there is an emergency, necessary to provide safe patient care. For the purposes of this paragraph, "emergency", including an unanticipated staffing emergency, is defined as an unforeseen event that could not be prudently planned for by an employer and does not regularly occur; or

d. an ongoing medical or surgical procedure in which the nurse is actively engaged and whose continued presence through the completion of the procedure is needed to ensure the health and safety of the patient.

4. The provisions of this section are intended as a remedial measure to protect the public health and the quality of patient care, and shall not be construed to diminish or waive any rights of any nurse pursuant to any other law, regulation, or collective bargaining agreement.

5. Oversight of the use of mandatory overtime during an emergency. a. The commissioner, in consultation with the commissioner of health, shall have the authority to promulgate any regulations necessary to carry out the provisions of this section.

b. Any health care employer that utilizes an exception to the limitation on mandatory overtime provisions as provided for in subdivision three of this section shall notify the department when such provisions are in use. If a health care employer has utilized the mandatory overtime provisions as provided for in this section for fifteen days or more in a given month, the employer shall report to the department and the department of health: (i) the number of days mandatory overtime was required; (ii) the number of employees that were required to remain on duty in overtime status; and (iii) the dates and times mandatory overtime was required. If a health care employer has utilized mandatory overtime provisions under this section for forty-five

days or more in any consecutive three month period the health care employer shall file with the department and the department of health an explanation for why mandatory overtime was required and provide an estimate of when the employer intends to cease the use of mandatory overtime.

c. The department shall establish an enforcement officer to oversee investigations into any complaints of violations of this section.

d. The health care employer shall, before utilizing mandatory overtime provisions and requiring an on-duty employee to remain, make a good faith effort to have overtime covered on a voluntary basis, including, but not limited to, calling per diems, agency nurses, assigning floats, or requesting an additional day of work from off-duty employees, to the extent such staffing options exist. Failure to engage in a good faith effort pursuant to this section shall be a violation. Any employee who has been required to work in violation of this section may file a complaint with the enforcement officer alleging such violation. Any complaint made pursuant to this paragraph must be made in good faith.

6. Upon receipt of a complaint pursuant to subdivision five of this section, the enforcement officer may cause such investigation to be made, in consultation with the department of health and shall notify the employer. If, after investigation, the commissioner determines that an employer has violated this section, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and to his or her authorized representative. The commissioner may assess the employer a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation if within twelve months, or three thousand dollars for a third or subsequent violation of this section if within twelve months; provided, however, that the department may assess an employer a civil penalty of not more than five hundred dollars for any violation of paragraph b of subdivision five of this section.

7. The department shall develop and make available on its website a poster containing information for employees on filing a complaint pursuant to this section. Every health care employer shall display such poster in a conspicuous location accessible to employees in the workplace.

§ 168. Hours of labor of certain state employees. 1. This section shall apply to all persons employed by the state in the ward, cottage, colony, kitchen and dining room, and guard service personnel in any hospital, school, prison, reformatory or other institution within or subject to the jurisdiction, supervision, control or visitation of the department of corrections and community supervision, the department of health, the department of mental hygiene, the department of social welfare or the department of veterans' services, and engaged in the performance of such duties as nursing, guarding or attending the incarcerated individuals, patients, wards or other persons kept or housed in such institutions, or in protecting and guarding the buildings and/or grounds thereof, or in preparing or serving food therein.

2. No person to whom this section is applicable shall be required to work more than eight hours in any day or more than forty hours or more than six days in any calendar week except in cases of fire, riot, flood, famine, pestilence or other cases of emergency endangering life or property; provided, however, that any such person, upon his own request and with the approval of the head of the institution in which he is employed, may be permitted to work one additional eight-hour day in any calendar week for not more than seven calendar weeks and be allowed continuous days free from duty equivalent to the number of additional days so worked. The provisions of this section shall not be interpreted to increase the number of working hours per day or the number of working days per week of any person for whom a shorter work-day or work-week is now provided.

§ 169. One day of rest for certain state employees. Every person employed by the state, upon its canal system in the maintenance or

operation of bridges, locks or other works or structures which are part of such system, shall be allowed and permitted a period of at least twenty-four consecutive hours of rest in each calendar week. No person shall, by reason of the provisions of this section, receive any reduction in the total weekly compensation paid him.

§ 169-a. One day of rest for state employees. No person employed by the state shall be required to work more than six days in any calendar week, except in cases of fire, riot, flood, famine, pestilence or other cases of emergency endangering life or property; provided, however, that any such person, upon his own request and with the approval of the head of the department or institution in which he is employed, may be permitted to work one additional day in any calendar week for not more than seven calendar weeks and be allowed continuous days free from duty equivalent to the number of additional days so worked. No person shall, by reason of the provisions of this section, receive any reduction in the total weekly compensation paid him. This section shall not apply to officers and members of the state police force.

§ 170. Hours of labor for domestic workers. No person or corporation employing a domestic worker as defined in subdivision sixteen of section two of this chapter, shall require any domestic worker to work more than forty hours in a week, or forty-four hours in a week for domestic workers who reside in the home of their employer; unless they receive compensation for overtime work at a rate which is at least one and one-half times the worker's normal wage rate.

ARTICLE 6

PAYMENT OF WAGES

Section 190. Definitions.

191. Frequency of payments.

191-a. Definitions.

191-b. Contracts with sales representatives.

191-c. Payment of sales commission.

- 192. Cash payment of wages.
- 193. Deductions from wages.
- 194. Differential in rate of pay because of protected class status prohibited.
- 194-a. Wage or salary history inquiries prohibited.
- 194-b. Mandatory disclosure of compensation or range of compensation.
- 195. Notice and record-keeping requirements.
- 196. Powers of commissioner.
- 196-a. Complaints by employees to commissioner.
- 196-b. Sick leave requirements.
- 196-d. Gratuities.
- 196-e. Construction industry reporting pay provisions.
- 197. Civil penalty.
- 198. Costs, remedies.
- 198-a. Criminal penalties.
- 198-b. "Kick-back" of wages prohibited.
- 198-c. Benefits or wage supplements.
- 198-d. Posting regulations on illegal wage deductions.
- 198-e. Construction industry wage theft.
- 199. Rules and regulations.
- 199-a. Notification of process.

§ 190. Definitions. As used in this article:

1. "Wages" means the earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a time, piece, commission or other basis. The term "wages" also includes benefits or wage supplements as defined in section one hundred ninety-eight-c of this article, except for the purposes of sections one hundred ninety-one and one hundred ninety-two of this article.

2. "Employee" means any person employed for hire by an employer in any employment, but with respect to the entirety of this article, except sections one hundred ninety-three, one hundred ninety-six-b, one hundred ninety-eight, and one hundred ninety-eight-b, shall not include any

person who has entered into a contract to play baseball at the minor league level and who is compensated pursuant to the terms of a collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of employees.

3. "Employer" includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service. The term "employer" shall not include a governmental agency.

4. "Manual worker" means a mechanic, workingman or laborer, but shall not include any person who has entered into a contract to play baseball at the minor league level and who is compensated pursuant to the terms of a collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of employees.

5. "Railroad worker" means any person employed by an employer who operates a steam, electric or diesel surface railroad or is engaged in the sleeping car business. The term "railroad worker" shall not include a person employed in an executive capacity.

6. "Commission salesman" means any employee whose principal activity is the selling of any goods, wares, merchandise, services, real estate, securities, insurance or any article or thing and whose earnings are based in whole or in part on commissions. The term "commission salesman" does not include an employee whose principal activity is of a supervisory, managerial, executive or administrative nature.

7. "Clerical and other worker" includes all employees not included in subdivisions four, five and six of this section, except any person employed in a bona fide executive, administrative or professional capacity whose earnings are in excess of one thousand three hundred dollars a week.

8. "Week" means a calendar week or a regularly established payroll week. "Month" means a calendar month or a regularly established fiscal month.

9. "Non-profitmaking organization" means a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

§ 191. Frequency of payments. 1. Every employer shall pay wages in accordance with the following provisions:

a. Manual worker.--- (i) A manual worker shall be paid weekly and not later than seven calendar days after the end of the week in which the wages are earned; provided however that a manual worker employed by an employer authorized by the commissioner pursuant to subparagraph (ii) of this paragraph or by a non-profitmaking organization shall be paid in accordance with the agreed terms of employment, but not less frequently than semi-monthly.

(ii) The commissioner may authorize an employer which has in the three years preceding the application employed an average of one thousand or more persons in this state or has for one year preceding the application employed an average of one thousand or more persons in this state and has for three years preceding the application employed an average of three thousand or more persons outside the state to pay less frequently than weekly but not less frequently than semi-monthly if the employer furnishes satisfactory proof to the commissioner of its continuing ability to meet its payroll responsibilities. In making this determination the commissioner shall consider the following: (A) the employer's history meeting its payroll responsibilities in New York state or if no such history in New York state is available, other financial information, as requested by the commissioner, which will assist the commissioner in determining the likelihood of the employer's continuing ability to meet payroll responsibilities; (B) proof of the employer's coverage for workers' compensation and disability; (C) proof that there are no outstanding warrants of the department of taxation and finance or the department of labor against the employer for failure to remit state personal income tax withholdings or unemployment insurance

contributions; and (D) proof that the employer has a computerized record keeping system for payroll which, at a minimum, specifies hours worked, rate of pay, gross wages, deductions and date of pay for each employee. If the employers' manual workers are represented by a labor organization, the commissioner shall not grant an employer's application for authorization under this subparagraph unless that labor organization consents thereto.

Upon notice to the employer and an opportunity to be heard, the commissioner may rescind such authorization whenever the commissioner has determined, based upon the factors enumerated above, that the employer is no longer able to meet its payroll responsibilities as previously authorized.

b. Railroad worker.--- A railroad worker shall be paid on or before Thursday of each week the wages earned during the seven-day period ending on Tuesday of the preceding week; and provided further that at the written request and notification of address by any employee, every railroad corporation, with the exception of those commuter railroads under the jurisdiction of the metropolitan transportation authority, shall mail every check for wages of such employee via the United States postal service, first class mail.

c. Commission salespersons.--A commission salesperson shall be paid the wages, salary, drawing account, commissions and all other monies earned or payable in accordance with the agreed terms of employment, but not less frequently than once in each month and not later than the last day of the month following the month in which they are earned; provided, however, that if monthly or more frequent payment of wages, salary, drawing accounts or commissions are substantial, then additional compensation earned, including but not limited to extra or incentive earnings, bonuses and special payments, may be paid less frequently than once in each month, but in no event later than the time provided in the employment agreement or compensation plan. The employer shall furnish a commission salesperson, upon written request, a statement of earnings paid or due and unpaid. The agreed terms of employment shall be reduced to writing, signed by both the employer and the commission salesperson,

kept on file by the employer for a period not less than three years and made available to the commissioner upon request. Such writing shall include a description of how wages, salary, drawing account, commissions and all other monies earned and payable shall be calculated. Where the writing provides for a recoverable draw, the frequency of reconciliation shall be included. Such writing shall also provide details pertinent to payment of wages, salary, drawing account, commissions and all other monies earned and payable in the case of termination of employment by either party. The failure of an employer to produce such written terms of employment, upon request of the commissioner, shall give rise to a presumption that the terms of employment that the commissioned salesperson has presented are the agreed terms of employment.

d. Clerical and other worker.--- A clerical and other worker shall be paid the wages earned in accordance with the agreed terms of employment, but not less frequently than semi-monthly, on regular pay days designated in advance by the employer.

2. No employee shall be required as a condition of employment to accept wages at periods other than as provided in this section.

3. If employment is terminated, the employer shall pay the wages not later than the regular pay day for the pay period during which the termination occurred, as established in accordance with the provisions of this section. If requested by the employee, such wages shall be paid by mail.

§ 191-a. Definitions. For purposes of this article the term:

(a) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar amount of wholesale orders or sales.

(b) "Earned commission" means a commission due for services or merchandise which is due according to the terms of an applicable contract or, when there is no applicable contractual provision, a commission due for merchandise which has actually been delivered to, accepted by, and paid for by the customer, notwithstanding that the

sales representative's services may have terminated.

(c) "Principal" means a person or company engaged in the business of manufacturing, and who:

(1) Manufactures, produces, imports, or distributes a product for wholesale;

(2) Contracts with a sales representative to solicit orders for the product; and

(3) Compensates the sales representative in whole or in part by commissions.

(d) "Sales representative" means a person or entity who solicits orders in New York state and is not covered by subdivision six of section one hundred ninety and paragraph (c) of subdivision one of section one hundred ninety-one of this article because he or she is an independent contractor, but does not include one who places orders for his own account for resale.

§ 191-b. Contracts with sales representatives. 1. When a principal contracts with a sales representative to solicit wholesale orders within this state, the contract shall be in writing and shall set forth the method by which the commission is to be computed and paid.

2. The principal shall provide each sales representative with a signed copy of the contract. The principal shall obtain a signed receipt for the contract from each sales representative.

3. A sales representative during the course of the contract, shall be paid the earned commission and all other monies earned or payable in accordance with the agreed terms of the contract, but not later than five business days after the commission has become earned.

§ 191-c. Payment of sales commission. 1. When a contract between a principal and a sales representative is terminated, all earned commissions shall be paid within five business days after termination or within five business days after they become due in the case of earned commissions not due when the contract is terminated.

2. The earned commission shall be paid to the sales representative at the usual place of payment unless the sales representative requests that the commission be sent to him or her through the mails. If the commissions are sent to the sales representative by mail, the earned commissions shall be deemed to have been paid as of the date of their postmark for purposes of this section.

3. A principal who fails to comply with the provisions of this section concerning timely payment of all earned commissions shall be liable to the sales representative in a civil action for double damages. The prevailing party in any such action shall be entitled to an award of reasonable attorney's fees, court costs, and disbursements.

§ 192. Cash payment of wages. 1. No employer shall without the advance written consent of any employee directly pay or deposit the net wage or salary of such employee in a bank or other financial institution.

2. This section shall not apply to any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of one thousand three hundred dollars a week, nor to employees working on a farm not connected with a factory.

§ 193. Deductions from wages. * 1. No employer shall make any deduction from the wages of an employee, except deductions which:

a. are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency including regulations promulgated under paragraph c and paragraph d of this subdivision; or

b. are expressly authorized in writing by the employee and are for the benefit of the employee, provided that such authorization is voluntary and only given following receipt by the employee of written notice of all terms and conditions of the payment and/or its benefits and the details of the manner in which deductions will be made. Whenever there

is a substantial change in the terms or conditions of the payment, including but not limited to, any change in the amount of the deduction, or a substantial change in the benefits of the deduction or the details in the manner in which deductions shall be made, the employer shall, as soon as practicable, but in each case before any increased deduction is made on the employee's behalf, notify the employee prior to the implementation of the change. Such authorization shall be kept on file on the employer's premises for the period during which the employee is employed by the employer and for six years after such employment ends. Notwithstanding the foregoing, employee authorization for deductions under this section may also be provided to the employer pursuant to the terms of a collective bargaining agreement. Such authorized deductions shall be limited to payments for:

- (i) insurance premiums and prepaid legal plans;
- (ii) pension or health and welfare benefits;
- (iii) contributions to a bona fide charitable organization;
- (iv) purchases made at events sponsored by a bona fide charitable organization affiliated with the employer where at least twenty percent of the profits from such event are being contributed to a bona fide charitable organization;
- (v) United States bonds;
- (vi) dues or assessments to a labor organization;
- (vii) discounted parking or discounted passes, tokens, fare cards, vouchers, or other items that entitle the employee to use mass transit;
- (viii) fitness center, health club, and/or gym membership dues;
- (ix) cafeteria and vending machine purchases made at the employer's place of business and purchases made at gift shops operated by the employer, where the employer is a hospital, college, or university;
- (x) pharmacy purchases made at the employer's place of business;
- (xi) tuition, room, board, and fees for pre-school, nursery, primary, secondary, and/or post-secondary educational institutions;
- (xii) day care, before-school and after-school care expenses;
- (xiii) payments for housing provided at no more than market rates by non-profit hospitals or affiliates thereof; and
- (xiv) similar payments for the benefit of the employee.

c. are related to recovery of an overpayment of wages where such

overpayment is due to a mathematical or other clerical error by the employer. In making such recoveries, the employer shall comply with regulations promulgated by the commissioner for this purpose, which regulations shall include, but not be limited to, provisions governing: the size of overpayments that may be covered by this section; the timing, frequency, duration, and method of such recovery; limitations on the periodic amount of such recovery; a requirement that notice be provided to the employee prior to the commencement of such recovery; a requirement that the employer implement a procedure for disputing the amount of such overpayment or seeking to delay commencement of such recovery; the terms and content of such a procedure and a requirement that notice of the procedure for disputing the overpayment or seeking to delay commencement of such recovery be provided to the employee prior to the commencement of such recovery.

d. repayment of advances of salary or wages made by the employer to the employee. Deductions to cover such repayments shall be made in accordance with regulations promulgated by the commissioner for this purpose, which regulations shall include, but not be limited to, provisions governing: the timing, frequency, duration, and method of such repayment; limitations on the periodic amount of such repayment; a requirement that notice be provided to the employee prior to the commencement of such repayment; a requirement that the employer implement a procedure for disputing the amount of such repayment or seeking to delay commencement of such repayment; the terms and content of such a procedure and a requirement that notice of the procedure for disputing the repayment or seeking to delay commencement of such repayment be provided to the employee at the time the loan is made.

* NB Effective until November 6, 2028

* 1. No employer shall make any deduction from the wages of an employee, except deductions which:

a. are made in accordance with the provisions of any law or any rule or regulation issued by any governmental agency; or

b. are expressly authorized in writing by the employee and are for the benefit of the employee; provided that such authorization is kept on

file on the employer's premises. Such authorized deductions shall be limited to payments for insurance premiums, pension or health and welfare benefits, contributions to charitable organizations, payments for United States bonds, payments for dues or assessments to a labor organization, and similar payments for the benefit of the employee.

* NB Effective November 6, 2028

* 2. Deductions made in conjunction with an employer sponsored pre-tax contribution plan approved by the IRS or other local taxing authority, including those falling within one or more of the categories set forth in paragraph b of subdivision one of this section, shall be considered to have been made in accordance with paragraph a of subdivision one of this section.

* NB Effective until November 6, 2028

* 2. No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages under the provisions of subdivision one of this section.

* NB Effective November 6, 2028

* 3. a. No employer shall make any charge against wages, or require an employee to make any payment by separate transaction unless such charge or payment is permitted as a deduction from wages under the provisions of subdivision one of this section or is permitted or required under any provision of a current collective bargaining agreement.

b. Notwithstanding the existence of employee authorization to make deductions in accordance with subparagraphs (iv), (ix), and (x) of paragraph b of subdivision one of this section and deductions determined by the commissioner to be similar to such deductions in accordance with subparagraph (xiv) of paragraph b of subdivision one of this section, the total aggregate amount of such deductions for each pay period shall be subject to the following limitations: (i) such aggregate amount shall not exceed a maximum aggregate limit established by the employer for each pay period; (ii) such aggregate amount shall not exceed a maximum aggregate limit established by the employee, which limit may be for any amount (in ten dollar increments) up to the maximum amount established by the employer under subparagraph (i) of this paragraph; (iii) the employer shall not permit any purchases within these categories of

deduction by the employee that exceed the aggregate limit established by the employee or, if no limit has been set by the employee, the limit set by the employer; (iv) the employee shall have access within the workplace to current account information detailing individual expenditures within these categories of deduction and a running total of the amount that will be deducted from the employee's pay during the next applicable pay period. Information shall be available in printed form or capable of being printed should the employee wish to obtain a listing. No employee may be charged any fee, directly or indirectly, for access to, or printing of, such account information.

c. With the exception of wage deductions required or authorized in a current existing collective bargaining agreement, an employee's authorization for any and all wage deductions may be revoked in writing at any time. The employer must cease the wage deduction for which the employee has revoked authorization as soon as practicable, and, in no event more than four pay periods or eight weeks after the authorization has been withdrawn, whichever is sooner.

* NB Effective until November 6, 2028

* 3. Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, nor with any other law applicable to deductions from wages.

* NB Effective November 6, 2028

* 4. Nothing in this section shall justify noncompliance with article three-A of the personal property law relating to assignment of earnings, with section two hundred twenty-one of this chapter relating to company stores or with any other law applicable to deductions from wages.

* NB Effective until November 6, 2028

5. There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements.

§ 194. Differential in rate of pay because of protected class status prohibited. 1. No employee with status within one or more protected class or classes shall be paid a wage at a rate less than the rate at which an employee without status within the same protected class or

classes in the same establishment is paid for: (a) equal work on a job the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions, or (b) substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions; except where payment is made pursuant to a differential based on:

- (i) a seniority system;
- (ii) a merit system;
- (iii) a system which measures earnings by quantity or quality of production; or
- (iv) a bona fide factor other than status within one or more protected class or classes, such as education, training, or experience. Such factor: (A) shall not be based upon or derived from a differential in compensation based on status within one or more protected class or classes and (B) shall be job-related with respect to the position in question and shall be consistent with business necessity. Such exception under this paragraph shall not apply when the employee demonstrates (1) that an employer uses a particular employment practice that causes a disparate impact on the basis of status within one or more protected class or classes, (2) that an alternative employment practice exists that would serve the same business purpose and not produce such differential, and (3) that the employer has refused to adopt such alternative practice.

2. For the purpose of subdivision one of this section: (a) "business necessity" shall be defined as a factor that bears a manifest relationship to the employment in question, and (b) "protected class" shall include age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, and any employee protected from discrimination pursuant to paragraphs (a), (b), and (c) of subdivision one of section two hundred ninety-six and any intern protected from discrimination pursuant to section two hundred ninety-six-c of the executive law.

3. For the purposes of subdivision one of this section, employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same geographical region, no larger than a county, taking into account population distribution, economic activity, and/or the presence of municipalities.

4. (a) No employer shall prohibit an employee from inquiring about, discussing, or disclosing the wages of such employee or another employee.

(b) An employer may, in a written policy provided to all employees, establish reasonable workplace and workday limitations on the time, place and manner for inquires about, discussion of, or the disclosure of wages. Such limitations shall be consistent with standards promulgated by the commissioner and shall be consistent with all other state and federal laws. Such limitations may include prohibiting an employee from discussing or disclosing the wages of another employee without such employee's prior permission.

(c) Nothing in this subdivision shall require an employee to disclose his or her wages. The failure of an employee to adhere to such reasonable limitations in such written policy shall be an affirmative defense to any claims made against an employer under this subdivision, provided that any adverse employment action taken by the employer was for failure to adhere to such reasonable limitations and not for mere inquiry, discussion or disclosure of wages in accordance with such reasonable limitations in such written policy.

(d) This prohibition shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee's essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge, or in furtherance of an investigation, proceeding, hearing, or action under this chapter, including an investigation conducted by the employer.

(e) Nothing in this section shall be construed to limit the rights of an employee provided under any other provision of law or collective bargaining agreement.

§ 194-a. Wage or salary history inquiries prohibited. 1. No employer shall:

a. rely on the wage or salary history of an applicant in determining whether to offer employment to such individual or in determining the wages or salary for such individual.

b. orally or in writing seek, request, or require the wage or salary history from an applicant or current employee as a condition to be interviewed, or as a condition of continuing to be considered for an offer of employment, or as a condition of employment or promotion.

c. orally or in writing seek, request, or require the wage or salary history of an applicant or current employee from a current or former employer, current or former employee, or agent of the applicant or current employee's current or former employer, except as provided in subdivision three of this section.

d. refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current employee based upon prior wage or salary history.

e. refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current employee because such applicant or current employee did not provide wage or salary history in accordance with this section.

f. refuse to interview, hire, promote, otherwise employ, or otherwise retaliate against an applicant or current or former employee because the applicant or current or former employee filed a complaint with the department alleging a violation of this section.

2. Nothing in this section shall prevent an applicant or current employee from voluntarily, and without prompting, disclosing or verifying wage or salary history, including but not limited to for the purposes of negotiating wages or salary.

3. An employer may confirm wage or salary history only if at the time an offer of employment with compensation is made, the applicant or current employee responds to the offer by providing prior wage or salary information to support a wage or salary higher than offered by the employer.

4. For the purposes of this section, "employer" shall include but not be limited to any person, corporation, limited liability company, association, labor organization, or entity employing any individual in any occupation, industry, trade, business or service, or any agent thereof. For the purposes of this section, the term "employer" shall also include the state, any political subdivision thereof, any public authority or any other governmental entity or instrumentality thereof, and any person, corporation, limited liability company, association or entity acting as an employment agent, recruiter, or otherwise connecting applicants with employers.

5. An applicant or current or former employee aggrieved by a violation of this section may bring a civil action for compensation for any damages sustained as a result of such violation on behalf of such applicant, employee, or other persons similarly situated in any court of competent jurisdiction. The court may award injunctive relief as well as reasonable attorneys' fees to a plaintiff who prevails in a civil action brought under this paragraph.

6. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any applicant or current or former employee under any other law or regulation or under any collective bargaining agreement or employment contract.

7. This section shall not supersede any federal, state or local law enacted prior to the effective date of this section that requires the disclosure or verification of salary history information to determine an employee's compensation.

8. The department shall conduct a public awareness outreach campaign,

which shall include making information available on its website, and otherwise informing employers of the provisions of this section.

§ 194-b. Mandatory disclosure of compensation or range of compensation. 1. a. No employer, employment agency, employee, or agent thereof shall advertise a job, promotion, or transfer opportunity that will physically be performed, at least in part, in the state of New York, including a job, promotion, or transfer opportunity that will physically be performed outside of New York but reports to a supervisor, office, or other work site in New York without disclosing the following:

- (i) the compensation or a range of compensation for such job, promotion, or transfer opportunity; and
- (ii) the job description for such job, promotion, or transfer opportunity, if such description exists.

b. An employer, employment agency, employee, or agent thereof advertising for a job, promotion, or transfer opportunity paid solely on commission shall maintain compliance with subparagraph (i) of paragraph a of this subdivision by disclosing a general statement that compensation shall be based on commission.

2. No employer shall refuse to interview, hire, promote, employ or otherwise retaliate against an applicant or current employee for exercising any rights under this section.

3. The commissioner shall promulgate rules and regulations to effectuate the provisions of this section.

4. The department shall conduct a public awareness outreach campaign, which shall include making information available on its website and otherwise informing employers of the provisions of this section.

5. a. Any person claiming to be aggrieved by a violation of this section may file with the commissioner a complaint regarding such alleged violation for an investigation of such complaint and statement setting the appropriate remedy, if any, pursuant to the provisions of

section one hundred ninety-six-a of this article.

b. An employer who fails to comply with any requirement of this section or any regulation published thereunder shall be deemed in violation of this section and shall be subject to a civil penalty in accordance with section two hundred eighteen of this chapter.

6. For the purposes of this section the following terms shall have the following meanings:

a. "range of compensation" shall mean the minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement for such opportunity.

b. "employer" shall mean:

(i) any person, corporation, limited liability company, association, labor organization or entity employing four or more employees in any occupation, industry, trade, business or service, or any agent thereof; and

(ii) any person, corporation, limited liability company, association or entity acting as an employment agent or recruiter, or otherwise connecting applicants with employers, provided that "employer" shall not include a temporary help firm as such term is defined by subdivision five of section nine hundred sixteen of this chapter.

c. "advertise" shall mean to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.

7. The provisions of this section shall not be construed or interpreted to supersede or preempt any provisions of local law, rules, or regulations.

§ 195. Notice and record-keeping requirements. Every employer shall:

1. (a) provide his or her employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring, a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the benefit portion of the minimum rate of home care aide total compensation as defined in section thirty-six hundred fourteen-c of the public health law ("home care aide benefits"), if applicable; prevailing wage supplements, if any, claimed as part of any prevailing wage or similar requirement pursuant to article eight of this chapter; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary. Where such prevailing wage supplements are claimed, or such home care aide benefits are provided, the notice shall identify, for each type of supplement claimed or each type of home care aide benefits provided: (i) the hourly rate claimed; (ii) the type of supplement or type of home care aide benefits, including when applicable, but not limited to, pension or healthcare; (iii) the names and addresses of the person or entity providing such supplement or such home care aide benefits; and (iv) the agreement, if any, requiring or providing for such supplement or such home care aide benefits, together with information on how copies of such agreements or summaries thereof may be obtained by an employee. Each time the employer provides such notice to an employee, the employer shall obtain from the employee a signed and dated written acknowledgement, in English and in the primary language of the employee, of receipt of this notice, which the employer shall preserve and maintain for six years. Such acknowledgement shall include an affirmation by the employee that the employee accurately identified his or her primary language to the employer, and that the notice provided by the employer to such employee pursuant to this subdivision was in the language so identified or otherwise complied with paragraph (c) of this subdivision, and shall conform to any additional

requirements established by the commissioner with regard to content and form. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the notice must state the regular hourly rate and overtime rate of pay;

(b) The commissioner shall prepare templates that comply with the requirements of paragraph (a) of this subdivision. Each such template shall be dual-language, including English and one additional language. The commissioner shall determine, in his or her discretion, which languages to provide in addition to English, based on the size of the New York state population that speaks each language and any other factor that the commissioner shall deem relevant. All such templates shall be made available to employers in such manner as determined by the commissioner;

(c) When an employee identifies as his or her primary language a language for which a template is not available from the commissioner, the employer shall comply with this subdivision by providing that employee an English-language notice or acknowledgment;

(d) An employer shall not be penalized for errors or omissions in the non-English portions of any notice provided by the commissioner;

(e) The commissioner shall have discretion to waive or alter requirements of paragraph (a) of this subdivision for temporary help firms as defined in section nine hundred sixteen of this chapter.

2. notify his or her employees in writing of any changes to the information set forth in subdivision one of this section, at least seven calendar days prior to the time of such changes, unless such changes are reflected on the wage statement furnished in accordance with subdivision three of this section;

3. furnish each employee with a statement with every payment of wages, listing the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; the benefit portion of the minimum rate of home care aide total

compensation as defined in section thirty-six hundred fourteen-c of the public health law ("home care aide benefits"), if applicable; prevailing wage supplements, if any, claimed as part of any prevailing wage or similar requirement pursuant to article eight of this chapter; and net wages. Where such prevailing wage supplements are claimed, or such home care aide benefits are provided, the statement shall either: (i) identify the type of each supplement claimed, or the type of each home care aide benefits provided, and the hourly rate for each; or (ii) be accompanied by a copy of the applicable notice required under subdivisions one and two of this section. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the statement shall include the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the statement shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. Upon the request of an employee, an employer shall furnish an explanation in writing of how such wages were computed;

3-a. in addition, every railroad corporation shall furnish each employee with a statement with every payment of wages listing accrued total earnings and taxes to date and further furnish said employee at the same time with a separate listing of his daily wages and how they were computed;

4. establish, maintain and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked; the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; amount of sick leave provided to each employee; the benefit portion of the minimum rate of home care aide total compensation as defined in section thirty-six hundred fourteen-c of the public health law ("home care aide benefits"), if applicable; prevailing wage supplements, if any, claimed as part of any prevailing wage or similar requirement pursuant to article eight of this chapter;

and net wages for each employee. Where such prevailing wage supplements are claimed, or such home care aide benefits are provided, the payroll records shall include copies of all notices required by subdivisions one and two of this section. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the payroll records shall include the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the payroll records shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate;

5. notify his employees in writing or by publicly posting the employer's policy on sick leave, vacation, personal leave, holidays and hours.

6. notify any employee terminated from employment, in writing, of the exact date of such termination as well as the exact date of cancellation of employee benefits connected with such termination. In no case shall notice of such termination be provided more than five working days after the date of such termination. Failure to notify an employee of cancellation of accident or health insurance subjects an employer to an additional penalty pursuant to section two hundred seventeen of this chapter.

§ 196. Powers of commissioner. 1. In addition to the powers of the commissioner specified in other sections of this chapter, the commissioner shall have the following duties, powers and authority:

a. He or she shall investigate and attempt to adjust equitably controversies between employers and employees relating to this article, or article five, seven, nineteen or nineteen-A of this chapter.

b. He or she may take assignments of claims for wages under this chapter from employees or third parties in trust for such employees or for the benefit of various funds for such employees. All such

assignments shall run to the commissioner and his or her successor in office. The commissioner may sue employers on wage claims thus assigned, with the benefits and subject to the provisions of existing law applying to actions by employees for collection of wages. He or she may join in a single action any number of wage claims against the same employer.

c. He or she may institute proceedings on account of any criminal violation of any provision of this article, or article five, seven, nineteen or nineteen-A of this chapter.

d. If it shall appear to him or her that any employer has been convicted of a violation of any provision of this article or article nineteen or nineteen-A of this chapter or that any order to comply issued against an employer under this chapter remains unsatisfied for a period of ten days after the time to appeal therefrom has expired, and that no appeal therefrom is then pending, the commissioner may require such employer to deposit with him or her a bond in such sum as he or she may deem sufficient and adequate in the circumstances, together with two or more sureties or a duly authorized surety company, to be approved by the commissioner. The bond shall be payable to the commissioner and shall be conditioned that the employer will, for a definite future period, not exceeding two years, pay his or her employees in accordance with the provisions of this article or article nineteen or nineteen-A of this chapter, and shall be further conditioned upon the payment by the employer of any amounts due pursuant to an order to comply or judgment against such employer pursuant to the provisions of this article or article nineteen or nineteen-A of this chapter.

If within ten days after demand for such bond, which demand may be made by certified or registered mail, such employer shall fail to deposit the same, the commissioner may bring an action in the name and on behalf of the people of the state of New York against such employer in the supreme court to compel such employer to furnish such a bond or to cease doing business until he or she has done so. The employer shall have the burden of proving that either such a bond is unnecessary or that the amount demanded is excessive. If the court finds that there is just cause for requiring the bond and that same is reasonably necessary

or proper to secure prompt payment of the wages of the employees of such employer and his or her compliance with the provisions of this article or article nineteen or nineteen-A of this chapter, the court may enjoin such employer and such other person or persons as may have been or may be concerned with or in any way participating in the failure to pay the wages resulting in the conviction or order to comply as aforesaid, from doing business until the requirement is met and make other and further orders appropriate to compel compliance with the requirement.

If any order to comply issued against an employer under this article or article nineteen or nineteen-A of this chapter remains unsatisfied for a period of ten days after the time to appeal therefrom has expired, and that no appeal therefrom is then pending, the commissioner may require the employer to provide an accounting of assets of the employer, including but not limited to, a list of all bank accounts, accounts receivable, personal property, real property, automobiles or other vehicles, and any other assets, in a form and manner as prescribed by the commissioner. An employer shall provide such amended accountings of assets as the commissioner shall order. If within ten days after demand for such an accounting of assets, which demand may be made by certified or registered mail, such employer shall fail to provide same, or if the employer fails to provide an amended accounting as required under this section, the commissioner may bring an action in the name and on behalf of the people of the state of New York against such employer in the supreme court to compel such employer to furnish the accounting and pay a civil penalty of no more than ten thousand dollars.

e. He or she is hereby authorized and empowered to enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of such department or agency, for the collection in such other states of claims and judgments for wages based upon claims assigned to the commissioner.

The commissioner may, to the extent provided for by any reciprocal agreement entered into by law or with any agency of another state as herein provided, maintain actions in the courts of such other state for

the collection of claims and judgments for wages and may assign such claims and judgments to the labor department or agency of such other state for collection to the extent that such an assignment may be permitted or provided for by the law of such state or by reciprocal agreement.

The commissioner may, upon the written consent of the labor department or other corresponding agency of any other state or of any person, board, officer or commission of such state authorized to act on behalf of such labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims and judgments for wages arising in such other state in the same manner and to the same extent that such actions by the commissioner are authorized when arising in this state. However, such actions may be maintained only in cases where such other state by law or reciprocal agreement extends a like comity to cases arising in this state.

2. Nothing in this section shall be construed as requiring the commissioner in every instance to investigate and attempt to adjust controversies, or to take assignments of wage claims, or to institute criminal prosecutions for any violation under this article or article five, seven, nineteen or nineteen-A of this chapter, but he or she shall be deemed vested with discretion in such matters.

§ 196-a. Complaints by employees to commissioner. (a) Any employee; person or organization acting on the employee's behalf; or the recognized and certified collective bargaining agent acting on the employee's behalf, may file with the commissioner a complaint regarding a violation of this article, article five, seven, nineteen, or nineteen-A of this chapter for an investigation of such complaint and statement setting the appropriate remedy, if any. The commissioner shall keep the names of employees that are the subject of an investigation confidential until such time that disclosure is necessary for resolution of an investigation or a complaint. Failure of an employer to keep adequate records or provide statements of wages to employees as required under this chapter, in addition to exposing such employer to penalties

authorized under subdivision one of section two hundred eighteen of this chapter, shall not operate as a bar to filing of a complaint by an employee. In such a case the employer in violation shall bear the burden of proving that the complaining employee was paid wages, benefits and wage supplements.

(b) Any employee, or the recognized and certified collective bargaining agent acting on the employee's behalf, contractor, or the recognized and certified labor organization with which the contractor has executed a collective bargaining agreement covering wages, benefits and supplements, may file with the commissioner a complaint regarding an alleged violation of this article or article nineteen of this chapter occasioned by another person, corporation, employer or entities in violation of article thirty-five-E of the general business law for an investigation of such complaint and statement setting the appropriate remedy, if any.

§ 196-b. Sick leave requirements. 1. Every employer shall be required to provide its employees with sick leave as follows:

a. For employers with four or fewer employees in any calendar year, each employee shall be provided with up to forty hours of unpaid sick leave in each calendar year; provided, however, an employer that employs four or fewer employees in any calendar year and that has a net income of greater than one million dollars in the previous tax year shall provide each employee with up to forty hours of paid sick leave pursuant to this section;

b. For employers with between five and ninety-nine employees in any calendar year, each employee shall be provided with up to forty hours of paid sick leave in each calendar year; and

c. For employers with one hundred or more employees in any calendar year, each employee shall be provided with up to fifty-six hours of paid sick leave each calendar year.

For purposes of determining the number of employees pursuant to this

subdivision, a calendar year shall mean the twelve-month period from January first through December thirty-first. For all other purposes, a calendar year shall either mean the twelve-month period from January first through December thirty-first, or a regular and consecutive twelve-month period, as determined by an employer.

2. Nothing in this section shall be construed to prohibit or prevent an employer from providing an amount of sick leave, paid or unpaid, or paid prenatal personal leave which is in excess of the requirements set forth in subdivision one and subdivision four-a of this section, or from adopting a paid leave policy that provides additional benefits to employees. An employer may elect to provide its employees with the total amount of sick leave required to fulfill its obligations pursuant to subdivision one of this section at the beginning of the calendar year, provided, however that no employer shall be permitted to reduce or revoke any such sick leave based on the number of hours actually worked by an employee during the calendar year if such employer elects pursuant to this subdivision.

3. Employees shall accrue sick leave at a rate of not less than one hour per every thirty hours worked, beginning at the commencement of employment or the effective date of this section, whichever is later, subject to the use and accrual limitations set forth in this section.

4. a. On and after January first, two thousand twenty-one and upon the oral or written request of an employee, an employer shall provide accrued sick leave for the following purposes:

(i) for a mental or physical illness, injury, or health condition of such employee or such employee's family member, regardless of whether such illness, injury, or health condition has been diagnosed or requires medical care at the time that such employee requests such leave;

(ii) for the diagnosis, care, or treatment of a mental or physical illness, injury or health condition of, or need for medical diagnosis of, or preventive care for, such employee or such employee's family member; or

(iii) for an absence from work due to any of the following reasons when the employee or employee's family member has been the victim of

domestic violence pursuant to subdivision thirty-four of section two hundred ninety-two of the executive law, a family offense, sexual offense, stalking, or human trafficking:

(a) to obtain services from a domestic violence shelter, rape crisis center, or other services program;

(b) to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members;

(c) to meet with an attorney or other social services provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding;

(d) to file a complaint or domestic incident report with law enforcement;

(e) to meet with a district attorney's office;

(f) to enroll children in a new school; or

(g) to take any other actions necessary to ensure the health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

For purposes of this subdivision, the reasons outlined above in subparagraph (a) through (g) must be related to the domestic violence, family offense, sexual offense, stalking, or human trafficking. Provided further that a person who has committed such domestic violence, family offense, sexual offense, stalking, or human trafficking shall not be eligible for leave under this subdivision for situations in which the person committed such offense and was not a victim, notwithstanding any family relationship.

b. For purposes of this section, "family member" shall mean an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent; and the child or parent of an employee's spouse or domestic partner. "Parent" shall mean a biological, foster, step- or adoptive parent, or a legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child. "Child" shall mean a biological, adopted or foster child, a legal ward, or a child of an employee standing in loco parentis.

4-a. In addition to the sick leave provided for in this section, on and after January first, two thousand twenty-five, every employer shall be required to provide to its employees twenty hours of paid prenatal personal leave during any fifty-two week calendar period. Paid prenatal personal leave shall mean leave taken for the health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy. Paid prenatal personal leave may be taken in hourly increments. Benefits for paid prenatal personal leave shall be paid in hourly installments. Employees shall receive compensation at the employee's regular rate of pay, or the applicable minimum wage established pursuant to section six hundred fifty-two of this chapter, whichever is greater, for the use of paid prenatal personal leave. Nothing in this section shall be construed to require an employer to pay an employee for unused paid prenatal leave upon such employee's termination, resignation, retirement, or other separation from employment.

5. a. An employer may not require the disclosure of confidential information relating to a mental or physical illness, injury, or health condition of such employee or such employee's family member, or information relating to absence from work due to domestic violence, a sexual offense, stalking, or human trafficking, as a condition of providing sick leave or paid prenatal personal leave pursuant to this section.

b. An employer may set a reasonable minimum increment for the use of sick leave which shall not exceed four hours. Employees shall receive compensation at his or her regular rate of pay, or the applicable minimum wage established pursuant to section six hundred fifty-two of this chapter, whichever is greater, for the use of paid sick leave.

6. An employee's unused sick leave shall be carried over to the following calendar year, provided, however, that: (i) an employer with fewer than one hundred employees may limit the use of sick leave to forty hours per calendar year; and (ii) an employer with one hundred or

more employees may limit the use of sick leave to fifty-six hours per calendar year. Nothing in this section shall be construed to require an employer to pay an employee for unused sick leave upon such employee's termination, resignation, retirement, or other separation from employment.

7. No employer or their agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because such employee has exercised their rights afforded under this section, including, but not limited to, requesting sick leave or paid prenatal leave and using sick leave or paid prenatal leave, consistent with the provisions of section two hundred fifteen of this chapter.

8. An employer shall not be required to provide any additional sick leave pursuant to this section if the employer has adopted a sick leave policy or time off policy that provides employees with an amount of leave which meets or exceeds the requirements set forth in subdivision one of this section and satisfies the accrual, carryover, and use requirements of this section.

9. Nothing in this section shall be construed to: a. prohibit a collective bargaining agreement entered into, on or after the effective date of this section from, in lieu of the leave provided for in this section, providing a comparable benefit for the employees covered by such agreement in the form of paid days off; such paid days off shall be in the form of leave, compensation, other employee benefits, or some combination thereof; or

b. impede, infringe, or diminish the ability of a certified collective bargaining agent to negotiate the terms and conditions of sick leave different from the provisions of this section.

Provided, however, that in the case of either paragraph a or b of this subdivision, the agreement must specifically acknowledge the provisions of this section.

10. Upon return to work following any sick leave or paid prenatal leave taken pursuant to this section, an employee shall be restored by their employer to the position of employment held by such employee prior to any sick leave or paid prenatal leave taken pursuant to this section with the same pay and other terms and conditions of employment.

11. Upon the oral or written request of an employee, an employer shall provide a summary of the amounts of sick leave accrued and used by such employee in the current calendar year and/or any previous calendar year. The employer shall provide such information to the employee within three business days of such request.

12. Nothing in this section shall be construed to prevent a city with a population of one million or more from enacting and enforcing local laws or ordinances which meet or exceed the standard or requirements for minimum hour and use set forth in this section, as determined by the commissioner. Any paid sick leave benefits provided by a sick leave program enforced by a municipal corporation in effect as of the effective date of this section shall not be diminished or limited as a result of the enactment of this section.

13. The commissioner shall have authority to adopt regulations and issue guidance to effectuate any of the provisions of this section. Employers shall comply with regulations and guidance promulgated by the commissioner for this purpose which may include but are not limited to standards for the accrual, use, payment, and employee eligibility of sick leave.

14. The department shall conduct a public awareness outreach campaign which shall include making information available on its website and otherwise informing employers and employees of the provisions of this section.

§ 196-d. Gratuities. No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly

or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. This provision shall not apply to the checking of hats, coats or other apparel. Nothing in this subdivision shall be construed as affecting the allowances from the minimum wage for gratuities in the amount determined in accordance with the provisions of article nineteen of this chapter nor as affecting practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are distributed to employees, nor to the sharing of tips by a waiter with a busboy or similar employee.

*** § 196-e. Construction industry reporting pay provisions. 1.**

Notwithstanding any law, rule or regulation to the contrary, an employee engaged in construction, as defined in subdivision one of section eight hundred sixty-one-b of this chapter, who by request or permission of an employer reports for work on any day shall be paid for at least four hours, or the number of hours in the regularly scheduled shift, whichever is less, at the employee's promised hourly wage.

2. Notwithstanding any law, rule or regulation to the contrary, an employee engaged in construction, as defined in subdivision one of section eight hundred sixty-one-b of this chapter, who by request or permission of an employer is scheduled to report for work on any day shall be paid for two hours at the employee's promised hourly wage when such scheduled shift is cancelled on less than twelve hours' notice to the employee. Payments owed to an employee pursuant to this section shall be deemed wages as defined in this article.

* NB Effective December 8, 2026

§ 197. Civil penalty. Any employer who fails to pay the wages of his employees or shall differentiate in rate of pay because of protected class status, as provided in this article, shall forfeit to the people of the state the sum of five hundred dollars for each such failure, to be recovered by the commissioner in any legal action necessary,

including administrative action or a civil action.

§ 198. Costs, remedies. 1. In any action instituted upon a wage claim by an employee or the commissioner in which the employee prevails, the court may allow such employee in addition to ordinary costs, a reasonable sum, not exceeding fifty dollars for expenses which may be taxed as costs. No assignee of a wage claim, except the commissioner, shall be benefited by this provision.

1-a. On behalf of any employee paid less than the wage to which they are entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim and as part of such legal action, in addition to any other remedies and penalties otherwise available under this article, the commissioner shall assess against the employer the full amount of any such underpayment, and an additional amount as liquidated damages, unless the employer proves a good faith basis for believing that its underpayment of wages was in compliance with the law. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of wages found to be due, except such liquidated damages may be up to three hundred percent of the total amount of the wages found to be due for a willful violation of section one hundred ninety-four of this article. In any action instituted in the courts upon a wage claim by an employee or the commissioner in which the employee prevails, the court shall allow such employee to recover the full amount of any underpayment, all reasonable attorney's fees, prejudgment interest as required under the civil practice law and rules, and, unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total amount of the wages found to be due, except such liquidated damages may be up to three hundred percent of the total amount of the wages found to be due for a willful violation of section one hundred ninety-four of this article. Notwithstanding the provisions of this subdivision, liquidated damages shall not be applicable to violations of paragraph a of subdivision one of section one hundred ninety-one of this article

where the employer paid the employee wages on a regular payday, no less frequently than semi-monthly. Such violations shall be subject to damages as follows:

(i) no more than one hundred percent of the lost interest found to be due for the delayed payment of wages calculated using a daily interest rate for each day payment is late based on the annual rate of interest then in effect, as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law for the employer's first violation; or

(ii) for conduct occurring after the effective date of this paragraph, liquidated damages equal to one hundred percent of the total amount of wages found to be due in violation of paragraph a of subdivision one of section one hundred ninety-one of this article for any employer who, after the effective date of this paragraph, has been subject to one or more previous findings and orders for violations of paragraph a of subdivision one of section one hundred ninety-one of this article for which no proceeding for administrative or judicial review as provided in this chapter is pending and the time for initiation of such proceeding shall have expired and relating to employees performing the same work.

For purposes of this subdivision, an order shall mean a single final order or determination made by the commissioner or a court of competent jurisdiction, regardless of the number of employees or the time period that was subject to such order.

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

On behalf of any employee not provided a notice as required by subdivision one of section one hundred ninety-five of this article, the

commissioner may bring any legal action necessary, including administrative action, to collect such claim, and as part of such legal action, in addition to any other remedies and penalties otherwise available under this article, the commissioner may assess against the employer damages of fifty dollars for each work day that the violations occurred or continue to occur, but not to exceed a total of five thousand dollars. In any action or administrative proceeding to recover damages for violation of paragraph (a) of subdivision one of section one hundred ninety-five of this article, it shall be an affirmative defense that (i) the employer made complete and timely payment of all wages due pursuant to this article or article nineteen or article nineteen-A of this chapter to the employee who was not provided notice as required by subdivision one of section one hundred ninety-five of this article or (ii) the employer reasonably believed in good faith that it was not required to provide the employee with notice pursuant to subdivision one of section one hundred ninety-five of this article.

1-d. If any employee is not provided a statement or statements as required by subdivision three of section one hundred ninety-five of this article, he or she shall recover in a civil action damages of two hundred fifty dollars for each work day that the violations occurred or continue to occur, but not to exceed a total of five thousand dollars, together with costs and reasonable attorney's fees. The court may also award other relief, including injunctive and declaratory relief, that the court in its discretion deems necessary or appropriate.

On behalf of any employee not provided a statement as required by subdivision three of section one hundred ninety-five of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and as part of such legal action, in addition to any other remedies and penalties otherwise available under this article, the commissioner may assess against the employer damages of two hundred fifty dollars for each work day that the violations occurred or continue to occur, but not to exceed a total of five thousand dollars. In any action or administrative proceeding to recover damages for violation of subdivision three of section one hundred ninety-five of this article, it shall be an affirmative defense

that (i) the employer made complete and timely payment of all wages due pursuant to this article or articles nineteen or nineteen-A of this chapter to the employee who was not provided statements as required by subdivision three of section one hundred ninety-five of this article or (ii) the employer reasonably believed in good faith that it was not required to provide the employee with statements pursuant to paragraph (e) of subdivision one of section one hundred ninety-five of this article.

2. The remedies provided by this article may be enforced simultaneously or consecutively so far as not inconsistent with each other.

3. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this section. All employees shall have the right to recover full wages, benefits and wage supplements and liquidated damages accrued during the six years previous to the commencing of such action, whether such action is instituted by the employee or by the commissioner. There is no exception to liability under this section for the unauthorized failure to pay wages, benefits or wage supplements.

4. In any civil action by an employee or by the commissioner, the employee or commissioner shall have the right to collect attorney's fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total

amount of judgment shall automatically increase by fifteen percent.

§ 198-a. Criminal penalties. 1. Every employer who does not pay the wages of all of his employees in accordance with the provisions of this chapter, and the officers and agents of any corporation, partnership, or limited liability company who knowingly permit the corporation, partnership, or limited liability company to violate this chapter by failing to pay the wages of any of its employees in accordance with the provisions thereof, shall be guilty of a misdemeanor for the first offense and upon conviction therefor shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. An indictment of a person or corporation operating a steam surface railroad for an offense specified in this section may be found and tried in any county within the state in which such railroad ran at the time of such offense.

2. Every employer who violates or fails to comply with the requirements of subdivision four of section one hundred ninety-five of this article, and the officers and agents of any corporation, partnership, or limited liability company who knowingly permit the corporation, partnership, or limited liability company to violate or fail to comply therewith, shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than five thousand dollars or imprisoned for not more than one year.

3. Every employer who knowingly violates or fails to comply with the requirements of subdivision four of section one hundred ninety-five of this article, and the officers and agents of any corporation, partnership, or limited liability company who knowingly permit the corporation, partnership, or limited liability company to violate or

fail to comply therewith, shall be guilty of a felony where such employer, officer or agent has been convicted of a violation of such subdivision within the previous six years, and upon conviction therefor shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. In determining the penalty, the court shall consider the severity of the violation, the size of the employer, and the employer's good faith effort to comply with the requirements of subdivision four of section one hundred ninety-five of this article.

§ 198-b. "Kick-back" of wages prohibited. 1. As used in this section, the term "person" shall include any firm, partnership, association, corporation or group of persons.

2. Whenever any employee who is engaged to perform labor shall be promised an agreed rate of wages for his or her services, be such promise in writing or oral, or shall be entitled to be paid or provided prevailing wages or supplements pursuant to article eight or nine of this chapter, it shall be unlawful for any person, either for that person or any other person, to request, demand, or receive, either before or after such employee is engaged, a return, donation or contribution of any part or all of said employee's wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment. Further, any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this section shall be guilty of a violation of the provisions of this section.

3. Whenever an agreement between a bona fide labor organization and an employer or an association of employers requires that employees shall be paid an agreed wage or rate of wages for their services, it shall be unlawful for any person, either for that person or any other person, to request, demand or receive, either before or after such employee is

engaged, that such employee pay back, return, donate, contribute or give any part or all of said employee's wages, salary, supplements or thing of value, to any person, upon the statement, representation or understanding that failure to comply with such requests or demand will prevent such employee from procuring or retaining employment, and any person who directly or indirectly aids, requests or authorizes any other person to violate any of the provisions of this section shall be guilty of a violation of the provisions of this section.

4. The provisions of this section shall not apply to any agent or representative of a duly constituted labor organization acting in the collection of dues or assessments of such organization.

5. A violation of the provisions of this section shall constitute a misdemeanor.

§ 198-c. Benefits or wage supplements. 1. In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement to pay or provide benefits or wage supplements to employees or to a third party or fund for the benefit of employees and who fails, neglects or refuses to pay the amount or amounts necessary to provide such benefits or furnish such supplements within thirty days after such payments are required to be made, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section one hundred ninety-eight-a of this article. Where such employer is a corporation, the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor.

2. As used in this section, the term "benefits or wage supplements" includes, but is not limited to, reimbursement for expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay.

3. This section shall not apply to any person in a bona fide executive, administrative, or professional capacity whose earnings are

in excess of one thousand three hundred dollars a week.

§ 198-d. Posting regulations on illegal wage deductions. Every employer engaged in the sale or service of food or beverages shall post in his establishment, in a place accessible to his employees and in a visually conspicuous manner, a copy of sections one hundred ninety-three and one hundred ninety-six-d of this chapter and any regulations promulgated pursuant thereto relating to illegal deductions from wages and tips by employers.

§ 198-e. Construction industry wage theft. 1. A contractor making or taking a construction contract shall be liable for any debt resulting from an action under section one hundred ninety-eight of this article, owed to an employee or third party on the employee's behalf, incurred by a subcontractor at any tier acting under, by, or for the contractor or its subcontractors for the employee's performance of labor. The provisions of this section shall not be deemed to limit the liability of a subcontractor under section one hundred ninety-eight of this article.

2. No agreement or release by an employee or subcontractor to waive liability of 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.

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 claim pursuant to this section 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. A contractor's liability pursuant to the provisions of this section shall be applicable only for claims occurring no earlier 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. Before bringing a civil action pursuant to this section, an employee, or third party on such employee's behalf, must give the contractor notice of the alleged violation. The notice need only describe the general nature of the claim and shall not limit the liability of the contractor or preclude subsequent amendments of an action to encompass additional employees employed by the subcontractor. An employee, or third party on such employee's behalf, may not bring a civil action until ten business days after giving the contractor notice of the alleged violation and may not bring a civil action if the contractor corrects the alleged violation. An employee, or third party on such employee's behalf, is not required to give notice to a contractor pursuant to this subdivision before bringing a civil action pursuant to this section if any employee, or third party on any

employee's behalf, previously has given notice to such contractor of the same alleged violation or a prior alleged violation by the same subcontractor. 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. On behalf of an employee subject to a 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.

§ 199. Rules and regulations. The commissioner may issue such rules and regulations as he determines necessary for the purposes of carrying out the provisions of this article.

§ 199-a. Notification of process. 1. Each employee who files a complaint regarding a violation of a provision of this article (payment of wages), article nineteen (minimum wage act), or article nineteen-A (minimum wage standards and protective labor practices for farm workers), section one hundred sixty-one, section one hundred sixty-two, section two hundred twelve-a, section two hundred twelve-b, or section two hundred fifteen of this chapter, or a rule or regulation promulgated thereunder, shall be provided with a written description of the anticipated processing of the complaint, including investigation, case conference, potential civil and criminal penalties, and collection procedures.

2. Each employee and his or her authorized representative shall be notified in writing of any case conference before it is held and given the opportunity to attend.

3. Each employee and his or her authorized representative shall be notified in writing of any award and collection of back wages and civil penalties, and of any intent to seek criminal penalties. In the event that criminal penalties are sought the employee and his or her authorized representative shall be notified of the outcome of prosecution.

ARTICLE 7

GENERAL PROVISIONS

Section 200. General duty to protect health and safety of employees; enforcement.

200-a. Laws to be posted at airports.

201. Laws and orders to be posted.

201-a. Fingerprinting of employees prohibited.

201-b. Fees for medical examination.

201-c. Discrimination in child-care leave prohibited.

201-d. Discrimination against the engagement in certain activities.

201-e. Maintenance of employee-patient records at occupational health service centers.

201-f. Posting regulations on employment of persons previously convicted of one or more crimes.

201-g. Prevention of sexual harassment.

201-h. Posting of veterans' benefits and services.

201-i. Request for access to personal accounts prohibited.

202. Protection of the public and of persons engaged at window cleaning and cleaning of exterior surfaces of buildings.

202-a. Leave of absence for bone marrow donations.

202-b. Leave for organ or bone marrow donation granted to state employees.

- 202-c. Prevention of personal injuries in the use of ski tows,
other passenger tramways and downhill ski areas.
- 202-d. Coin-operated machines performing a manufacturing
process.
- 202-e. Protection of persons employed on/in vehicular bridges
and/or tunnels.
- 202-f. Protection of hotel and motel employees against fire
hazards in employee housing facilities.
- 202-g. Display of fuel-connected appliances in wholesale or
retail store.
- 202-h. High-voltage proximity.
- 202-i. Leave of absence for military spouses.
- 202-j. Leave of absence for blood donation granted to employees.
- 202-k. Protection of persons employed in the broadcast industry.
- 202-l. Leave of absence for volunteer emergency responders.
- 203. Washrooms, washing facilities and waterclosets for
elevator employees.
- 203-a. Seats in certain passenger elevators or relief for the
operator.
- 203-b. Seats for female employees.
- 203-c. Employee privacy protection.
- 203-d. Employee personal identifying information.
- 203-e. Prohibition of discrimination based on an employee's or a
dependent's reproductive health decision making.
- 203-f. Inventions made by employees.
- 204. Inspection of boilers; enforcement; fees; identification;
exceptions.
- 204-b. Refunds.
- 205. Prohibition against eating meals in certain workrooms.
- 206. Prevention of personal injuries to persons engaged in
tree trimming.
- 206-a. Physical examinations of females.
- 206-c. Right of nursing employees to express breast milk.
- 207. Protection of employees at switchboards.
- 207-a. Employee safety in work on energized high voltage lines.
- 208. Labels, brands and marks used by labor organizations.
- 209. Illegal use of labels, brands and marks; injunction

proceedings.

- 209-a. Fraudulent representation in labor organizations.
- 210. Proceedings for nonenforcement.
- 210-a. Legal duty to employees.
- 210-b. Access to personnel records.
- 211. Protection of employees.
- 211-a. Prohibition against use of funds.
- 212. Drinking water for farm laborers.
- 212-a. Migrant registration law.
- 212-b. Farm labor camp commissaries; issuance of permit; renewal, refusal, suspension, and revocation of permit; rules and regulations.
- 212-c. Definitions.
- 212-d. Field sanitation for farm hand workers, farm field workers and farm food processing workers.
- 213. Violations of provisions of labor law; the rules, regulations or orders of the industrial commissioner and the industrial board of appeals.
- 213-a. Special provisions regarding the purchasing of apparel or sports equipment by the state university of New York and the city university of New York.
- 214. Criminal prosecution.
- 215. Penalties and civil action; prohibited retaliation.
- 215-a. Discrimination against employees for failure to meet certain ticket quotas.
- 215-b. Children; adverse information; notification.
- 215-c. Discrimination against employees for displaying the American flag.
- 216. Failure to pay statutory inspection fees.
- 217. Employee notification and remittance of premiums; group policies of accident and health insurance.
- 218. Violations of certain provisions; civil penalties.
- 218-a. Sun safety education for state employees.
- 218-b. Prevention of occupational exposure to an airborne infectious disease.
- 219. Violations of certain wage payment provisions; interest, filing of order as judgment.

219-a. Affirmation in lieu of oath.

219-c. Public notice of employer violations.

219-d. Emergency alert notification system employer
registration.

§ 200. General duty to protect health and safety of employees; enforcement. 1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. The board may make rules to carry into effect the provisions of this section.

2. If the commissioner finds that any machinery, equipment, or device in any place to which this chapter applies is in a dangerous condition, or finds that any area to which this chapter applies is in a dangerous condition, he may attach a notice to such machinery, equipment, or device, or post a notice in such area warning all persons of the danger. Such notice shall prohibit the use of such machinery, equipment, or device or prohibit further work in or occupancy of such area until the dangerous condition is corrected and the notice is removed by the commissioner. Upon receipt of a written notification from the employer that the dangerous condition has been corrected, the commissioner shall make a reinspection within ten working days, and if the commissioner finds that the dangerous condition has been corrected, he shall remove the notice. The filing with the board of a petition for a review of the validity and reasonableness of the commissioner's order pursuant to section one hundred one of this chapter, shall not stay further proceedings; provided, however, that the board, in its discretion, may upon application of the petitioner stay further proceedings. The board shall grant or deny such application for a stay within seventy-two hours after the filing of the application.

3. Whenever a notice is attached or posted as provided in subdivision

two of this section, the attorney general may institute a proceeding to enjoin the use of such machinery, equipment, or device or to enjoin further work in or occupancy of such area. Such proceeding shall not be stayed by the filing with the board of a petition for a review of the validity or reasonableness of a commissioner's order pursuant to section one hundred one of this chapter.

4. In the exercise of his powers to protect the health and safety of employees the commissioner shall, in municipalities which have accepted the applicability of the state building construction code, enforce the provisions of such code in factories, mercantile establishments and places of public assembly with respect to: (a) sanitation and health facilities; (b) guarding against and minimizing fire and industrial radiation hazards; (c) safety of vertical transportation; and (d) adequacy of exits.

§ 200-a. Laws to be posted at airports. An airport, as defined in section two hundred forty of the general business law, shall permanently and prominently post signs indicating the increased penalties for interference with security personnel under 49 USC 46503. Such signs shall state an individual in an area within a commercial service airport in the United States who, by assaulting or intimidating a federal, airport, or air carrier employee who has security duties within the airport, interferes with the performance of the duties of the employee or lessens the ability of the employee to perform those duties, shall be fined under title 18 of the United States code, imprisoned for not more than ten years, or both. If the individual used a dangerous weapon in committing the assault, intimidation, or interference, the individual may be imprisoned for any term of years or life imprisonment. Signage shall include the telephone numbers of local law enforcement and the Transportation Security Administration for the purpose of reporting a violation.

§ 201. Laws and orders to be posted. Wherever persons are employed who are affected by the provisions of this chapter or of the industrial

code, the commissioner shall furnish to the employer copies or abstracts of such provisions, rules and orders as he may deem necessary affecting such persons. The copies or abstracts shall be in such language as the commissioner may require and shall be kept posted by the employer in a conspicuous place on each floor of the premises. Digital versions of such copies and abstracts shall also be made available through the employer's website or by email. Employers shall provide notice that documents required for physical posting are also available electronically. All other documents required to be physically posted at a worksite pursuant to state or federal law or regulation shall also be made electronically available in the manner described pursuant to this section.

§ 201-a. Fingerprinting of employees prohibited. Except as otherwise provided by law, no person, as a condition of securing employment or of continuing employment, shall be required to be fingerprinted. This provision shall not apply to employees of the state or any municipal subdivisions or departments thereof, or to the employees of legally incorporated hospitals, supported in whole or in part by public funds or private endowment, or to the employees of medical colleges affiliated with such hospitals or to employees of private proprietary hospitals.

§ 201-b. Fees for medical examination. 1. It shall be unlawful for any employer to require any applicant for employment to pay the cost of a medical examination required by the employer as a condition of original employment.

2. It shall be unlawful for any employer to require an employee, as a condition of continuation of employment, to pay the cost of any medical examination or the cost of furnishing any health certificate relating thereto where:

a. such employee is not covered by health insurance or the employee's health insurance does not cover such examination or certificate or the employer does not provide qualified medical personnel to conduct such

examination without cost to the employee; and

b. such examination or certificate is not required pursuant to a state or federal statute or municipal ordinance or local law.

3. The term "employer" as used in this section shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within the state.

4. Nothing contained herein shall prohibit the parties to a collective bargaining agreement from inserting therein a provision requiring:

a. an applicant for employment to pay, in the first instance, the cost of such medical examination provided that such collective bargaining agreement also provides for the repayment of such cost by the employer to the applicant after a reasonable period of employment; and

b. an employee who is otherwise protected by the provisions of subdivision two of this section, to pay in the first instance the cost of such medical examination or of furnishing the health certificate provided that such collective bargaining agreement also provides for the repayment of such cost by the employer to the employee within a reasonable time.

5. Any employer who violates the provisions of this section shall be liable to a penalty of not more than fifty dollars for each violation. It shall be the duty of the department of labor to enforce this section.

§ 201-c. Discrimination in child-care leave prohibited. 1. Whenever an employer or governmental agency permits an employee to take a leave of absence upon the birth of such employee's child, an adoptive parent, following the commencement of the parent-child relationship, shall be entitled to the same leave and upon the same terms; provided, however, that the adoptive parent shall not be entitled to such equal child care

leave, or any portion thereof, at any time after the adoptive child reaches the minimum age set forth in subdivision one of section three thousand two hundred two of the education law for attendance in public school without the payment of tuition. With respect to the adoption of a hard-to-place or handicapped child as defined in section four hundred fifty-one of the social services law who is under the age of eighteen, an adoptive parent, following commencement of the parent-child relationship, shall be entitled to such leave of absence.

2. For purposes of this section, "commencement of the parent-child relationship" shall mean:

a. When the adoption occurs under sponsorship of an authorized agency, as defined in subdivision ten of section three hundred seventy-one of the social services law, the date the child is placed by the authorized agency in the home of the adoptive parents pursuant to section three hundred eighty-four of the social services law.

b. When the adoption occurs without the sponsorship of an authorized agency, the date a petition for the adoption of a child residing with the adoptive parents is filed in a court.

3. In addition to any other penalties or actions otherwise applicable pursuant to this chapter, whenever an employer or governmental agency has refused to extend available child-care leave to an adoptive parent in violation of this section, an aggrieved individual may commence an action for equitable relief and damages. In all actions brought pursuant to this section, reasonable attorney's fees, as determined by the court, shall be awarded to the prevailing plaintiff.

§ 201-d. Discrimination against the engagement in certain activities.

1. Definitions. As used in this section:

a. "Political activities" shall mean (i) running for public office, (ii) campaigning for a candidate for public office, or (iii) participating in fund-raising activities for the benefit of a candidate,

political party or political advocacy group;

b. "Recreational activities" shall mean any lawful, leisure-time activity, for which the employee receives no compensation and which is generally engaged in for recreational purposes, including but not limited to sports, games, hobbies, exercise, reading and the viewing of television, movies and similar material;

c. "Work hours" shall mean, for purposes of this section, all time, including paid and unpaid breaks and meal periods, that the employee is suffered, permitted or expected to be engaged in work, and all time the employee is actually engaged in work. This definition shall not be referred to in determining hours worked for which an employee is entitled to compensation under any law including article nineteen of this chapter;

d. "Political matters" shall mean matters relating to elections for political office, political parties, legislation, regulation and the decision to join or support any political party or political, civic, community, fraternal or labor organization;

e. "Religious matters" shall mean matters relating to religious affiliation and practice and the decision to join or support any religious organization or association.

2. Unless otherwise provided by law, it shall be unlawful for any employer or employment agency to refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual in compensation, promotion or terms, conditions or privileges of employment because of:

a. an individual's political activities outside of working hours, off of the employer's premises and without use of the employer's equipment or other property, if such activities are legal, provided, however, that this paragraph shall not apply to persons whose employment is defined in paragraph six of subdivision (a) of section seventy-nine-h of the civil rights law, and provided further that this paragraph shall not apply to

persons who would otherwise be prohibited from engaging in political activity pursuant to chapter 15 of title 5 and subchapter III of chapter 73 of title 5 of the USCA;

b. an individual's legal use of consumable products, including cannabis in accordance with state law, prior to the beginning or after the conclusion of the employee's work hours, and off of the employer's premises and without use of the employer's equipment or other property;

c. an individual's legal recreational activities, including cannabis in accordance with state law, outside work hours, off of the employer's premises and without use of the employer's equipment or other property;

d. an individual's membership in a union or any exercise of rights granted under Title 29, USCA, Chapter 7 or under article fourteen of the civil service law; or

e. an individual's refusal to: (i) attend an employer-sponsored meeting with the employer or its agent, representative or designee, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters; or (ii) listen to speech or view communications, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters.

3. The provisions of subdivision two of this section shall not be deemed to protect activity which:

a. creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest;

b. with respect to employees of a state agency as defined in sections seventy-three and seventy-four of the public officers law respectively, is in knowing violation of subdivision two, three, four, five, seven, eight or twelve of section seventy-three or of section seventy-four of the public officers law, or of any executive order, policy, directive, or other rule which has been issued by the attorney general regulating

outside employment or activities that could conflict with employees' performance of their official duties;

c. with respect to employees of any employer as defined in section twenty-seven-a of this chapter, is in knowing violation of a provision of a collective bargaining agreement concerning ethics, conflicts of interest, potential conflicts of interest, or the proper discharge of official duties;

d. with respect to employees of any employer as defined in section twenty-seven-a of this chapter who are not subject to section seventy-three or seventy-four of the public officers law, is in knowing violation of article eighteen of the general municipal law or any local law, administrative code provision, charter provision or rule or directive of the mayor or any agency head of a city having a population of one million or more, where such law, code provision, charter provision, rule or directive concerns ethics, conflicts of interest, potential conflicts of interest, or the proper discharge of official duties and otherwise covers such employees; and

e. with respect to employees other than those of any employer as defined in section twenty-seven-a of this chapter, violates a collective bargaining agreement or a certified or licensed professional's contractual obligation to devote his or her entire compensated working hours to a single employer, provided however that the provisions of this paragraph shall apply only to professionals whose compensation is at least fifty thousand dollars for the year nineteen hundred ninety-two and in subsequent years is an equivalent amount adjusted by the same percentage as the annual increase or decrease in the consumer price index.

4. Notwithstanding the provisions of subdivision three of this section, an employer shall not be in violation of this section where the employer takes action based on the belief either that: (i) the employer's actions were required by statute, regulation, ordinance or other governmental mandate, (ii) the employer's actions were permissible pursuant to an established substance abuse or alcohol program or

workplace policy, professional contract or collective bargaining agreement, or (iii) the individual's actions were deemed by an employer or previous employer to be illegal or to constitute habitually poor performance, incompetency or misconduct.

4-a. Notwithstanding the provisions of subdivision three or four of this section, an employer shall not be in violation of this section where the employer takes action related to the use of cannabis based on the following:

(i) the employer's actions were required by state or federal statute, regulation, ordinance, or other state or federal governmental mandate;

(ii) the employee is impaired by the use of cannabis, meaning the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, or such specific articulable symptoms interfere with an employer's obligation to provide a safe and healthy work place, free from recognized hazards, as required by state and federal occupational safety and health law; or

(iii) the employer's actions would require such employer to commit any act that would cause the employer to be in violation of federal law or would result in the loss of a federal contract or federal funding.

5. Nothing in this section shall apply to persons who, on an individual basis, have a professional service contract with an employer and the unique nature of the services provided is such that the employer shall be permitted, as part of such professional service contract, to limit the off-duty activities which may be engaged in by such individual.

6. Nothing in this section shall prohibit an organization or employer from offering, imposing or having in effect a health, disability or life insurance policy that makes distinctions between employees for the type of coverage or the price of coverage based upon the employees' recreational activities or use of consumable products, provided that differential premium rates charged employees reflect a differential cost to the employer and that employers provide employees with a statement delineating the differential rates used by the carriers providing

insurance for the employer, and provided further that such distinctions in type or price of coverage shall not be utilized to expand, limit or curtail the rights or liabilities of any party with regard to a civil cause of action.

7. a. Where a violation of this section is alleged to have occurred, the attorney general may apply in the name of the people of the state of New York for an order enjoining or restraining the commission or continuance of the alleged unlawful acts. In any such proceeding, the court may impose a civil penalty in the amount of three hundred dollars for the first violation and five hundred dollars for each subsequent violation.

b. In addition to any other penalties or actions otherwise applicable pursuant to this chapter, where a violation of this section is alleged to have occurred, an aggrieved individual may commence an action for equitable relief and damages.

8. Nothing in this section shall prohibit: (i) an employer or its agent, representative or designee from communicating to its employees any information that the employer is required by law to communicate, but only to the extent of such legal requirement; (ii) an employer or its agent, representative or designee from communicating to its employees any information that is necessary for such employees to perform their job duties; (iii) an institution of higher education, or any agent, representative or designee of such institution, from meeting with or participating in any communications with its employees that are part of coursework, any symposia or an academic program at such institution; (iv) casual conversations between employees or between an employee and an agent, representative or designee of an employer, provided participation in such conversations is not required; or (v) a requirement limited to the employer's managerial and supervisory employees.

9. The provisions of this section shall not apply to a religious corporation, entity, association, educational institution or society that is exempt from the requirements of Title VII of the Civil Rights

Act of 1964 pursuant to 42 USC 2000e-1(a) with respect to speech on religious matters to employees who perform work connected with the activities undertaken by such religious corporation, entity, association, educational institution or society.

10. Every employer shall post a sign in every workplace at the location or locations where notices to employees are normally posted, to inform employees of their rights pursuant to this section.

§ 201-e. Maintenance of employee-patient records at occupational health service centers. No person charged with the custody and care of the health records of employees treated at an on-site employer sponsored occupational health service facility shall release or disclose any employee-patient record to an employer, except upon the express authorization of the employee-patient, or as otherwise authorized by law.

§ 201-f. Posting regulations on employment of persons previously convicted of one or more crimes. Every employer shall post in his or her establishment, in a place accessible to his or her employees and in a visually conspicuous manner, a copy of article twenty-three-A of the correction law and any regulations promulgated pursuant thereto relating to the licensure and employment of persons previously convicted of one or more criminal offenses.

§ 201-g. Prevention of sexual harassment. 1. The department shall consult with the division of human rights to create and publish a model sexual harassment prevention guidance document and sexual harassment prevention policy that employers may utilize in their adoption of a sexual harassment prevention policy required by this section.

a. Such model sexual harassment prevention policy shall: (i) prohibit sexual harassment consistent with guidance issued by the department in consultation with the division of human rights and provide examples of

prohibited conduct that would constitute unlawful sexual harassment; (ii) include but not be limited to information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment and a statement that there may be applicable local laws; (iii) include a standard complaint form; (iv) include a procedure for the timely and confidential investigation of complaints and ensure due process for all parties; (v) inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially; (vi) clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue; and (vii) clearly state that retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.

b. Every employer shall adopt the model sexual harassment prevention policy promulgated pursuant to this subdivision or establish a sexual harassment prevention policy to prevent sexual harassment that equals or exceeds the minimum standards provided by such model sexual harassment prevention policy. Such sexual harassment prevention policy shall be provided to all employees in writing as required by subdivision two-a of this section. Such model sexual harassment prevention policy shall be publicly available and posted on the websites of both the department and the division of human rights.

2. The department shall consult with the division of human rights and produce a model sexual harassment prevention training program to prevent sexual harassment in the workplace.

a. Such model sexual harassment prevention training program shall be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the department in consultation with the division of human rights; (ii) examples of conduct that would constitute unlawful sexual harassment; (iii) information concerning the federal and state statutory provisions concerning sexual harassment and

remedies available to victims of sexual harassment; and (iv) information concerning employees' rights of redress and all available forums for adjudicating complaints.

b. The department shall include information in such model sexual harassment prevention training program addressing conduct by supervisors and any additional responsibilities for such supervisors.

c. Every employer shall utilize the model sexual harassment prevention training program pursuant to this subdivision or establish a training program for employees to prevent sexual harassment that equals or exceeds the minimum standards provided by such model training. Such sexual harassment prevention training shall be provided to all employees on an annual basis.

2-a. a. Every employer shall provide his or her employees, in writing in English and in the language identified by each employee as the primary language of such employee, at the time of hiring and at every annual sexual harassment prevention training provided pursuant to subdivision two of this section, a notice containing such employer's sexual harassment prevention policy and the information presented at such employer's sexual harassment prevention training program.

b. The commissioner shall prepare templates of the model sexual harassment prevention policy created and published pursuant to subdivision one of this section and the model sexual harassment prevention training program produced pursuant to subdivision two of this section. The commissioner shall determine, in his or her discretion, which languages to provide in addition to English, based on the size of the New York state population that speaks each language and any other factor that the commissioner shall deem relevant. All such templates shall be made available to employers in such manner as determined by the commissioner.

c. When an employee identifies as his or her primary language a language for which a template is not available from the commissioner, the employer shall comply with this subdivision by providing that

employee an English-language notice.

d. An employer shall not be penalized for errors or omissions in the non-English portions of any notice provided by the commissioner.

3. The commissioner may promulgate regulations as he or she deems necessary for the purposes of carrying out the provisions of this section.

4. Beginning in the year two thousand twenty-two, and every succeeding four years thereafter, the department in consultation with the division of human rights shall evaluate, using the criteria within this section, the impact of the current model sexual harassment prevention guidance document and sexual harassment prevention policy. Upon the completion of each evaluation the department shall update the model sexual harassment prevention guidance document and sexual harassment prevention policy as needed.

§ 201-h. Posting of veterans' benefits and services. 1. The department shall consult with the division of veterans' services to create and distribute a veterans' benefits and services poster.

2. Such poster shall, at a minimum, include information regarding the following services available to veterans:

a. contact and website information for the division of veterans' services and the department's veterans' program;

b. substance abuse and mental health treatment;

c. educational, workforce, and training resources;

d. tax benefits;

e. New York state veteran drivers' licenses and non-driver identification cards;

f. eligibility for unemployment insurance benefits under state and/or federal law;

g. legal services; and

h. contact information for the U.S. Department of Veterans Affairs Veterans Crisis Line.

3. Every employer in the state with more than fifty full-time equivalent employees shall display the poster created pursuant to this section in a conspicuous place accessible to employees in the workplace.

§ 201-i. Request for access to personal accounts prohibited. 1. For purposes of this section, the following words shall have the following meanings:

(a) "Applicant" means an applicant for employment.

(b) "Electronic communications device" means any device that uses electronic signals to create, transmit, and receive information, including, but not limited to computers, telephones, personal digital assistants and other similar devices.

(c) "Employer" means (i) a person or entity engaged in a business, industry, profession, trade or other enterprise in the state; (ii) the state of New York; (iii) a county, city, town, village or any other political subdivision or civil division of the state; (iv) a school district or any government entity operating a public school, college, or university; (v) a public improvement or special district; (vi) a public authority, commission or public benefit corporation; or (vii) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state; and (viii) shall include an agent, representative or designee of the employer.

(d) "Personal account" means an account or profile on an electronic medium where users may create, share, and view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, instant messages, or internet website profiles or locations that is used by an employee or an applicant exclusively for

personal purposes.

2. (a) Except as provided in paragraph (b) of this subdivision, it shall be unlawful for any employer to request, require or coerce any employee or applicant for employment to:

(i) disclose any user name and password, password, or other authentication information for accessing a personal account through an electronic communications device;

(ii) access the employee's or applicant's personal account in the presence of the employer; or

(iii) reproduce in any manner photographs, video, or other information contained within a personal account obtained by the means prohibited in this paragraph.

(b) An employer may require an employee to disclose any user name, password or other means for accessing nonpersonal accounts that provide access to the employer's internal computer or information systems.

(c) For the purposes of this section, "access" shall not include an employee or applicant voluntarily adding an employer, agent of the employer, or employment agency to their list of contacts associated with a personal internet account.

3. An employer may not:

(a) Discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee for an employee's refusal to disclose any information specified in paragraph (a) of subdivision two of this section; or

(b) Fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any information specified in paragraph (a) of subdivision two of this section.

4. It shall be an affirmative defense to an action under this section that the employer acted to comply with requirements of a federal, state or local law.

5. (a) Nothing in this section shall prohibit an employer from:

(i) requesting or requiring an employee to disclose access information to an account provided by the employer where such account is used for

business purposes and the employee was provided prior notice of the employer's right to request or require such access information;

(ii) requesting or requiring an employee to disclose access information to an account known to an employer to be used for business purposes;

(iii) accessing an electronic communications device paid for in whole or in part by the employer where the provision of or payment for such electronic communications device was conditioned on the employer's right to access such device and the employee was provided prior notice of and explicitly agreed to such conditions. However, nothing in this subparagraph shall permit an employer to access any personal accounts on such device;

(iv) complying with a court order in obtaining or providing information from, or access to, an employee's accounts as such court order may require;

(v) restricting or prohibiting an employee's access to certain websites while using an employer's network or while using an electronic communications device paid for in whole or part by the employer where the provision of or payment for such electronic communications device was conditioned on the employer's right to restrict such access and the employee was provided prior notice of and explicitly agreed to such conditions.

(b) This section does not prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal law or by a self regulatory organization, as defined in section 3(a)(26) of the securities and exchange act of 1934, 15 USC §78c(a)(26).

(c) This section does not prohibit or restrict an employer from viewing, accessing, or utilizing information about an employee or applicant that can be obtained without any required access information, that is available in the public domain, or for the purposes of obtaining reports of misconduct or investigating misconduct, photographs, video, messages, or other information that is voluntarily shared by an employee, client, or other third party that the employee subject to such report or investigation has voluntarily given access to contained within such employee's personal account.

6. The provisions of this section shall not apply to any law enforcement agency, a fire department or a department of corrections and community supervision.

§ 202. Protection of the public and of persons engaged at window cleaning and cleaning of exterior surfaces of buildings. The owner, lessee, agent and manager of every public building and every contractor involved shall provide such safe means for the cleaning of the windows and of exterior surfaces of such building as may be required and approved by the board of standards and appeals. The owner, lessee, agent, manager or superintendent of any such public building and every contractor involved shall not require, permit, suffer or allow any window or exterior surface of such building to be cleaned unless such means are provided to enable such work to be done in a safe manner for the prevention of accidents and for the protection of the public and of persons engaged in such work in conformity with the requirements of this chapter and the rules of the board of standards and appeals. A person engaged at cleaning windows or exterior surfaces of a public building shall use the safety devices provided for his protection. Every employer and contractor involved shall comply with this section and the rules of the board and shall require his employee, while engaged in cleaning any window or exterior surface of a public building, to use the equipment and safety devices required by this chapter and rules of the board of standards and appeals.

The provisions of this section shall not apply to (1) multiple dwellings six stories or less in height located anywhere in this state; nor to (2) any building three stories or less in height in cities, towns or villages having a population of less than forty thousand; nor to (3) the windows or exterior surfaces of any building which may be exempted under any rule adopted by the board of standards and appeals.

The board of standards and appeals may grant variations pursuant to the provisions of section thirty of this chapter. All existing variations heretofore made by the board relating to the cleaning of

windows are hereby validated and continued in full force and effect until amended or terminated by the board.

The board of standards and appeals may make rules to effectuate the purposes of this section.

Notwithstanding any other law or regulation, local or general, the provisions of this section and the rules issued thereunder shall be applicable exclusively throughout the state and the commissioner shall have exclusive authority to enforce this section and the rules issued thereunder.

§ 202-a. Leave of absence for bone marrow donations. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Employee" means a person who performs services for hire for an employer, for an average of twenty or more hours per week, and includes all individuals employed at any site owned or operated by an employer but shall not include an independent contractor.

(b) "Employer" means a person or entity that employs twenty or more employees at at least one site and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, county, town, city, school district, public authority or other governmental subdivision of any kind.

2. An employer must grant leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. The combined length of the leaves shall be determined by the physician, but may not exceed twenty-four work hours, unless agreed to by the employer. The employer may require verification by a physician for the purpose and length of each leave requested by the employee to donate bone marrow.

3. An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section for the purpose of undergoing a medical procedure to donate bone marrow.

4. The provisions of this section shall not prevent an employer from providing leave for bone marrow donations in addition to leave allowed under any other provision of law. The provisions of this section shall not affect an employee's rights with respect to any other employee benefit otherwise provided by law.

§ 202-b. Leave for organ or bone marrow donation granted to state employees. 1. Any employee of the state of New York shall be allowed up to seven days paid leave to undergo a medical procedure to donate bone marrow and up to thirty days paid leave to serve as an organ donor, provided, however, that an employee of the state of New York shall provide his or her employer with not less than fourteen days prior written notice of an intention to utilize such leave, unless there exists a medical emergency, attested to by a physician, which would require the employee to participate in the medical procedure or organ donation for which the leave is sought within the fourteen day notification period. Such leave shall be in addition to any other sick or annual leave allowed. The employer may require verification by a physician for the purpose and length of each leave requested by the employee to donate bone marrow.

2. An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section for the purpose of undergoing a medical procedure to donate bone marrow or serve as an organ donor.

3. The provisions of this section shall not prevent an employer from providing leave for bone marrow or organ donations in addition to leave allowed under any other provision of law. The provisions of this section shall not affect an employee's rights with respect to any other employee benefit otherwise provided by law.

§ 202-c. Prevention of personal injuries in the use of ski tows, other passenger tramways and downhill ski areas. The commissioner may make rules, consistent with article eighteen of the general obligations law,

guarding against personal injuries to employees and the public in the use and operation of ski tows, other passenger tramways and downhill ski areas.

§ 202-d. Coin-operated machines performing a manufacturing process.

The commissioner may make such rules governing the construction, maintenance, use, and operation of coin-operated machines which perform any manufacturing process that he or she finds necessary for the protection of the lives, health, and safety of employees and of persons lawfully using such machines. The term "manufacturing" as used in this section shall include the processes described in subdivision nine of section two of this chapter.

§ 202-e. Protection of persons employed on/in vehicular bridges and/or tunnels. The board of standards and appeals may make such rules as may be necessary for the protection of the lives, health and safety of persons employed on/in vehicular bridges and/or tunnels by bridge and tunnel authorities subject to the public authorities law of this state.

§ 202-f. Protection of hotel and motel employees against fire hazards in employee housing facilities. Notwithstanding any other provision of law, the board of standards and appeals shall issue a temporary rule governing fire hazards in housing facilities for hotel and motel employees, to become effective on the first day of June, nineteen hundred seventy-three. Such temporary rule shall contain such national consensus standards or standards of any governmental agency in the state relating to housing facilities as the board deems necessary for the protection of the lives, health and safety of hotel and motel employees. Notice of the adoption of such temporary rule shall be published in ten newspapers throughout the state and such temporary rule shall be filed with the secretary of state. Such temporary rule shall remain in effect until superseded by a safety and health standard promulgated in accordance with the procedure prescribed in article twelve of this chapter or until the first day of June, nineteen hundred seventy-four,

whichever occurs first, provided however, that nothing in this section shall prevent any other agency of the state or subdivision thereof from enforcing a public health and safety standard promulgated pursuant to section two hundred twenty-five of the public health law.

§ 202-g. Display of fuel-connected appliances in wholesale or retail store. No gas, gasoline or liquefied petroleum gas fueled appliances shall be displayed in a wholesale or retail store when attached to a live fuel source. This section shall not prevent a live demonstration of such appliances under the immediate supervision, and in the presence of, a responsible adult.

§ 202-h. High-voltage proximity. 1. This section may be known as the "high-voltage proximity act".

2. Definitions. For the purpose of this section:

(a) "High-voltage lines" means electrical conductors installed above ground and having a voltage differential in excess of six hundred volts between any pair of conductors or between any conductor and ground. In the case of alternating current, the voltage shall be measured in R.M.S. value. This definition shall not include approved armored cable used to supply power to portable equipment and insulated power cables enclosed in approved metallic raceways.

(b) "Dangerous proximity" means a distance within ten feet of high-voltage lines, or within such greater distances as are set forth in the current editions and any subsequent revisions of the regulations of the United States Occupational Safety and Health Administration (29 CFR parts 1910 and 1926), the New York industrial code (12 NYCRR part 23) and the national electrical safety code.

3. Prohibited activity. (a) No employer or supervising agent of an employer shall require or permit an employee to, and no self-employed individual, independent contractor having no employees or homeowner shall, participate in the operation, erection, transportation, handling, or storage of any tools, machinery, equipment, supplies, materials or

apparatus, or the moving of any building, if in the course of such operation, erection, transportation, handling, storage or moving it is possible for such tools, machinery, equipment, supplies, materials, apparatus or building, to come within dangerous proximity of a high-voltage line; or participate in any activity which would cause the employee, self-employed individual, independent contractor or homeowner to come within dangerous proximity of a high-voltage line; unless precautionary action has been taken to protect against the danger from contact with such high-voltage line, either by de-energizing such high-voltage line and grounding it where necessary, or other effective methods or devices which have been approved in advance by the owner or person in charge of such high-voltage lines for the particular case and for the particular location.

(b) Employers whose employees operate, erect, transport, handle or store any tools, machinery, equipment, supplies, materials or apparatus, or move any building, which in the course of such operation, erection, transportation, handling, storing or moving might come within dangerous proximity of a high-voltage line, shall advise such employees of the dangers inherent in such work, highlight precautions which are to be taken under such circumstances and encourage employees to communicate with and advise employers or their supervising agents of conditions which would require precautionary action by the employer as required by paragraph (a) of this subdivision.

(c) In no case shall the required clearance be provided by moving or displacing any conductor, except where the same is temporarily relocated pursuant to arrangements made with the owner or person in charge of the high-voltage line, and such actions are performed by such owner or person in charge.

(d) All high-voltage lines shall be considered as energized high-voltage lines until assurance has been given that they are otherwise by qualified representatives of the owners or persons in charge of such lines.

4. Warning sign required. (a) The owner, agent, lessee, bailee, user, or employer responsible for the operations of equipment capable of coming within dangerous proximity of a high-voltage line in the course of its operation, shall post and maintain in plain view of the operator

on each piece of such equipment, an approved durable warning sign legible at a distance of twelve feet reading "Danger Unlawful To Operate Any Part Of This Equipment Within 10 Feet of High-Voltage Lines". Additional warning signs shall be placed on various parts of the equipment providing similar warnings to others in the vicinity of the high-voltage lines.

Notwithstanding the foregoing, all such posted warnings shall specify the actual distance by which the term "dangerous proximity" is defined by paragraph (b) of subdivision two of this section. The owner, agent, lessee, bailee, user, or employer responsible for the operations of equipment shall provide such other warning signs on equipment or at the work site as may be required by regulations promulgated hereunder. The requirement that warning signs be posted shall not apply to railway equipment operating on railway right-of-way in relation to high-voltage conductors of such railway system under conditions for which exemption is granted under subdivision eight of this section.

(b) If for any reason and for any time period, the operator of the equipment is unable to assess visually the clearance of the equipment from overhead high-voltage lines, a second person shall be designated to observe the clearance and provide timely warning to the equipment operator.

5. Notification to power company and responsibility for safeguards. Whenever any activity is to be performed requiring precautionary action under this section, the employer, contractor or other person responsible for the activity shall promptly notify the owner or person in charge of the high-voltage line of the intended activity, such notification to be submitted at least five normal work days before the activity is to be performed. The owner or person responsible for the high-voltage line shall perform all necessary precautionary actions, and the employer, contractor or other person responsible for the activity shall be responsible for all costs of such precautionary actions. Under no circumstances shall activities requiring precautionary actions be undertaken before such precautionary actions have been completed.

6. Enforcement. The commissioner shall administer and enforce the

provisions of this section and is hereby empowered to prescribe and promulgate rules and regulations consistent herewith. Such regulations shall include a requirement that clearances greater than the dangerous proximity distance must be maintained where, in the judgment of the board, safety so requires.

7. Civil penalty. (a) Any person violating any of the provisions of this section shall be liable for a penalty of not less than one hundred dollars nor more than one thousand dollars to be collected in a civil action by a summary proceeding. Any violation of this section by an officer, agent or employee shall be a violation by the employer if such employer had knowledge of and actual control over the cause of such violation. Where the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

(b) The commissioner is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the commissioner as may appear appropriate and equitable under the circumstances.

8. Exceptions. (a) This section shall not be construed as applying to, shall not apply to, and is not intended to apply to, the construction, reconstruction, operations, and maintenance of overhead electrical conductors and their supporting structures and associated equipment by authorized and qualified electrical workers; nor to the authorized and qualified employees of any person engaged in the construction, reconstruction, operation, and maintenance of overhead electrical circuits or conductors and their supporting structures and associated equipment of rail transportation systems, or electrical generating, transmission, distribution, and communication systems. This exception when applied to railway systems shall be construed as permitting operation of standard rail equipment, which is normally used in the transportation of freight or passengers or both and the operation of relief trains, or other equipment in emergencies, or in maintenance of way service, within dangerous proximity of and high-voltage conductor of such railway system; but this section shall be construed as prohibiting normal repair or construction operations within dangerous proximity of

any high-voltage conductor by other than properly qualified and authorized persons or employees under the direct supervision of an authorized person who is familiar with the hazards involved, unless there has been compliance with the safety provisions hereof.

(b) This section shall not be construed as applying to motor vehicle transportation across or along a public road or highway where the combined vehicle and load shall not be in excess of thirteen and one-half feet high and thirteen feet wide. Nevertheless, this section shall apply to motor vehicle transportation across or along a public road or highway during such time as the combined vehicle and load shall for any reason and for any period of time be in excess of thirteen and one-half feet high and thirteen feet wide.

9. Severability. In case any provisions of this section shall be adjudged unconstitutional or void for any reason, such adjudication shall not affect any of the other provisions of this section.

§ 202-i. Leave of absence for military spouses. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Employee" means a person who performs service for hire for an employer, for an average of twenty or more hours per week, and includes all individuals employed at any site owned or operated by an employer but shall not include an independent contractor.

(b) "Employer" means a person or entity that employs twenty or more employees at at least one site and includes an individual, corporation, the state, county, town, city, school district, public authority or other governmental subdivision of any kind.

(c) "Period of military conflict" means a period of war declared by the United States Congress, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to sections 12301 and 12302 of title 10 of the United States Code.

2. The spouse of a member of the armed forces of the United States, national guard or reserves who has been deployed during a period of military conflict, to a combat theater or combat zone of operations shall be allowed up to ten days unpaid leave by their employer. Such

leave shall only be used when such person's spouse is on leave from the armed forces of the United States, national guard or reserves while deployed during a period of military conflict to a combat theater or combat zone of operations.

3. An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided in this section.

4. The provisions of this section shall not affect or prevent an employer from providing leave for military spouses in addition to leave allowed under any other provision of law. The provisions of this section shall not affect an employee's rights with respect to any other employee benefit provided by law.

§ 202-j. Leave of absence for blood donation granted to employees. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Employee" means a person who performs services for hire for an employer, for an average of twenty or more hours per week, and includes all individuals employed at any site owned or operated by an employer but shall not include an independent contractor.

(b) "Employer" means a person or entity that employs twenty or more employees at at least one site and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district, public authority or other governmental subdivision of any kind.

2. An employer must either, at its option: (a) grant three hours of leave of absence in any twelve month period to an employee who seeks to donate blood; provided that the leave of absence may not exceed three hours, unless otherwise agreed to by the employer, and must comply with the requirements established by the commissioner under subdivision five of this section; or (b) allow its employees without use of accumulated leave time to donate blood during work hours at least two times per year at a convenient time and place set by the employer, including allowing an employee to participate in a blood drive at the employee's place of

employment.

3. An employer shall not retaliate against an employee for requesting or obtaining a leave of absence under this section.

4. This section shall not prevent an employer from providing leave for blood donation in addition to leave allowed under any other provision of law. This section shall not affect an employee's rights with respect to any other employee benefit otherwise provided by law.

5. The commissioner is hereby authorized and directed to establish any necessary guidelines, including requirements for notice, request and approval of leave, and documentation, for the timely implementation of the program.

§ 202-k. Protection of persons employed in the broadcast industry. 1. For the purposes of this section:

(a) "Broadcasting industry employer" includes television stations or networks, radio stations or networks, cable stations or networks, internet or satellite-based services similar to a broadcast station or network, any broadcast entities affiliated with any of the employers of this paragraph, or any other entity that provides broadcasting services such as news, weather, traffic, sports, or entertainment reports or programming.

(b) "Broadcast employee" means any on-air employee or off-air employee of a broadcasting industry employer, excluding management employees.

2. A broadcasting industry employer shall not require as a condition of employment, whether in an employment contract or otherwise, that a broadcast employee or prospective broadcast employee refrain from obtaining employment:

(a) in any specified geographic area;

(b) for a specific period of time; or

(c) with any particular employer or in any particular industry; after the conclusion of employment with such broadcasting industry employer. This section shall not apply to preventing the enforcement of such a

covenant during the term of an employment contract.

3. Any person who violates this section shall be civilly liable to a broadcast employee for damages, attorney's fees and costs.

§ 202-1. Leave of absence for volunteer emergency responders. 1.

During the time that an emergency exists following a declaration of such emergency pursuant to section twenty-four or twenty-eight of the executive law, an employee may request and shall be granted a leave of absence from his or her employer while engaged in the actual performance of his or her duties as, (a) a volunteer firefighter, or (b) an enrolled member of a volunteer ambulance service pursuant to article thirty of the public health law unless the employer determines that the employee's absence would impose an undue hardship on the conduct of the employer's business as defined by paragraph (d) of subdivision ten of section two hundred ninety-six of the executive law.

2. Subdivision one of this section shall apply only when:

(a) The employer has previously received written documentation from the head of the employee's volunteer fire department or volunteer ambulance service, as applicable, notifying the employer of the employee's status as a volunteer firefighter or member of a volunteer ambulance service; and

(b) The employee's duties as a volunteer firefighter or member of a volunteer ambulance service are related to the declared emergency.

3. The entire period of the authorized leave of absence granted pursuant to this section shall either be unpaid excused leave for employees who are subject to the overtime provisions of this chapter, the federal fair labor standards act and regulations promulgated thereunder, or may otherwise be charged against any other leave to which such employee is entitled, as determined by the employee.

4. Upon the employer's request, an employee who has been granted a leave of absence in accordance with this section shall provide his or her employer with a notarized statement from the head of the volunteer

fire department or volunteer ambulance service, as applicable, certifying the period of time, or times, that said employee responded to any emergency pursuant to this section.

5. Nothing set forth in this section shall be construed to impede, infringe or diminish the rights and benefits which accrue to employees through bona fide collective bargaining agreements, or otherwise diminish the integrity of the existing collective bargaining relationship.

6. As used in this section, employer does not include the state. Nothing set forth in this section shall be construed as superseding, limiting, or otherwise affecting the provisions of section eighty-two-a of the civil service law, providing for authorized absences for public officers and employees of the state.

§ 203. Washrooms, washing facilities and waterclosets for elevator employees. There shall be provided and maintained for the use of all persons employed in operating freight or passenger elevators adequate and convenient washrooms or washing facilities and a sufficient number of suitable and convenient waterclosets. Where the elevator is used in or in connection with a factory or mercantile establishment, the provisions of sections two hundred and ninety-three and two hundred and ninety-five shall apply to wash-rooms, washing facilities and waterclosets for employees mentioned in this section; and where the elevator is used in any other building or place, the provisions of such sections three hundred and seventy-eight and three hundred and eighty-one shall apply to washrooms, washing facilities and waterclosets for employees engaged in the care, custody or operation of an elevator in such building or place. For the purpose of so applying the sections last referred to, the term "mercantile establishment" as therein used shall be deemed to mean and include a building in which the elevator is located or with which it connects.

§ 203-a. Seats in certain passenger elevators or relief for the

operator. Every passenger elevator operated and maintained for use by the public shall be equipped or furnished with a seat, collapsible or otherwise, for the use of the operator when the elevator is not being operated, provided the operator thereof is not allowed a continuous recess period of at least fifteen minutes in every three hours in addition to and apart from a lunch period of at least forty-five minutes. Every passenger elevator operated in a building owned and maintained by the state shall be equipped or furnished with such a seat for the use of the operator when the elevator is not being operated, notwithstanding the operator is allowed the recess and lunch period herein specified. The provisions of this section shall not apply to elevators in factory buildings or any other building having only one passenger elevator.

§ 203-b. Seats for female employees. A sufficient number of suitable seats, with backs where practicable, shall be provided and maintained in every factory, mercantile establishment, freight or passenger elevator, hotel and restaurant for female employees who shall be allowed to use the seats to such an extent as may be reasonable for the preservation of their health. In factories, female employees shall be allowed to use such seats whenever they are engaged in work which can be properly performed in a sitting posture. In mercantile establishments, at least one seat shall be provided for every three female employees and if the duties of such employees are to be performed principally in front of a counter, table, desk or fixture, such seats shall be placed in front thereof, or if such duties are to be performed principally behind such counter, table, desk or fixture they shall be placed behind the same.

§ 203-c. Employee privacy protection. 1. No employer may cause a video recording to be made of an employee in a restroom, locker room, or room designated by an employer for employees to change their clothes, unless authorized by court order.

2. No video recording made in violation of this section may be used by an employer for any purpose.

3. In any civil action alleging a violation of this section, the court may:

(a) award damages and reasonable attorneys' fees and costs to a prevailing plaintiff; and

(b) afford injunctive relief against any employer that commits or proposes to commit a violation of this section.

4. The rights and remedies provided herein shall be in addition to, and not supersede, any other rights and remedies provided by statute or common law.

5. The provisions of this section do not apply with respect to any law enforcement personnel engaged in the conduct of his or her authorized duties.

§ 203-d. Employee personal identifying information. 1. An employer shall not unless otherwise required by law:

(a) Publicly post or display an employee's social security number;

(b) Visibly print a social security number on any identification badge or card, including any time card;

(c) Place a social security number in files with unrestricted access; or

(d) Communicate an employee's personal identifying information to the general public. For purposes of this section, "personal identifying information" shall include social security number, home address or telephone number, personal electronic mail address, Internet identification name or password, parent's surname prior to marriage, or drivers' license number.

2. A social security number shall not be used as an identification number for purposes of any occupational licensing.

3. The commissioner may impose a civil penalty of up to five hundred dollars on any employer for any knowing violation of this section. It shall be presumptive evidence that a violation of this section was

knowing if the employer has not put in place any policies or procedures to safeguard against such violation, including procedures to notify relevant employees of these provisions.

§ 203-e. Prohibition of discrimination based on an employee's or a dependent's reproductive health decision making. 1. An employer shall be prohibited from accessing an employee's personal information regarding the employee's or the employee's dependent's reproductive health decision making, including but not limited to, the decision to use or access a particular drug, device or medical service without the employee's prior informed affirmative written consent.

2. An employer shall not:

(a) discriminate nor take any retaliatory personnel action against an employee with respect to compensation, terms, conditions, or privileges of employment because of or on the basis of the employee's or dependent's reproductive health decision making, including, but not limited to, a decision to use or access a particular drug, device or medical service; or

(b) require an employee to sign a waiver or other document which purports to deny an employee the right to make their own reproductive health care decisions, including use of a particular drug, device, or medical service.

3. An employee may bring a civil action in any court of competent jurisdiction against an employer alleged to have violated the provisions of this section. In any civil action alleging a violation of this section, the court may:

(a) award damages, including, but not limited to, back pay, benefits and reasonable attorneys' fees and costs incurred to a prevailing plaintiff;

(b) afford injunctive relief against any employer that commits or proposes to commit a violation of the provisions of this section;

(c) order reinstatement; and/or

(d) award liquidated damages equal to one hundred percent of the award for damages pursuant to paragraph (a) of this subdivision unless an

employer proves a good faith basis to believe that its actions in violation of this section were in compliance with the law.

4. Nothing in this section shall be construed to limit any rights of an employee provided through any other provision of law, common law or collective bargaining unit.

5. Any act of retaliation for an employee exercising any rights granted under this section shall subject an employer to separate civil penalties under this section. For the purposes of this section, retaliation or retaliatory personnel action shall mean discharging, suspending, demoting, or otherwise penalizing an employee for:

(a) making or threatening to make, a complaint to an employer, co-worker, or to a public body, that rights guaranteed under this section have been violated;

(b) causing to be instituted any proceeding under or related to this section; or

(c) providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry into any such violation of a law, rule, or regulation by such employer.

6. An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this section.

7. If any word, phrase, clause, sentence, paragraph, subdivision, or part of this section or the application thereof to any person or circumstances shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, and the application thereof to other persons or circumstances, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, subdivision, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the intent of the legislature that this section would have been enacted even if such invalid provisions had not been included herein.

§ 203-f. Inventions made by employees. 1. Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(a) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(b) result from any work performed by the employee for the employer.

2. To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision one of this section, such provision is against the public policy of this state and shall be unenforceable.

§ 204. Inspection of boilers; enforcement; fees; identification; exceptions. 1. Inspection. The commissioner shall cause to be inspected at least once every two years all boilers as defined in this section, except for high pressure power boilers, antique boilers and miniature boilers, which the commissioner shall cause to be inspected at least once each year, and except for boilers inspected and insured by a duly authorized insurance company in accordance with the provisions of subdivision eight of this section and with the rules of the commissioner.

2. Enforcement. If upon inspection of a boiler the commissioner finds a violation of the provisions of this section or of the rules of the board or if the commissioner receives notice from a duly authorized insurance company that the owner or lessee of a boiler has failed, after notice from the insurance company, to comply with the provisions of this section and rules of the board, the commissioner shall issue an order to

the owner or lessee directing compliance therewith. If in the judgment of the commissioner the boiler is in an unsafe or dangerous condition the commissioner shall order the use of the boiler discontinued until such dangerous and unsafe condition has been remedied. Such order shall be served upon the owner or lessee of the boiler, personally or by mail.

3. Fees. A fee of two hundred dollars shall be charged the owner or lessee of each boiler internally inspected and seventy-five dollars for each boiler externally inspected by the commissioner, provided however, that the external inspection of multiple boilers connected to a common header or of separate systems owned or leased by the same party and located in the same building, with a combined input which is 300,000 BTU/hour or less, shall be charged a single inspection fee, and further provided that, not more than two hundred seventy-five dollars shall be charged for the inspection of any one boiler for any year; except that no fee shall be charged for internal or external inspections by the commissioner of an antique steam engine maintained as a hobby and displayed at agricultural fairs and other gatherings or of a miniature boiler.

4. Identification of boilers; unfired pressure vessels.

a. Owners and lessees of boilers shall attach to such boilers the numbers assigned by the commissioner under a penalty of five dollars for each day's failure so to do after such numbers have been assigned.

b. Owners and lessees of unfired pressure vessels shall ensure that such vessels are constructed in accordance with regulations promulgated by the commissioner.

5. Exceptions. The provisions of this section shall not apply:

a. to a boiler subject to inspection by inspectors of steam vessels under the department of transportation;

b. to a boiler located on a farm and used solely for agricultural purposes;

c. to a steam or vapor boiler operating at a gauge pressure of not more than fifteen pounds per square inch, and which is located in a dwelling occupied by less than six families;

d. to a hot water boiler which is located in a dwelling occupied by less than six families;

e. to a boiler subject to inspection or control by a federal agency;

f. to the boiler of a miniature model locomotive, boat, tractor or stationary engine constructed and maintained as a hobby and not for commercial use, and having a volume of less than two cubic feet and a grate area not in excess of two square feet; and

g. to any low pressure boiler with a capacity of one hundred thousand British Thermal Units or less.

6. Definitions. a. For purposes of this section, the term "boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the application of heat from combustible fuels, electricity, or any other source, but shall not include a device or apparatus used solely to heat water for a hot water supply system. The term "boiler" shall include the apparatus used by which heat is generated, and all controls and devices related to such apparatus or to the closed vessel. The term "boiler" also shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

b. The term "miniature boiler" shall mean a nonelectric fired pressure vessel which does not exceed inside shell diameter of sixteen inches, forty-two inches over-all length of outside to outside of heads at center, water heating surface of twenty square feet, and maximum allowable working pressure of one hundred pounds per square inch.

c. For the purposes of this section, the term "unfired pressure vessel" shall include containers for the containment of internal or external pressure which may be obtained from an external source or by the application of heat from a direct or indirect source, or any combination thereof, provided however, that the term "unfired pressure vessel" shall not include:

(1) pressure vessels meeting the requirements of the United States department of transportation for the shipment of liquids or gases under pressure;

(2) air tanks used on vehicles used for carrying passengers or freight or used directly in the operation of trains;

(3) pressure vessels having a volume of five cubic feet or less or having an inside diameter not exceeding six inches;

(4) pressure vessels designed for pressures of less than fifteen pounds per square inch;

(5) hot water supply storage tanks, provided none of the following limitations is exceeded: (i) a heat input of two hundred thousand BTU's per hour; (ii) a water temperature of two hundred ten degrees fahrenheit; (iii) a nominal water containing capacity of one hundred twenty gallons;

(6) pressure vessels under federal control or regulation;

(7) pressure vessels containing water under pressure, including those containing air, the compression of which serves only as a cushion, when none of the following limitations are exceeded: (i) a design pressure of thirty pounds per square inch; (ii) a design temperature of two hundred ten degrees fahrenheit; and

(8) pressure vessels used for agricultural purposes.

7. Cities. a. A city which qualifies under the provisions of this subdivision shall enforce the provisions of this section and the rules of the board promulgated hereunder and for such purpose shall have the powers of the commissioner prescribed in subdivision two of this section. In order to so qualify, a city shall have enacted a local law or ordinance requiring an inspection of all boilers required to be inspected by the provisions of this section located in such city, which inspection shall be conducted with at least the same frequency as is required by this section, but in no case more often than once a year.

Such boilers shall be inspected by competent inspectors employed by the city except boilers inspected and insured by a duly authorized insurance company in accordance with the provisions of subdivision eight of this section and with the rules of the commissioner.

b. The fee schedule contained in subdivision three of this section shall not apply within a city which qualifies under the provisions of this subdivision. Such a city may, by local law or ordinance, impose reasonable fees for the inspection of boilers by the inspecting agency of such city.

8. Inspection by insurance companies. a. All boilers which are inspected by a duly authorized insurance company shall be exempt from inspection by the commissioner and by cities which qualify under the provisions of subdivision seven of this section, under the following conditions: (1) that inspections by the insurance company are made with the same frequency as is required by this section except that, for all such boilers located within a city which qualifies under the provisions of subdivision seven of this section, inspections are made with the same frequency as is required by such city; (2) that the insurance company complies with the rules of the commissioner; (3) that the inspectors of the insurance company hold certificates of competency; (4) that the insurance company gives notice to the owner or lessee of each boiler inspected listing all violations of any provision of the rules of the commissioner; (5) that a certified copy of the report of each inspection is filed with the commissioner or the inspecting agency of such city, as the case may be, within twenty-one days of the inspection, on such forms and in such manner as required by the commissioner or the inspecting agency of such city, as the case may be. A copy filed with the commissioner shall be accompanied by a non-refundable fee of one hundred dollars paid for each boiler inspected. If insurance is refused, cancelled or discontinued for the boiler inspected the report shall so state, together with the reasons therefor; the report shall also list any instances of the failure of an owner or lessee of the boiler to comply with the rules of the commissioner.

b. In order to satisfy the inspection requirements of this section,

all inspections which are made by duly authorized insurance companies shall be made by inspectors whose competency has been certified by the commissioner in accordance with the rules of the board. The commissioner may, after a hearing upon notice, suspend or revoke a certificate of competency in accordance with the rules of the board. The commissioner may require reasonable cooperation from a city which qualifies under the provisions of subdivision seven of this section in the course of his or her investigation into the competency of a certified inspector.

9. Members of boards. Any member of a boiler inspection examining board or other board created pursuant to rules and regulations of the commissioner to implement this section shall serve without salary or other compensation.

§ 204-b. Refunds. Whenever the commissioner determines that any moneys received under the provisions of this chapter or the rules issued thereunder, or any moneys received under the provisions of article eleven of the general business law, are in excess of the amount required by law, or were paid in error, or that other justifiable circumstances exist, such moneys may, within three years from receipt thereof, be refunded upon the audit of the state comptroller, without interest.

§ 205. Prohibition against eating meals in certain workrooms. No employee shall take or be permitted to take any food into a room of any working place where lead, arsenic or other poisonous substances or injurious or noxious fumes, dust or gases exist in harmful conditions or are present in harmful quantities as an incident or result of the business carried on in such working place. Notice to the foregoing effect shall be posted in such room. No employee, unless his presence is necessary for the proper conduct of the business, shall remain in any such room during the time allowed for meals. The employer shall provide a suitable place in such establishment in which the employees may eat.

§ 206. Prevention of personal injuries to persons engaged in tree

trimming. The board of standards and appeals may make rules guarding against personal injuries to persons engaged in cutting, trimming or removing trees or brush for hire. Such rules shall not apply to persons cutting, trimming or removing trees or brush on behalf of, or employed by, a public service corporation subject to the jurisdiction of the public service commission.

§ 206-a. Physical examinations of females. Whenever an employer shall require a physical examination of a female by a physician or a surgeon she shall be entitled to have the examination made by one of her sex or to have another female present if a male physician or surgeon makes the examination. The employer requiring the examination shall post a notice informing the party to be examined of her rights under this section.

§ 206-c. Right of nursing employees to express breast milk. 1. An employer shall provide paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes, to allow an employee to express breast milk for such employee's nursing child each time such employee has reasonable need to express breast milk for up to three years following child birth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

2. (a) Upon request of an employee who chooses to express breast milk in the workplace, an employer shall designate a room or other location which shall be made available for use by such employee to express breast milk. Such room or other location shall be a place that is: (i) in close proximity to the work area; (ii) well lit; (iii) shielded from view; and (iv) free from intrusion from other persons in the workplace or the public. Such room or other location shall provide, at minimum, a chair, a working surface, nearby access to clean running water and, if the workplace is supplied with electricity, an electrical outlet. The room or location provided by the employer for this purpose shall not be a restroom or toilet stall.

(b) If the sole purpose or function of such room or other location is

not dedicated for use by employees to express breast milk, such room or other location shall be made available to such an employee when needed and shall not be used for any other purpose or function while in use by such employee. Employers shall provide notice to all employees as soon as practicable when such room or other location has been designated for use by employees to express breast milk.

(c) Where compliance with the requirements of paragraphs (a) or (b) of this subdivision is impracticable because it would impose an undue hardship on the employer by causing significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business, such employer shall make reasonable efforts to provide a room or other location, other than a restroom or toilet stall, that is in close proximity to the work area where an employee can express breast milk in privacy. Provided, however, nothing in this subdivision shall otherwise exempt an employer from the requirements of subdivision one of this section.

(d) If the workplace has access to refrigeration, the employer shall extend such access to refrigeration for the purposes of storing the expressed milk.

3. The commissioner shall develop and implement a written policy regarding the rights of nursing employees to express breast milk in the workplace pursuant to the provisions of this section. Employers shall provide such written policy to each employee upon hire and annually thereafter, and to employees upon returning to work following the birth of a child. Such policy shall:

(a) Inform employees of their rights pursuant to this section;

(b) Specify the means by which a request may be submitted to the employer for a room or other location for use by employees to express breast milk; and

(c) Require the employer to respond to such request within a reasonable timeframe, but not to exceed five business days.

4. No employer or their agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee because such employee has

exercised their rights afforded under this section.

§ 207. Protection of employees at switchboards. All buildings having installed therein a switchboard of two hundred and twenty volts or over shall have, on the floor or upon the platform or other standing place where the switchboard is located or to which it is attached, a rubber mat the length of the switchboard and of sufficient width to allow a person to walk or stand thereon while working at the switchboard or making tests.

§ 207-a. Employee safety in work on energized high voltage lines. 1. There shall be no change in the present industry work practices, procedures and standards with regard to bare-hand, live-line techniques or with insulated-glove techniques in the handling of energized high-voltage lines and equipment having a voltage differential in excess of 15 kv between any pair of conductors or grounds. Changes in industry work practices, procedures and standards relative to the handling of energized high-voltage lines and equipment having a voltage differential in excess of 15 kv between any pair of conductors or grounds shall be permitted where such changes require the utilization of "hot stick" methods. Nothing contained herein shall prevent any change in industry work practices, procedures and standards with regard to the handling of energized voltage lines and equipment having a high-voltage differential in excess of 100 kv between any pair of conductors or grounds.

2. For the purposes of this section the term "work" shall include, but not be limited to the erection, maintenance, repair, construction or installation of such energized conductors or associated equipment and lines in both emergency and non-emergency situations.

3. No provision herein is to prevent or prohibit any appropriate administrative or rule-making body from making and issuing appropriate rules and regulations concerning employee or worker safety in the work to be performed on energized or properly grounded high-voltage electric transmission and distribution lines and equipment.

§ 208. Labels, brands and marks used by labor organizations. 1. A bona fide union or association of employees which has adopted a device in the form of a label, brand, mark, name or other character for the purpose of designating the products of the labor of its members may apply to the commissioner for the registration of such device.

2. An application for such registration shall be made on a form prescribed by the commissioner and shall be accompanied by a non-refundable filing fee of ten dollars. Notice of the filing of such application shall be given by the commissioner to interested persons and unions in such manner as the commissioner shall by rule prescribe. Within twenty days following the date of such notice of application, any union or aggrieved person may submit to the commissioner a written objection to the registration of the device. If no objection is submitted, the commissioner may register the device and issue a certificate of registration. Such certificate shall not be assignable.

3. If an objection to the registration is duly filed with the commissioner, the commissioner shall promptly refer the objection to the board of standards and appeals. Upon due notice the board shall conduct a hearing to determine whether the registration should be granted or denied. The board may deny registration on any of the following grounds:

a. That the union or association of employees filing the application for registration is not a bona fide union;

b. That the union or association of employees filing the application for registration is not the rightful owner thereof;

c. That the union or association of employees filing the application for registration has made misrepresentations concerning the device; or

d. That the device sought to be registered by the union or association of employees is so similar to a device previously registered by a union or association of employees that it is calculated to deceive.

4. On petition of a union or aggrieved person, the registration of any device may be revoked by the board if it determines that the registration was granted improperly or was obtained fraudulently.

5. The determination of the board may be reviewed pursuant to the provisions of article seventy-eight of the civil practice law and rules.

6. The commissioner and the board shall promulgate appropriate rules and regulations to carry into effect the provisions of this section.

§ 209. Illegal use of labels, brands and marks; injunction proceedings. No person shall in any way use or display the label, brand, mark, name or other character, adopted by any such union or association as provided in section two hundred eight, without the consent or authority of such union or association; or counterfeit or imitate any such label, brand, mark, name or other character, or knowingly sell, dispose of, keep or have in his possession with intent to sell or dispose of any goods, wares, merchandise or other products of labor, upon which any such counterfeit or imitation is attached, affixed, printed, stamped or impressed, or knowingly sell, dispose of, keep or have in his possession with intent to sell or dispose of any goods, wares, merchandise or other products of labor contained in any box, case, can or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed. If such device has been registered as provided in section two hundred eight, the union or association may maintain an action to enjoin the manufacture, use, display or sale of counterfeit or colorable imitations of such device, or of goods bearing the same, or the unauthorized use or display of such device, or of goods bearing the same, and the court may restrain such wrongful manufacture, use, display or sale, and every unauthorized use or display by others of the genuine device so registered and filed, if such use or display is not authorized by the owner thereof, and may award to the plaintiff such damages resulting from such wrongful manufacture, use, display or sale as may be proved, together with the profits derived therefrom.

A union or association which has registered a device as provided in section two hundred eight may maintain in an action in the supreme court to enjoin the manufacture, use, display or sale of a device which is calculated to deceive because of its similarity with a device filed by such union or association of members. In such action if it shall appear that the manufacture, use, display or sale of such device sought to be enjoined has not been authorized by the union or association of employees which has registered the device or that such device is so similar to a device previously registered that it is calculated to deceive, the court may restrain the manufacture, use, display or sale of such device and may revoke and cancel the registration of such device.

A person violating any of the provisions of this section shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for not less than three months nor more than one year or by both such fine and imprisonment.

§ 209-a. Fraudulent representation in labor organizations. Any person who represents himself or herself to be a member of, or who claims to represent a labor organization which does not exist within the state, at the time of such representation, or who has in his or her possession a credential, certificate or letter of introduction bearing a fraudulent seal, or bearing the seal of a labor organization which has ceased to exist, and does not exist at the time of such representation, and attempts to gain admission by the use of said credential, certificate, letter of introduction, as a member of any convention, or meeting of representatives of labor organizations of the state, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than twenty dollars nor more than fifty dollars, and imprisonment for not less than ten days nor more than thirty days in the jail of the county wherein such conviction is had, or by both such fine and imprisonment.

§ 210. Proceedings for nonenforcement. Any officer, agent or employee of this state or of a municipal corporation therein having a duty to act in the premises who violates, evades or knowingly permits the violation of any of the provisions of this chapter shall be guilty of malfeasance in office and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee; otherwise by the governor. Any citizen of this state may maintain proceedings for the suspension or removal of such officer, agent or employee who knowingly permits the violation of any of the provisions of this chapter.

§ 210-a. Legal duty to employees. It shall be unlawful for any employer to refuse to hire, employ or license, or to discharge from employment, an employee in order to evade such employer's legal duty to provide workers' compensation coverage for such employee. An employer in violation of this section shall be guilty of a misdemeanor.

*** § 210-b. Access to personnel records.** 1. As used in this section, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

(a) "Employee" means a person currently employed or formerly employed by an employer.

(b) "Employer" means any individual, corporation, partnership, labor organization, unincorporated association or any other legal business, including any governmental entity or public employer as defined in paragraph (a) of subdivision six of section two hundred one of the civil service law, and any commercial entity, including agents of such employer.

(c) "Personnel record" means a record kept by an employer that identifies an employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action. A personnel record shall include a record in the possession of a person, corporation, partnership or other association that has a contractual agreement with the employer to keep

or supply a personnel record as provided in this section. A personnel record shall not include information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of such other person's privacy. Without limiting the applicability or generality of the foregoing, all of the following written information or documents to the extent prepared by an employer regarding an employee shall be included in the personnel record for that employee: the name, address, date of birth, job title and description; rate of pay and any other compensation paid to the employee; starting date of employment; the job application of the employee; resumes or other forms of employment inquiry submitted to the employer in response to the employer's advertisement by the employee; all employee performance evaluations, including but not limited to, employee evaluation documents; written warnings of substandard performance; lists of probationary periods; waivers signed by the employee; copies of dated termination notices; any other documents relating to disciplinary action regarding the employee. A personnel record shall be maintained in typewritten or printed form or may be handwritten in indelible ink.

2. An employer shall notify an employee within ten days of the employer placing in the employee's personnel record any information to the extent that the information is, has been used or may be used, to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action. An employer receiving a written request from an employee to access such employee's personnel record shall provide the employee with a copy of such personnel record, at no cost to the employee, within five business days of submission of a written request for such copy to the employer. An employer shall not be required to allow an employee to review the employee's personnel record on more than two separate occasions in a calendar year; provided, however, that the notification and review caused by the placing of negative information in the personnel record shall not be deemed to be one of the two annually permitted reviews.

3. If there is a disagreement with any information contained in a

personnel record, removal or correction of such information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee's position which shall be contained and become a part of such employee's personnel record. The statement shall be included when said information is transmitted to a third party as long as the original information is retained as part of the file. If an employer places any information in a personnel record which such employer knew or should have known to be false, the employee shall have remedy through the collective bargaining agreement, other personnel procedures or judicial process to have such information expunged. The provisions of this section shall not prohibit the removal of information contained in a personnel record upon mutual agreement of the employer and employee for any reason.

4. An employer shall retain the complete personnel record of any employee as required to be kept under this section without deletions or expungement of information from the date of employment of such employee to a date three years after the termination of employment of the employee with such employer.

5. If an employer elects to have a written personnel policy regarding the terms and conditions of employment, such personnel policy, as the same may be amended from time to time, shall be continuously maintained at the office of such employer where personnel matters are administered.

6. Nothing in this section shall be construed to supersede the terms of a collective bargaining agreement, provided, however, that such agreement provides at least substantially similar access by an employee to their personnel records as that provided by this section.

7. Any violation of this section by an employer or any other person shall be punished by a fine of not less than five hundred nor more than twenty-five hundred dollars. This section shall be enforced by the attorney general.

8. No employer or any other person shall discharge, threaten,

penalize, or in any other manner discriminate or retaliate against any employee who exercises such employee's rights under this section. As used in this section, to threaten, penalize, or in any other manner discriminate or retaliate against an employee includes, but is not limited to, threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state or local agency.

* NB Effective November 8, 2026

§ 211. Protection of employees. The commissioner shall cooperate with any employee in the enforcement of a just claim against his employer and for his protection against frauds and other improper practices on the part of any person public or private.

§ 211-a. Prohibition against use of funds. 1. The legislature hereby finds and declares that sound fiscal management requires vigilance to ensure that funds appropriated by the legislature for the purchase of goods and provision of needed services are ultimately expended solely for the purpose for which they were appropriated. The legislature finds and declares that when public funds are appropriated for the purchase of specific goods and/or the provision of needed services, and those funds are instead used to encourage or discourage union organization, the proprietary interests of this state are adversely affected. As a result, the legislature declares that the use of state funds and property to encourage or discourage employees from union organization constitutes a misuse of the public funds and a misapplication of scarce public resources, which should be utilized solely for the public purpose for which they were appropriated.

2. Notwithstanding any other provision of law, no monies appropriated by the state for any purpose shall be used or made available to

employers to: (a) train managers, supervisors or other administrative personnel regarding methods to encourage or discourage union organization, or to encourage or discourage an employee from participating in a union organizing drive; (b) hire or pay attorneys, consultants or other contractors to encourage or discourage union organization, or to encourage or discourage an employee from participating in a union organizing drive; or (c) hire employees or pay the salary and other compensation of employees whose principal job duties are to encourage or discourage union organization, or to encourage or discourage an employee from participating in a union organizing drive.

3. Any employer that utilizes funds appropriated by the state and engages in such activities shall maintain, for a period of not less than three years from the date of such activities, financial records, audited as to their validity and accuracy, sufficient to show that state funds were not used to pay for such activities. An employer shall make such financial records available to the state entity that provided such funds and the attorney general within ten business days of receipt of a request from such entity or the attorney general for such records.

4. The attorney general may apply in the name of the people of the state of New York for an order enjoining or restraining the commission or continuance of the alleged violation of this section. In any such proceeding, the court may order the return to the state of the unlawfully expended funds. Further, the court may impose a civil penalty not to exceed one thousand dollars where it has been shown that an employer engaged in a violation of subdivision two of this section; provided, however, that a court may impose a civil penalty not to exceed one thousand dollars or three times the amount of money unlawfully expended, whichever is greater, where it is shown that the employer knowingly engaged in a violation of subdivision two of this section or where the employer previously had been found to have violated subdivision two within the preceding two years. All monies collected pursuant to this section shall be deposited in the state general fund.

5. The commissioner shall promulgate regulations describing the form

and content of the financial records required pursuant to this section, and the commissioner shall provide advice and guidance to state entities subject to the provisions of this section as to the implementation of contractual and administrative measures to enforce the purposes of this section.

§ 212. Drinking water for farm laborers. Every grower or processor who employs or uses paid farm or food processing workers, whether or not he uses the services of a farm labor contractor, shall, at his own expense, provide safe drinking water, which may be in a portable container reasonably accessible to each and every site whereat laborers are working.

§ 212-a. Migrant registration law. 1. Definitions. As used in this section:

a. "Farm labor contractor" includes:

(1) Any person who, for a fee, recruits, transports, supplies or hires farm or food processing workers to work for, or under the direction, supervision, or control of, a third person; or

(2) Any person who recruits, transports, supplies, or hires farm or food processing workers and who, for a fee, directs, supervises, or controls all or any part of the work of such workers.

The term "farm labor contractor" shall not include an employment agency licensed in accordance with the provisions of article eleven of the general business law. The term "farm labor contractor" shall not include a person who is a grower or processor as defined herein who recruits or hires workers for work on his farm or in his plant.

b. "Fee" includes any money or other valuable consideration paid or promised to be paid to a farm labor contractor for the performance of any of the services enumerated in paragraph a of this subdivision.

c. "Grower or processor" means any person who is the owner or lessee

of a farm or food processing plant.

d. "Person" includes any individual, firm, partnership, cooperative, association, or corporation.

2. Farm labor contractor.

a. No person shall act as a farm labor contractor unless he holds a valid certificate of registration issued by the commissioner.

b. The application for such certificate of registration shall be made on a form prescribed by the commissioner, shall contain information on wages, working conditions, housing and on such other matters as the commissioner may prescribe. It shall be countersigned by each grower or processor who utilizes the services of such farm labor contractor, as provided in subdivision three of this section. Copies of the application, or summaries thereof containing the above information, shall be made available by the commissioner to the registrant, and the registrant shall give a copy to each worker, preferably at the time of recruitment, but in no event later than the time of arrival in this state if the worker comes from outside of the state, or the time of commencement of work if the worker does not come from outside of the state. A copy shall also be kept posted at all times in a conspicuous place in any camp in which such workers are housed. Each applicant shall submit his or her fingerprints with his or her application for a certificate of registration. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check.

c. Every farm labor contractor shall keep payroll records for each worker of wage rates, wages earned, number of hours worked, or if the worker is paid on a piecework basis the number of units produced, except that in the case of employees in the twelve to fourteen year-old age bracket, records of hours worked shall be kept, regardless of whether employment be on hourly or piecework basis, all withholdings from wages,

and the net wages paid. Such payroll record shall be kept on a form and in a manner prescribed by the commissioner and shall be available for inspection by the commissioner or his duly authorized representative at any reasonable time.

d. Every farm labor contractor shall give to each worker with every payment of wages a written statement showing the employer's name and address, the employee's name, the worker's wage rate, wages earned, number of hours worked, or if the worker is paid on a piecework basis the number of units produced, except that in the case of employees in the twelve to fourteen year-old age bracket, the number of hours worked shall be shown, regardless of whether employment be on hourly or piecework basis, all withholdings and other deductions fully itemized and explained from wages, and the net wages paid.

e. A farm labor contractor shall keep the certificate of registration in his immediate personal possession and shall display it upon the request of the commissioner or his duly authorized representative.

3. Grower or processor who utilizes the services of a farm labor contractor.

a. No grower or processor shall utilize the services of a farm labor contractor unless such grower or processor has a certificate issued by the commissioner therefor, and the farm labor contractor is registered in accordance with the provisions of this section. The commissioner shall issue to such grower or processor a separate certificate of registration.

b. Every grower or processor who utilizes the services of a farm labor contractor shall countersign an application of the farm labor contractor for registration under subdivision two of this section, and shall state that the information contained in such application is true to the best of his knowledge and belief.

c. If a farm labor contractor fails to comply with the provisions of subdivision two of this section relating to the giving of copies of

information to workers, the posting of a copy of such information, the keeping of payroll records, and the giving of wage statements to workers, the commissioner shall notify the grower or processor who utilizes the services of such farm labor contractor and responsibility for compliance shall thereafter be imposed on such grower or processor with the same force and effect as though the grower or processor were primarily responsible for compliance.

d. Notwithstanding any other provision of this section, a grower or processor may utilize the services of a registered farm labor contractor for not more than five days, provided, he shall within twenty-four hours after the beginning of such utilization, countersign the application of such farm labor contractor as provided in paragraph b of this subdivision, and immediately thereafter transmit the said application to the commissioner.

4. Grower or processor who does not utilize the services of a farm labor contractor.

a. Every grower or processor who, without utilizing the services of a farm labor contractor, brings into the state or is responsible for bringing into the state five or more out-of-state migrant farm or food processing workers shall, in each instance, prior to the importation of such workers, obtain a certificate of registration from the commissioner.

b. The application for such registration shall be made on a form prescribed by the commissioner, shall contain information on wages, working conditions, housing, and on such other matters as the commissioner may prescribe. Copies of the application, or summaries thereof containing the above information, shall be made available by the commissioner to the registrant, and the registrant shall give a copy to each worker, preferably at the time of recruitment, but in no event later than the time of arrival in this state. A copy shall also be kept posted at all times in a conspicuous place in any camp in which such workers are housed.

c. Every such grower or processor shall keep payroll records for each worker of wage rates, wages earned, number of hours worked, or if the worker is paid on a piecework basis the number of units produced, except that in the case of employees in the twelve to fourteen year-old age bracket, records of hours worked shall be kept, regardless of whether employment be on hourly or piecework basis, all withholdings from wages, and the net wages paid. Such payroll records shall be kept on a form and in a manner prescribed by the commissioner and shall be available for inspection by the commissioner or his duly authorized representative at any reasonable time.

d. Every such grower or processor shall give to each worker with every payment of wages, a written statement showing the worker's wage rate, wages earned, number of hours worked, or if the worker is paid on a piecework basis the number of units produced, except that in the case of employees in the twelve to fourteen year-old age bracket, the number of hours worked shall be shown, regardless of whether employment be on hourly or piecework basis, all withholdings from wages, and the net wages paid.

5. The commissioner may refuse to grant, or suspend, or revoke a certificate of a farm labor contractor or of a grower or processor when he finds that such person:

a. Has failed to comply with any of the provisions of this chapter, or has been convicted of any crime or offense, except traffic infractions; or

b. Has made any misrepresentations or false statements in his application for a registration certificate; or

c. Has given false or misleading information concerning terms, conditions, or existence of employment to workers who are recruited or hired.

6. The commissioner shall not refuse, suspend, or revoke a certificate of a farm labor contractor or of a grower or processor unless, upon due

notice, an opportunity to be heard has been given to such person; provided, however, that pending the determination of such hearing, the commissioner may temporarily suspend a certificate if, in his opinion, its suspension for such period is necessary to effectuate the purposes of this section.

7. A certificate issued under this section shall terminate on the thirty-first day of March following issuance, unless sooner revoked by the commissioner, and it may not be transferred or assigned to any other person.

8. The commissioner shall submit to each person certified under this section pertinent information concerning workmen's compensation insurance and farmers' liability insurance with medical payments, including the rates for such protection, at the time of certification.

9. The commissioner may promulgate rules and regulations necessary to carry out the provisions of this section.

§ 212-b. Farm labor camp commissaries; issuance of permit; renewal, refusal, suspension, and revocation of permit; rules and regulations.

1. No person shall operate a farm labor camp commissary, or cause or allow the operation of a farm labor camp commissary, without a permit from the commissioner to do so, and unless such permit is in full force and effect. Application for such permit shall be made on a form prescribed by the commissioner.

2. A permit to operate a farm labor camp commissary must be conspicuously posted in the commissary. The permit may not be transferred or assigned, and shall run for a period not to exceed twelve months, which period shall end on the thirty-first day of March, unless sooner revoked by the commissioner. The permit may be renewed each year upon the filing of an application for renewal on a form prescribed by the commissioner.

3. A permit-holder shall post, and keep posted, in a conspicuous place

in the commissary, the current prices of all goods sold or leased, and the prices charged shall not exceed the prices listed on the poster.

4. The commissioner may refuse, revoke, or suspend a permit when he finds that:

(a) the applicant or permit-holder has violated any of the provisions of this chapter or of the penal law, or has been convicted of any crime or offense, except traffic violations, or is not a person of good character or responsibility; or

(b) the applicant or permit-holder has made any misrepresentation or false statements in his application for a permit.

5. The commissioner shall not refuse, revoke, or suspend a permit unless the applicant or permit-holder, upon due notice, has been given an opportunity to be heard; provided however, that pending the determination of such hearing, the commissioner may temporarily suspend a registration if, in his opinion, its suspension for such period is necessary to effectuate the purposes of the section.

6. The commissioner may promulgate rules and regulations necessary to carry out the provisions of this section.

§ 212-c. Definitions. As used in section two hundred twelve-b: 1. "Persons" includes any individual, firm, partnership, association, or corporation.

2. "Farm labor camp commissary" means a place where goods are offered for sale or lease and which is operated in or in connection with a farm labor camp, including meals sold to workers. "Farm labor camp commissary" includes a building, shed, or structure, or any part thereof, occupied as a farm labor camp commissary.

3. "Farm labor camp" means a property consisting of a tract of land and all tents, vehicles, buildings, or other structure pertaining thereto, any part of which may be occupied by persons employed as laborers in farm activities who are provided with sleeping facilities,

in whole or in part, by the owner, lessee, or operator thereof, with or without stipulated agreement as to the duration of their stay, whether or not they are supplied with meals but who are supplied with such services or facilities as are necessary for their use of such property. The term, "farm activities" shall include the following activities in connection with vegetables and fruits and the plants, bushes, or trees producing the vegetables or fruits: fitting, planting, cultivating, harvesting, vining, sorting, grading, packing, storing, canning, freezing, dehydrating, bottling and preserving or treating by any method.

4. "Goods" includes all goods, wares, merchandise, food or any article or thing.

§ 212-d. Field sanitation for farm hand workers, farm field workers and farm food processing workers. 1. Every grower or processor who employs or uses paid farm hand workers, farm field workers or farm food processing workers, whether or not he or she uses the services of a farm labor contractor, shall, at his or her own expense, provide or make available to such workers toilet and handwashing facilities, including transportation to such facilities.

2. Where five or more paid farm handworkers, farm field workers or farm food processing workers are employed in one location at the same time, at least one toilet and handwashing facility shall be provided at such location for every twenty workers or fraction thereof. Toilet and handwashing units shall be located together. Such facilities shall be located within a one-quarter mile walk of most hand-laborers or at the closest point that may be accessible by motor vehicle.

3. Where more than twenty paid farm hand workers, farm field workers or farm food processing workers are employed in one location at the same time and fifty or more percent of such workers are women, one toilet shall be designated with appropriate signs for men and one toilet designated with appropriate signs for women. Toilet and handwashing units shall be located together. Such facilities shall be located within

a one-quarter mile walk of most hand-laborers.

4. When compliance with the provisions of subdivisions one, two and three of this section is not practicable because of physical or terrain conditions, such toilet and handwashing facilities shall be located at the closest point that may be accessible by motor vehicle.

5. Any violation of this section, shall be a misdemeanor punishable by a fine of not less than five hundred dollars, nor more than one thousand dollars, or up to thirty days imprisonment, or both such fine and imprisonment. Any second or subsequent offense shall be a misdemeanor punishable by a fine of not less than one thousand dollars, nor more than three thousand dollars, or up to sixty days imprisonment, or both such fine and imprisonment.

§ 213. Violations of provisions of labor law; the rules, regulations or orders of the industrial commissioner and the industrial board of appeals. Any person who violates or does not comply with any provision of the labor law, any rule, regulation or lawful order of the industrial commissioner or the industrial board of appeals, and the officers and agents of any corporation who knowingly permit the corporation to violate such provisions, are guilty of a misdemeanor and upon conviction shall be punished, except as in this chapter or in the penal law otherwise provided, for a first offense by a fine of not more than one hundred dollars, provided, however, that if the first offense is a violation of a rule or provision for the protection of the safety or health of employees or persons lawfully frequenting a place to which this chapter applies, the punishment shall be a fine of not more than one hundred dollars or by imprisonment for not more than fifteen days or by both such fine and imprisonment; for a second offense by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a subsequent offense by a fine of not less than three hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. This section shall not apply to any person covered by section twenty-seven-a of this chapter.

§ 213-a. Special provisions regarding the purchasing of apparel or sports equipment by the state university of New York and the city university of New York.

1. Notwithstanding any other provision of law, the various units of the state university of New York, the city university of New York and community colleges shall have the authority to:

a. Determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in section one hundred sixty-three of the state finance law based upon either of the following considerations:

(i) the labor standards applicable to the manufacture of the apparel or sports equipment, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor, or

(ii) the bidder's failure to provide information sufficient for the state agency or corporation to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

b. Include in the internal policies and procedures governing procurement of apparel or sports equipment, where such procurement is not further required to be made pursuant to the competitive bidding requirements of section one hundred sixty-three of the state finance law, a prohibition against the purchase of apparel or sports equipment from any vendor based upon either or both of the following considerations:

(i) the labor standards applicable to the manufacture of the apparel or sports equipment, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor, or

(ii) the bidder's failure to provide sufficient information for said state agencies to determine the labor standards applicable to the manufacture of the apparel or sports equipment.

2. For the purposes of this section the term:

a. "apparel" shall mean goods, such as, but not limited to, sports uniforms, including gym uniforms, required school uniforms, shoes, including, but not limited to, athletic shoes or sneakers, sweatshirts, caps, hats, and other clothing, whether or not imprinted with a school's name or logo, academic regalia, lab coats and staff uniforms; and

b. "sports equipment" shall mean equipment, such as, but not limited to, balls, bats and other goods intended for use by those participating in sports and games.

§ 214. Criminal prosecution. The attorney-general may prosecute every person charged with the commission of a criminal offense in violation of this chapter, or of any rule, regulation or order made thereunder, or in violation of the laws of this state, applicable to or arising out of any provision of this chapter or any rule, regulation or order made thereunder.

§ 215. Penalties and civil action; prohibited retaliation. 1. (a) No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee (i) because such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general or any other person, that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or any order issued by the commissioner (ii) because such employer or person believes that such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general, or to any other person that the employer has violated any provision of this chapter, or any order issued by the commissioner (iii) because such employee has caused to be instituted or is about to institute a proceeding under or related to

this chapter, or (iv) because such employee has provided information to the commissioner or his or her authorized representative or the attorney general, or (v) because such employee has testified or is about to testify in an investigation or proceeding under this chapter, or (vi) because such employee has otherwise exercised rights protected under this chapter, or (vii) because the employer has received an adverse determination from the commissioner involving the employee, or (viii) because such employee has used any legally protected absence pursuant to federal, local, or state law.

An employee complaint or other communication need not make explicit reference to any section or provision of this chapter to trigger the protections of this section.

As used in this section, to threaten, penalize, or in any other manner discriminate or retaliate against any employee includes; threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state or local agency; or assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay.

(b) If after investigation the commissioner finds that an employer or person has violated any provision of this section, the commissioner may, by an order which shall describe particularly the nature of the violation, assess the employer or person a civil penalty of not less than one thousand nor more than ten thousand dollars provided, however, that if the commissioner finds that the employer has violated the provisions of this section in the preceding six years, he or she may assess a civil penalty of not less than one thousand nor more than twenty thousand dollars. The commissioner may also order all appropriate relief including enjoining the conduct of any person or employer; ordering payment of liquidated damages to the employee by the person or

entity in violation; and, where the person or entity in violation is an employer ordering rehiring or reinstatement of the employee to his or her former position or an equivalent position, and an award of lost compensation or an award of front pay in lieu of reinstatement and an award of lost compensation. Liquidated damages shall be calculated as an amount not more than twenty thousand dollars. The commissioner may assess liquidated damages on behalf of every employee aggrieved under this section, in addition to any other remedies permitted by this section.

(c) This section shall not apply to employees of the state or any municipal subdivisions or departments thereof.

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

(b) At or before the commencement of any action under this section,

notice thereof shall be served upon the attorney general by the employee.

3. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person who violates subdivision one of this section shall be guilty of a class B misdemeanor.

*** § 215-a. Discrimination against employees for failure to meet certain ticket quotas.** 1. No employer or his or her duly authorized agent shall transfer or in any other manner penalize or threaten, expressly or impliedly, an employee as to his or her employment in a manner, including, but not limited to, a reassignment, a scheduling change, an adverse evaluation, a constructive dismissal, the denial of a promotion, or the denial of overtime, based in whole or in part on such employee's failure to meet a quota, established by his or her employer or his or her duly authorized agent, of (a) tickets or summonses issued within a specified period of time for violations of provisions of law for which a ticket or summons is authorized by any general, special or local law; or (b) arrests made within a specified period of time for violations of provisions of law for which such arrest is authorized by any general, special or local law; or (c) stops of individuals suspected of criminal activity within a specified period of time. Any employee so transferred or otherwise penalized may cause to be instituted a grievance proceeding pursuant to the provisions of a collective bargaining agreement, if any, or pursuant to the provisions of section seventy-five-a of the civil service law if no collective bargaining agreement exists. Any employee so transferred or otherwise penalized shall be restored to his or her previously assigned position of employment and shall be compensated by his or her employer for any loss of wages arising out of such transfer or other penalty, and shall have any penalty imposed restored; provided, that if such employee shall cease to be qualified to perform the duties of his or her employment he or she shall not be entitled to such restoration; and it shall be contrary to the public policy of this state for such employer to establish or hereafter maintain a quota policy of (i) tickets or

summonses issued within a specified period of time for violations of provisions of law for which a ticket or summons is authorized by any general, special or local law; or (ii) arrests made within a specified period of time for violations of provisions of law for which such arrest is authorized by any general, special or local law; or (iii) stops of individuals suspected of criminal activity within a specified period of time.

2. For the purpose of this section a quota shall mean a specific number of (a) tickets or summonses for violations of law for which a ticket or summons is authorized by any general, special or local law, which are required to be made within a specified period of time; or (b) arrests made for violations of provisions of law for which such arrest is authorized by any general, special or local law, which are required to be made within a specified period of time; or (c) stops of individuals suspected of criminal activity within a specified period of time.

* NB Effective until September 1, 2027

* § 215-a. Discrimination against employees for failure to meet certain ticket quotas. 1. No employer or his or her duly authorized agent shall transfer or in any other manner penalize or threaten, expressly or impliedly, an employee who is a police officer as to his or her employment in a manner, including, but not limited to, a reassignment, a scheduling change, an adverse evaluation, a constructive dismissal, the denial of a promotion, or the denial of overtime based in whole or in part on such employee's failure to meet a quota, established by his or her employer or his or her duly authorized agent, of (a) tickets or summonses issued within a specified period of time of provisions of law for which a ticket or summons is authorized by any general, special or local law; or (b) arrests made within a specified period of time for violations of provisions of law for which such arrest is authorized by any general, special or local law; or (c) stops of individuals suspected of criminal activity within a specified period of time. Any employee so transferred or otherwise penalized may cause to be instituted a grievance proceeding pursuant to the provisions of a collective bargaining agreement, if any, or pursuant to the provisions of section seventy-five-a of the civil service law if no collective

bargaining agreement exists. Any employee so transferred or otherwise penalized shall be restored to his or her previously assigned position of employment and shall be compensated by his or her employer for any loss of wages arising out of such transfer or other penalty, and shall have any penalty imposed restored; provided, that if such employee shall cease to be qualified to perform the duties of his or her employment he or she shall not be entitled to such restoration; and it shall be contrary to the public policy of this state for such employer to establish or hereafter maintain a quota policy of (i) tickets or summonses issued within a specified period of time for violations of provisions of law for which a ticket or summons is authorized by any general, special or local law; or (ii) arrests made within a specified period of time for violations of provisions of law for which such arrest is authorized by any general, special or local law; or (iii) stops of individuals suspected of criminal activity within a specified period of time.

2. For the purpose of this section a quota shall mean a specific number of (a) tickets or summonses for violations of law for which a ticket or summons is authorized by any general, special or local law, which are required to be made within a specified period of time; or (b) arrests made for violations of provisions of law for which such arrest is authorized by any general, special or local law, which are required to be made within a specified period of time; or (c) stops of individuals suspected of criminal activity within a specified period of time.

* NB Effective September 1, 2027

§ 215-b. Children; adverse information; notification. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Child" means any person under the age of sixteen;

(b) "Parent" means the birth or adoptive parent, the guardian or other adult having legal responsibility for the child;

(c) "Person" means any individual, partnership, corporation, association or other business entity or any employee thereof which regularly maintains a place of business which is open to the public and

which operates or is operated for the purpose of offering for sale, whether at wholesale, retail or otherwise, a consumer commodity for purchase by the public;

(d) "Adverse information file" means any written or other communication of any information with respect to the alleged commission by a child of an act of theft within or directly proximate to any place of business operated by such person which alleged acts had they been committed by an adult would constitute misdemeanor larcenies under the penal law. Any information contained in such file on such child that is likely to have an effect upon the ability or eligibility of such child, either while he is a child or upon attaining a legal status other than a child, to obtain credit, insurance, employment, or other benefits, goods or services for which he may seek shall be deemed to be adverse information within the meaning of such term. Any such information shall be deemed to be adverse without regard to whether any legal action as authorized by the family court act or the penal law was ever commenced against such child with regards to the alleged act of theft;

(e) "Consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in gathering, assembling or evaluating consumer credit information or other information on, about or relating to consumers, employees or potential employees for the purpose of furnishing reports to third parties.

2. Any person who opens or causes to be opened an adverse information file shall:

(a) Open such adverse information file within seven days of the alleged commission of a theft;

(b) Notify a parent of such child by regular mail within seventy-two hours, exclusive of weekends and holidays, of the time such file is opened, and make known to such parent by such notice that an adverse information file has been opened on his child by such person and such notice shall be accompanied by copies of any documents in the file, including the written statements of admission or denial signed by his child. Such notice shall contain a telephone number for the parent to call to arrange for an appointment and an address to mail additional material for the file. Every person required to make the notification

required by this paragraph shall use reasonable diligence and effort to ascertain the proper identity and location of a parent so as to assure that the provisions of this subdivision shall be complied with. In the event that a child divulges a false parent identity or location to a person, the person shall be exempted from the notification requirements of this paragraph unless the person has actual knowledge of the true identity or location of a parent. The notification requirements of this paragraph shall not apply if the child falsely reports or gives false evidence of his age to be sixteen years or over to such person unless the person has actual knowledge that such child is under the age of sixteen. The notification required in this paragraph shall be made without regard to whether any legal action as authorized by the family court act or the penal law was ever commenced against such child with regards to the alleged act of theft;

(c) Further notify the parent of such child in the notification provided for in paragraph (b) of this subdivision that such parent shall have the right to request that a written statement of two hundred and fifty words or less to be prepared by the child or parent relevant to the alleged act of theft be submitted and contained in such adverse information file. Upon such request and submission the written statement shall be attached to and included with such adverse information file.

3. No person shall provide access to, give, forward or make available any adverse information file or any part thereof to any consumer reporting agency.

4. Any person who fails to comply with the requirements of this section applicable to such person shall be liable to the child in an action commenced on behalf of such child in an amount equal to the sum of:

(a) Any actual damages sustained by the child as a result of any violation of this section;

(b) Such amount of punitive damages as the court may allow; and

(c) In the case of any successful action to enforce any liability under this section together with reasonable attorney's fees as determined by the court.

§ 215-c. Discrimination against employees for displaying the American flag. 1. No employer, public or private, or such employer's duly authorized agent shall discharge or discriminate against any employee in compensation or in terms, conditions or privileges of employment for displaying an American flag on the employee's person or work station, provided such display physically does not substantially or materially interfere with the employee's job duties. If after investigation the commissioner finds that an employer has violated any provision of this section, the commissioner may, by an order which shall describe particularly the nature of the violation, assess the employer a civil penalty of not less than two hundred nor more than two thousand dollars. Notwithstanding the provisions of section two hundred thirteen of this chapter, the penalties set forth in this section shall be the exclusive remedies available for violations of this section.

2. An employee may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated the provisions of this section. The court shall have jurisdiction to restrain violations of this section, within two years after such violation, and to order all appropriate relief, including rehiring or reinstatement of the employee to his former position with restoration of seniority, payment of lost compensation, damages, and reasonable attorneys' fees. At or before the commencement of any action under this section, notice thereof shall be served upon the attorney general by the employee.

§ 216. Failure to pay statutory inspection fees. Any person who fails to pay the statutory fees for the inspection of boilers, as provided in subdivision three of section two hundred four of this article or the statutory fees for the inspection of places of public assembly, as provided in subdivision two of section four hundred seventy-three of this article after written notice that such fees are due and payable, shall pay an additional amount equal to the amount specified in the written notice as being due and payable if such statutory fee is not received within forty-five days from the date on the written notice, two

times the amount specified in the written notice as being due and payable if such statutory fee is not received within sixty days from the date of the written notice, or three times the amount specified in the written notice as being due and payable if such statutory fee is not received within one hundred eighty days from the date on the written notice.

§ 217. Employee notification and remittance of premiums; group policies of accident and health insurance. 1. Statement of public policy. The legislature finds that in today's society health and accident insurance coverage for medical care and treatment is of prime importance to all employees and their dependents within the state of New York. Adequate and prospective planning is necessary to insure that such coverage is in effect at the time of commencement of the need for medical and health care. Many employees and their dependents in New York State are covered through group policies issued to their employers, employee organizations or trustees of employee welfare funds and no statutory provision has heretofore afforded these employees and their dependents the right as certificate holders of a group accident or group health policy to receive notification of the intended termination or substitution of the group policy and to have premiums remitted to insurers on their behalf should they choose to exercise continuation privileges available under law.

Accordingly, it is the declared public policy of the state of New York that sufficient and timely notice be afforded each employee covered under a group accident or group health policy of the intended termination or substitution of such policy and that employers be required to remit premiums to insurers on behalf of individuals exercising their right to continuation coverage under the law.

2. Definitions. As used in this section:

(a) "Policyholder" shall mean any person, co-partnership, corporation, trade association, joint stock association, incorporated or unincorporated association, trustees or labor organization as defined in subsections (c) and (g), respectively, of section four thousand four

hundred two of the insurance law or any other entity to whom a policy or contract of group accident, group health or group accident and health insurance has been issued.

For the purpose of this section, "policyholder" shall also include any group remitting agent.

(b) "Certificate holder" shall mean any person insured, on either a contributory or non-contributory basis, by a policy or contract of group accident, group health or group accident and health insurance, as well as persons covered by group remittance policies.

3. Notification. A policyholder shall, subsequent to receipt from the insurer of notice of termination pursuant to subsection (k) of section four thousand two hundred thirty-five of the insurance law provide written notice to the certificate holders of such policy of such termination. In any case where the policyholder is substituting such policy with another policy providing similar coverage for the same certificate holders, the policyholder shall provide certificate holders with a written notice including therein the name of the substituted insurer. Where the employees are represented by a labor organization, such notice shall be given to the representative of that labor organization. Such written notice shall be in accordance with the rules and regulations of the superintendent of financial services, promulgated pursuant to subsection (l) of section four thousand two hundred thirty-five of the insurance law.

4. Exception. The provisions of subdivision three of this section shall not be deemed to apply if, within ten days subsequent to receipt of notice of termination from the insurer, the policyholder has taken necessary steps whereby the intended termination is rendered null and void.

5. Where the policyholder has contracted with another insurer to replace the existing insurer for the providing of similar and continuous coverage for the same certificate holders he shall file an affidavit with the commissioner of labor and superintendent of financial services to that effect.

6. Remittance of premiums. Any policyholder who receives notification from an individual entitled to exercise a right to continuation of coverage by the policyholder's insurer pursuant to section three thousand two hundred twenty-one of the insurance law, shall, no later than thirty days subsequent to receipt of premiums from such individual, remit such premiums to the insurer on behalf of such individual and provide evidence to the individual that the premium has been remitted.

6-a. Residence location to accompany enrollment data. When a policyholder provides information to an insurer or health maintenance organization certified under article forty-four of the public health law or licensed pursuant to the insurance law regarding the initial or continued enrollment eligibility of a certificate holder, the policy holder must include the current united states postal service zip code and state in which the certificate holder currently resides.

7. Penalties. (a) Any policyholder who fails to comply with this section, shall forfeit to the people of the State a sum up to five thousand dollars, to be recovered by the commissioner in a civil action. Where the policyholder is a corporation, trade association, joint stock association, incorporated or unincorporated association, the president, secretary and treasurer thereof shall be liable for any forfeiture.

(b) In addition to such penalty, where the failure to comply involves the failure to notify an employee of the termination of a group accident or group health policy pursuant to subdivision three of this section or the failure to remit premiums pursuant to subdivision six of this section, or the failure to provide an individual with notice of termination pursuant to subdivision six of section one hundred ninety-five of this chapter, the policy holder shall also be liable, in a civil action brought by the individual entitled to receive the notice of termination or exercise the right to continuation of coverage in a court of competent jurisdiction, to appropriate damages which shall include reimbursement for medical expenses which were not covered by the policyholder's insurer by virtue of his termination of the policy or failure to remit such premiums.

§ 218. Violations of certain provisions; civil penalties. 1. If the commissioner determines that an employer has violated a provision of article six (payment of wages), article nineteen (minimum wage act), article nineteen-A (minimum wage standards and protective labor practices for farm workers), article twenty-one-A (warehouse worker protection act), section two hundred twelve-a, section two hundred twelve-b, section one hundred sixty-one (day of rest) or section one hundred sixty-two (meal periods) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and any authorized representative of him or her. In addition to directing payment of wages, benefits or wage supplements found to be due, and liquidated damages in the amount of one hundred percent of unpaid wages, such order, if issued to an employer who previously has been found in violation of those provisions, rules or regulations, or to an employer whose violation is willful or egregious, shall direct payment to the commissioner of an additional sum as a civil penalty in an amount not to exceed double the total amount of wages, benefits, or wage supplements found to be due. In no case shall the order direct payment of an amount less than the total wages, benefits or wage supplements found by the commissioner to be due, plus the liquidated damages in the amount of one hundred percent of unpaid wages, the appropriate civil penalty, and interest at the rate of interest then in effect, as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment. Where the violation is for a reason other than the employer's failure to pay wages, benefits or wage supplements found to be due, the order shall direct payment to the commissioner of a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation or three thousand dollars for a third or subsequent violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith basis of the employer to believe that its conduct was in compliance with the law, the gravity of

the violation, the history of previous violations and, in the case of wages, benefits or supplements violations, the failure to comply with recordkeeping or other non-wage requirements.

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

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

2. An order issued under subdivision one of this section shall be final and not subject to review by any court or agency unless review is had pursuant to section one hundred one of this chapter.

3. (a) Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner

may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner, or the decision of the industrial board of appeals containing the amount found to be due including the civil penalty, if any, and at the commissioner's discretion, an additional fifteen percent damages upon any outstanding monies owed. Notwithstanding any provision to the contrary, in execution of any order or decision filed by the commissioner pursuant to this section, the commissioner shall have all the powers conferred upon sheriffs by article twenty-five of the civil practice law and rules, but the commissioner shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty.

Additionally, at the request of an employee, the commissioner shall assign, without consideration or liability, that portion of the filed order that constitutes wages, wage supplements, interest on wages or wage supplements, or liquidated damages due that employee, to that employee and may file an assignment or order in that amount in the name of that employee with the county clerk of the county where the employer resides or has a place of business. The filing of such assignment, order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The assignment may be enforced by the employee in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(b) In addition and as an alternative to any other remedy provided by this section and provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may issue a warrant under the commissioner's official seal, directed to the sheriff of any county, commanding the sheriff to levy upon and sell the real and personal property that may be found within the sheriff's county of an employer who has defaulted in the payment of any sum determined to be due from such employer for the payment of such sum together with interest, penalties, and the cost of executing the warrant, and to return such warrant to the commissioner and to pay into the fund the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall, within five days after the receipt of the warrant, file with the clerk of the county a copy

thereof, and thereupon such clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contribution, interest, and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property and chattels of the employer against whom the warrant is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and the sheriff shall be entitled to the same fees, which they may collect in the same manner, for the sheriff's services in executing the warrant.

(c) In the discretion of the commissioner, a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the department of labor who may file a copy of such warrant with the clerk of any county in the state, and thereupon each such clerk shall docket it and it shall become a lien in the same manner and with the same force and effect as hereinbefore provided with respect to a warrant issued and directed to and filed by a sheriff; and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but they shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner shall have the same remedies to enforce the amount thereof as if the commissioner had recovered judgment for the same.

4. The civil penalty provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty provided for in this chapter.

5. An employer similar in operation and ownership to a prior employer which had been found in violation of article six, nineteen or nineteen-A of this chapter, shall be deemed the same employer for the purposes of this section if the employees of the new employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the subsequent employer

has substantially the same production process, produces substantially the same products and has substantially the same body of customers. Such subsequent employer shall continue to be subject to this section and liable for the acts of the prior employer under this section.

§ 218-a. Sun safety education for state employees. 1. Any state employee who spends more than a total of five hours per week outdoors shall be provided information about (a) the potential dangers of diseases caused by over-exposure of the sun, such as skin cancer, (b) the existence of available protections and their proper uses, and (c) any other information necessary to afford an employee his or her best opportunity to protect themselves from the sun.

2. An employer of any employee subject to subdivision one of this section shall ensure that any necessary information is given to each employee for his or her use during their employment, at no cost to the employee.

3. The commissioner, in consultation with the commissioner of education, shall determine the form and content of the information supplied to the state employees who are subject to the provisions of this section.

§ 218-b. Prevention of occupational exposure to an airborne infectious disease. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "Employee" shall mean any person providing labor or services for remuneration for a private entity or business within the state, without regard to an individual's immigration status, and shall include part-time workers, independent contractors, domestic workers, home care and personal care workers, day laborers, farmworkers and other temporary and seasonal workers. The term shall also include individuals working for digital applications or platforms, staffing agencies, contractors or subcontractors on behalf of the employer at any individual work site, as well as any individual delivering goods or transporting people at, to or

from the work site on behalf of the employer, regardless of whether delivery or transport is conducted by an individual or entity that would otherwise be deemed an employer under this chapter. The term shall not include employees or independent contractors of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

(b) "Work site" shall mean any physical space, including a vehicle, that has been designated as the location where work is performed over which an employer has the ability to exercise control. The term shall include employer-provided housing and employer-provided transportation at, to or from the work site but shall not include the residence of the employer or employee unless such residence has been provided by the employer and is used as the primary place of work or such residence is provided by an employer covered under the provisions of article nineteen-A of this chapter. The term shall not include a telecommuting or telework site unless the employer has the ability to exercise control of such site.

(c) "Supervisor" or "supervisory employee" shall mean any person who has the authority to direct and control the work performance of other employees, or who has the managerial authority to take corrective action regarding the violation of the law, rules or regulations. This term shall not include any employee who is a member of a collective bargaining unit that primarily represents employees not otherwise deemed to be a supervisor or supervisory employee as defined by this subdivision.

(d) "Employer" shall mean any person, entity, business, corporation, partnership, limited liability company, or association employing, hiring, or paying for the labor of any individual in any occupation, industry, trade, business, or service. The term shall not include the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

(e) "Airborne infectious disease" shall mean any infectious viral, bacterial or fungal disease that is transmissible through the air in the form of aerosol particles or droplets and is designated by the commissioner of health a highly contagious communicable disease that presents a serious risk of harm to the public health.

2. The commissioner, in consultation with the department of health, shall create and publish, in both English and Spanish, a model airborne infectious disease exposure prevention standard for industries representing a significant portion of the workforce, or those with unique characteristics requiring distinct standards, as determined by the commissioner, in consultation with the commissioner of health. The commissioner shall further create and publish, in English and in Spanish, a general model airborne infectious disease exposure prevention standard applicable to all worksites not included in the specific industry standards. Such model standards shall establish minimum requirements for preventing exposure to airborne infectious diseases in the workplace in order to protect the public and the workforce. The model infectious disease exposure prevention standards shall take into account the types of risks present at any work site customarily associated with each covered industry, including the presence of third parties. The model standards shall explicitly specify and distinguish the extent to which the provisions are applicable for different levels of airborne infectious disease exposure, and shall take into consideration circumstances where a state of emergency has or has not been declared due to an airborne infectious disease, and distinctions in policies based on circumstances where a state of emergency has been declared due to an airborne infectious disease shall take into consideration all applicable federal standards to the extent practicable. The commissioner shall determine, in his or her discretion, which languages to publish the standards in addition to English and Spanish based on the number of individuals in the state population that speak each language, the prevalence of certain languages being spoken in particular industries, and any other factor that the commissioner shall deem relevant. Such standards shall include, but not be limited to, establishing requirements on procedures and methods for:

- (a) Employee health screenings;

- (b) Face coverings;

- (c) Required personal protective equipment ("PPE") applicable to each industry for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, which shall be provided, used, and maintained in a sanitary and reliable condition at the expense of the employer. The standards shall provide for a list of

PPE that satisfies the requirements, based on hazard assessments for each industry;

(d) Accessible workplace hand hygiene stations and maintaining healthy hand hygiene and that employers provide adequate break times for employees to use handwashing facilities as needed;

(e) Regular cleaning and disinfecting of shared equipment and frequently touched surfaces such as workstations, touchscreens, telephones, handrails, and doorknobs, and all surfaces and washable items in other high-risk areas such as restrooms, dining areas/breakrooms, locker rooms, vehicles and sleeping quarters;

(f) Effective social distancing for employees and consumers or customers, as the risk of illness may warrant, including options for social distancing such as sign postage or markers; increasing physical space between employees at the worksite; limiting capacity of customers or consumers; delivering services remotely or through curbside pick-up; reconfiguring spaces where employees congregate; flexible meeting and travel options; flexible worksites; or implementing flexible work hours such as staggered shifts;

(g) Compliance with mandatory or precautionary orders of isolation or quarantine that have been issued to employees, including the identification and provision of separate and appropriate accommodations for employees who reside in employer-provided housing in a manner consistent with mandatory or precautionary orders of isolation and quarantine that have been issued to employers and employees;

(h) Compliance with applicable engineering controls such as proper air flow or exhaust ventilation;

(i) Designation of one or more supervisory employees to enforce compliance with the airborne infectious disease exposure prevention plan and any other federal, state, or local guidance related to avoidance of spreading an airborne infectious disease as applicable to employees and third parties such as customers, contractors, and members of the public within the workplace. No individual who is not a supervisory employee shall have responsibility for overseeing compliance with the requirements of the airborne infectious disease exposure prevention plan;

(j) Compliance with any applicable laws, rules, regulations, standards, or guidance on notification to employees and relevant state

and local agencies of potential exposure to airborne infectious disease at the work site; and

(k) Verbal review of infectious disease standard, employer policies and employee rights under this section, except such review need not be provided to any individuals working for staffing agencies, contractors or subcontractors on behalf of the employer at any individual work site, as well as any individual delivering goods or transporting people at, to or from the work site on behalf of the employer, where delivery or transport is conducted by an individual or entity that would otherwise be deemed an employer under this chapter.

3. The model airborne infectious disease exposure prevention standards shall also include anti-retaliation requirements pursuant to subdivision eight of this section. The commissioner, in consultation with the department of health, shall update the model airborne infectious disease exposure prevention standards as necessary provided that the commissioner shall inform employers of the changes.

4. (a) Within thirty days after the commissioner publishes the model general standard and the model standard relevant to the industry, each employer shall establish an airborne infectious disease exposure prevention plan either by adopting the model standard relevant to their industry promulgated pursuant to this section as its airborne infectious disease exposure prevention plan or by establishing an alternative plan that equals or exceeds the minimum standards provided by the model standard. No employee who is not a supervisory employee shall have responsibility for overseeing compliance with the requirements of such an airborne infectious disease exposure plan.

(b) In any circumstance where an alternative airborne infectious disease exposure prevention plan is adopted, the employer shall develop such plan pursuant to an agreement with the collective bargaining representative, if any, or with meaningful participation of employees where there is no collective bargaining representative, for all aspects of the plan, and such plan shall be tailored and specific to hazards in the specific industry and work sites of the employer.

5. Every employer shall provide the airborne infectious disease

exposure prevention plan to his or her employees, in writing in English and in the language identified by each employee as the primary language of such employees within thirty days after adoption of the plan, within fifteen days after reopening after a period of closure due to airborne infectious disease and, to a newly hired employee, upon hiring the new employee. Businesses permitted to operate as of the effective date of this section shall provide such a plan to all employees within sixty days after the commissioner publishes the model standard relevant to the industry. When an employee identifies as his or her primary language a language for which a model standard is not available from the commissioner, the employer shall comply with this paragraph by providing that employee with an English-language notice.

6. The airborne infectious disease exposure prevention plan shall be posted in a visible and prominent location within each worksite, other than a vehicle. An employer that provides an employee handbook to its employees shall, in addition, include the airborne infectious disease exposure prevention plan in its handbook.

7. Each employer shall make the airborne infectious disease exposure prevention plan available, upon request, to all employees and independent contractors, employee representatives, collective bargaining representatives, and the commissioner and the commissioner of health.

8. No employer, or his or her agent, or person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, shall discriminate, threaten, retaliate against, or take adverse action against any employee for:

(a) Exercising their rights under this section or under the applicable airborne infectious disease exposure prevention plan.

(b) Reporting violations of this section or the applicable airborne infectious disease exposure prevention plan to any state, local, or federal government entity, public officer or elected official.

(c) Reporting an airborne infectious disease exposure concern to, or seeking assistance or intervention with respect to airborne infectious disease exposure concerns, to their employer, state, local, or federal

government entity, public officer or elected official.

(d) Refusing to work where such employee reasonably believes, in good faith, that such work exposes him or her, or other workers or the public, to an unreasonable risk of exposure to an airborne infectious disease due to the existence of working conditions that are inconsistent with laws, rules, policies, orders of any governmental entity, including but not limited to, the minimum standards provided by the model airborne infectious disease exposure prevention standard, provided that the employee, another employee, or employee representative notified the employer of the inconsistent working conditions and the employer failed to cure the conditions or the employer had or should have had reason to know about the inconsistent working conditions and maintained the inconsistent working conditions.

9. 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, provided that for such waiver to be valid, it shall explicitly reference this section.

10. (a) If after investigation the commissioner finds that such employer or person has violated any provision of this section, the commissioner may, by an order which shall describe particularly the nature of the violation, assess a civil penalty of not less than fifty dollars per day for failure to adopt an airborne infectious disease exposure prevention plan, or not less than one thousand dollars nor more than ten thousand dollars for failure to abide by an adopted airborne infectious disease exposure prevention plan. Provided, however, that if the commissioner finds that the employer has violated the provisions of this section in the preceding six years, he or she may assess a civil penalty of not less than two hundred dollars per day for failure to adopt an airborne infectious disease exposure prevention plan, or not less than one thousand dollars nor more than twenty thousand dollars for failure to abide by an adopted airborne infectious disease exposure prevention plan. The commissioner may also order other appropriate relief including enjoining the conduct of any person or employer in addition to any other remedies permitted by this section.

(b) Any employee may bring a civil action seeking injunctive relief in a court of competent jurisdiction against an employer alleged to have violated the airborne infectious disease exposure prevention plan in a manner that creates a substantial probability that death or serious physical harm could result to the employee from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, by the employer at the work site, unless the employer did not and could not, with the exercise of reasonable diligence, know of the presence of the violation. The court shall have jurisdiction to restrain such violations and to order all appropriate relief, including enjoining the conduct of the employer; and awarding costs and reasonable attorneys' fees to the employee. Where an action brought by an employee under this subdivision is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court may award to the employer costs and reasonable attorneys' fees. The costs and fees awarded may be assessed either against the employee or against the attorney for the employee, or against both, as may be determined by the court, based upon the circumstances of the case. Before bringing a civil action pursuant to this subdivision, an employee must give the employer notice of the alleged violation. An employee may not bring a civil action until thirty days after giving the employer notice of the alleged violation, except where an employee alleges with particularity that the employer has demonstrated an unwillingness to cure a violation in bad faith, and may not bring a civil action if the employer corrects the alleged violation. An employee must bring a civil action pursuant to this subdivision within six months from the date the employee had knowledge of the violation alleged in such civil action.

11. The provisions and remedies of paragraph (b) of subdivision one and paragraphs (a) and (b) of subdivision two of section two hundred fifteen of this article shall be applicable to subdivision eight of this section. Where an action brought by an employee under this subdivision is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court may award to the employer costs and reasonable attorneys' fees. The costs and fees awarded may be assessed either against the employee or against the attorney for the employee, or

against both, as may be determined by the court, based upon the circumstances of the case.

12. Where a violation of this section is alleged to have occurred, the commissioner or attorney general may apply in the name of the people of the state of New York for an order enjoining or restraining the commission or continuance of the alleged unlawful acts. The commissioner, in consultation with the commissioner of health, shall promulgate rules and regulations necessary to ensure compliance with this chapter.

13. The commissioner, in consultation with the commissioner of health, shall adopt and amend rules and regulations to effectuate the provisions and purposes of this section.

§ 219. Violations of certain wage payment provisions; interest, filing of order as judgment. 1. If the commissioner determines that an employer has failed to pay wages, benefits or wage supplements required pursuant to article six (payment of wages), article nineteen (minimum wage act) or article nineteen-A (minimum wage standards and protective labor practices for farm workers) of this chapter, or a rule or regulation promulgated thereunder, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the nature of the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and to his or her authorized representative. Such order shall direct payment of wages or supplements found to be due, liquidated damages in the amount of one hundred percent of unpaid wages, and interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment.

At the discretion of the commissioner, the commissioner shall have full authority to provide for inclusion of an automatic fifteen percent additional amount of damages to come due and owing upon expiration of ninety days from an order to comply becoming final. The commissioner

shall provide written notice to the employer in the order to comply of this additional damage.

2. An order issued under subdivision one of this section shall be final and not subject to review by any court or agency unless review is had pursuant to section one hundred one of this chapter.

3. (a) Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount found to be due, including, at the commissioner's discretion, an additional fifteen percent damages upon any outstanding monies owed. Notwithstanding any provision to the contrary, in execution of any order or decision filed by the commissioner pursuant to this section, the commissioner shall have all the powers conferred upon sheriffs by article twenty-five of the civil practice law and rules, but the commissioner shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Additionally, at the request of an employee, the commissioner shall assign, without consideration or liability, that portion of the filed order that constitutes wages, wage supplements, interest on wages or wage supplements, or liquidated damages due the employee, to that employee and may file an assignment or order in that amount in the name of such employee with the county clerk of the county where the employer resides or has a place of business. The filing of such assignment, order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The assignment may be enforced by the employee in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(b) In addition and as an alternative to any other remedy provided by this section and provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may issue a warrant under the official seal of the

commissioner, directed to the sheriff of any county, commanding the sheriff to levy upon and sell the real and personal property that may be found within the sheriff's county of an employer who has defaulted in the payment of any sum determined to be due from such employer for the payment of such sum together with interest, penalties, and the cost of executing the warrant, and to return such warrant to the commissioner and to pay into the fund the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall, within five days after the receipt of the warrant, file with the clerk of the county a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contribution, interest, and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property and chattels of the employer against whom the warrant is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and the sheriff shall be entitled to the same fees, which they may collect in the same manner, for the sheriff's services in executing the warrant.

(c) In the discretion of the commissioner, a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the department of labor who may file a copy of such warrant with the clerk of any county in the state, and thereupon each such clerk shall docket it and it shall become a lien in the same manner and with the same force and effect as hereinbefore provided with respect to a warrant issued and directed to and filed by a sheriff; and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but they shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. If a warrant is returned not satisfied in full, the commissioner shall have the same remedies to enforce the amount thereof as if the commissioner had recovered judgment for the same.

4. An employer similar in operation and ownership to a prior employer

found to be in violation of article six, nineteen or nineteen-A of this chapter, shall be deemed the same employer for the purposes of this section if the employees of the subsequent employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the new entity has substantially the same production process, produces substantially the same products and has substantially the same body of customers. Such a subsequent employer will continue to be subject to this section and shall be liable for the acts of the prior employer under this section.

§ 219-a. Affirmation in lieu of oath. Notwithstanding any other provision of law, any application for a license, permit, registration, certificate or notification required by law to be filed with the department may, in lieu of being acknowledged or sworn to under oath, be subscribed by the applicant and affirmed by him or her as true under penalties of perjury.

§ 219-c. Public notice of employer violations. The commissioner shall have the following powers:

1. where an employer is found in violation of article six, nineteen or nineteen-A of this chapter, to post and/or affix for a period not to exceed one year a notice of no less than eight and one-half by eleven inches in an area visible to employees summarizing the violations found and other information deemed pertinent by the commissioner, according to such form and manner ordered by the commissioner; and

2. where the violation is for a willful failure to pay all wages as required by article six, nineteen, or nineteen-A of this chapter, to post and/or affix for a period not to exceed ninety days in an area visible to the general public, as ordered by the commissioner, a notice of no less than eight and one-half by eleven inches as to the violations found, according to such form and manner ordered by the commissioner. Any person other than the commissioner or the commissioner's duly authorized representative who removes, alters, defaces or otherwise

interferes with a notice posted and/or affixed under this section shall be guilty of a misdemeanor.

3. where an order is issued under section two hundred eighteen of this article that assesses a civil penalty against an employer for a repeated, willful, or egregious violation, to direct such employer to report, by location, and to post on the department's website, for such period as the commissioner shall determine, (a) the number of permanent full-time employees, the number of temporary full-time employees, the number of permanent part-time employees, the number of temporary part-time employees, and the number of temporary staffing agency employees performing work for the employer; (b) the hourly rates of such employees reported in the following brackets: the state minimum wage to \$9.99; \$10.00 to \$11.99; \$12.00 to \$14.99; and \$15.00 or more; (c) the number of employees who regularly worked the following number of hours per week during the relevant calendar period: at least sixty; at least fifty but fewer than sixty; at least forty but fewer than fifty; at least thirty-five but fewer than forty; at least thirty but fewer than thirty-five; at least twenty-five but fewer than thirty; at least twenty but fewer than twenty-five; at least ten but fewer than twenty; at least five but fewer than ten; fewer than five. No individual identifying information of such employees shall be reported or otherwise disclosed to the department. For the purposes of this section "temporary employees" shall be those employees who are hired for a period of sixty days or less during the relevant calendar year, full-time employees shall be those regularly working forty hours or more per week during the relevant calendar year, part-time employees shall be those working less than forty hours per week during the relevant calendar year.

§ 219-d. Emergency alert notification system employer registration. 1. The department, in consultation with the state office of information technology services, shall provide every employer in the state with a registration form which shall be created by the state office of information technology services, to voluntarily register with the emergency alert notification system. Such registration form shall be accompanied by a summary of the benefits of registering for alerts from

the emergency alert notification system, including a description of how the use of the emergency alert system can be utilized to preserve the health and safety of workers, and an example for dissemination to workers of information received from an emergency alert notification.

2. For the purposes of this section, the "emergency alert notification system" shall mean the state office of information technology services alert system known as alert.ny.gov, or NY-Alert.

ARTICLE 8

PUBLIC WORK

- Section 220. Hours, wages and supplements.
- 220-a. Statements showing amounts due for wages and supplements to be filed--Verification.
 - 220-b. Amounts due for wages and supplements may be withheld for benefit of laborers.
 - 220-c. Contractor or subcontractor verifying false statement guilty of perjury.
 - 220-d. Minimum rate of wage and supplement.
 - 220-e. Provisions in contracts prohibiting discrimination on account of race, creed, color or national origin in employment of citizens upon public works.
 - 220-f. Labor policy of the state with regard to public work contracts; participation in an international boycott prohibited.
 - 220-g. Additional enforcement of article.
 - 220-h. Occupational Safety and Health Administration (OSHA) construction safety and health course.
 - 220-i. Registration system for contractors and subcontractors.
 - 220-j. Payroll reporting requirements.
 - 221. Company stores.
 - 221-a. Permits required.
 - 221-b. Issue of permits.
 - 222. Project labor agreements.
 - 222-a. Prevention of dust hazard in public works.
 - 223. Enforcement of article.

- 224. Contracting for public work; enforcement.
- 224-a. Prevailing wage requirements applicable to construction projects performed under private contract.
- 224-b. Stop-work orders.
- 224-c. Public subsidy board.
- 224-d. Wage requirements for certain renewable energy systems.
- 224-e. Wage requirements for certain broadband projects.
- 224-f. Wage requirements for certain climate risk-related and energy transition projects.
- 224-f*2. Workers on excavations.
- 224-g. Wage requirements for reporting and scheduling pay.

§ 220. Hours, wages and supplements. 1. Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.

2. Each contract to which the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law is a party, and any contract for public work entered into by a third party acting in place of, on behalf of and for the benefit of such public entity pursuant to any lease, permit or other agreement between such third party and the public entity, and which may involve the employment of laborers, workers or mechanics shall contain a stipulation that no laborer, worker or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency. Extraordinary emergency within the meaning of this section shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay

of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same. Upon the application of any person interested, the commissioner shall make a determination as to whether or not on any public project or on all public projects in any area of this state, sufficient laborers, workers and mechanics of any or all classifications can be employed to carry on work expeditiously if their labor is restricted to eight hours per day and five days per week, and in the event that the commissioner determines that there are not sufficient workers, laborers and mechanics of any or all classifications which may be employed to carry on such work expeditiously if their labor is restricted to eight hours per day and five days per week, and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the commissioner for the preservation of the contract site and for the protection of the life and limb of the persons using the same, the commissioner shall grant a dispensation permitting all laborers, workers and mechanics, or any classification of such laborers, workers and mechanics, to work such additional hours or days per week on such public project or in such areas the commissioner shall determine. Whenever such a dispensation is granted, all work in excess of eight hours per day and five days per week shall be considered overtime work, and the laborers, workers and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed. No such dispensation shall be effective with respect to any public work unless and until the department of jurisdiction, as defined in this section, certifies to the commissioner that such public work is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public. Time lost in any week because of inclement weather by employees engaged in the construction, reconstruction and maintenance of highways outside of the limits of cities and villages may be made up during that week and/or the succeeding three weeks.

2-a. Any person contracting with the state or a public benefit corporation, or a municipal corporation, or a commission appointed pursuant to law that shall require more than eight hours work for a

day's labor, unless otherwise permitted by law, is guilty of a misdemeanor, and upon conviction thereof shall be punished in accordance with the penal law for each offense.

3. (a) The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon such public works, shall be not less than the prevailing rate of wages as hereinafter defined. Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be paid not less than the prevailing rate of wages as hereinafter defined. No employee shall be deemed to be an apprentice unless he is individually registered in an apprenticeship program which is duly registered with the commissioner of labor in conformity with the provisions of article twenty-three of this chapter. The wages to be paid for a legal day's work, as hereinbefore defined, to laborers, workmen or mechanics upon any material to be used upon or in connection therewith, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used. Such contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided.

(b) The supplements, as hereinafter defined, to be provided to laborers, workmen or mechanics upon such public works, shall be in accordance with the prevailing practices in the locality, as hereinafter defined. Serving laborers, helpers, assistants and apprentices shall not be classified as common labor and shall be provided supplements in accordance with the prevailing practices as hereinafter defined. No employee shall be deemed to be an apprentice unless he is individually registered in an apprenticeship program which is duly registered with the industrial commissioner in conformity with the provisions of article twenty-three of this chapter. The supplements, as hereinafter defined, to be provided to laborers, workmen or mechanics upon any material to be used upon or in connection therewith, shall be in accordance with the prevailing practices in the same trade or occupation in the locality within the state where such public work on, about or in connection with

which such labor is performed in its final or completed form is to be situated, erected or used. Such contracts shall contain a provision that each laborer, workman or mechanic, employed by such contractor, subcontractor or other person about or upon such public work, shall be provided the supplements as required in this article.

(c) It shall be the duty of the fiscal officer, as defined in this section, to ascertain and determine the schedules of supplements to be provided and wages to be paid workers, laborers and mechanics on such public work, prior to the time of the advertisement for bids, and such schedules shall be annexed to and form a part of the specifications for the work. Such fiscal officer shall file with the department having jurisdiction such schedules prior to the time of the commencement of the advertisement for bids on all public works proposed to be constructed. The term "contract" as used in this article also shall include reconstruction and repair of any such public work, and any public work performed under a lease, permit or other agreement pursuant to which the department of jurisdiction grants the responsibility of contracting for such public work to any third party proposing to perform such work to which the provisions of this article would apply had the department of jurisdiction contracted directly for its performance, or where there is no lease, permit or other agreement and ownership of a public work is intended to be assumed by such public entity at any time subsequent to completion of the public work.

(d) (i) Any person that participates in a public works project in the capacity of a contractor or subcontractor and who wilfully fails to pay or provide the prevailing rate of wage or supplements and:

(1) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, results in an amount less than twenty-five thousand dollars, shall be guilty of a class A misdemeanor;

(2) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than twenty-five thousand dollars, that person shall be guilty of a class E felony;

(3) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than one hundred thousand dollars, that person shall be guilty

of a class D felony; or

(4) such failure results in underpayments, which in the aggregate amount to all workers employed by such person, result in an amount greater than five hundred thousand dollars, that person shall be guilty of a class C felony.

(ii) Disposition for violations of this section shall be in accordance with the penal law. Fines upon conviction for any violation of this section shall be in accordance with the penal law.

(iii) In addition to the penalties set forth above, any such person convicted of a second offense under subparagraph (i) of this paragraph within five years shall disgorge profits and shall not be entitled to receive any monies due and owing on the contract or subcontract; nor shall any officer, agent or employee of the department of jurisdiction or its financial officer pay to such person any such monies.

Notwithstanding the foregoing, the department of jurisdiction may release monies due and owing on the contract or subcontract which have not been withheld pursuant to section two hundred twenty-b of this article for the sole purpose of satisfying the contractor's or subcontractor's obligations under the contract or subcontract to third parties who were not themselves involved in the violations giving rise to the subsequent offense. For the purposes of this subdivision, third parties shall include, but not be limited to, contractors, subcontractors, materialmen, and funds, plans, and programs providing pension, health, and welfare benefits to workmen, laborers, and mechanics employed pursuant to such contract or subcontract. The department of jurisdiction may release such monies upon the application of the contractor provided that no monies shall be released without the written approval of the fiscal officer or by order of a court of competent jurisdiction.

(iv) In addition to the penalties set forth above, every contract for a public work project shall contain a term stating that the filing of payrolls in a manner consistent with subdivision three-a of this section is a condition precedent to payment of any sums due and owing to any person for work done upon the project.

(e) The commissioner shall ensure that all supplements due under this article shall be paid to or on behalf of an employee. The commissioner shall require proof that the pension plan for which any supplement has

been paid is qualified as a bona fide plan by the United States internal revenue service. Acceptable proof shall be shown by submission of a determination letter issued by the United States internal revenue service.

(f) (i) For the purposes of this subdivision contractors or subcontractors engaged in custom fabrication shall not be regarded as material suppliers. For the purposes of this subdivision, a legal day's work for which the prevailing rate of wages for the New York county in which the public works project is situated shall be paid to laborers, workers and mechanics shall include custom fabrication regardless of whether the custom fabrication occurs on-site, off-site, or in another jurisdiction and such pay shall be a condition of the contract concerning all such custom fabrication work involving the contractor or employer awarded the public work contract, except where the project includes federal funding that triggers federal rules for wage requirements, and any subcontractor thereto shall pay the on-site prevailing wage required for workers at the site of the public work project to those workers performing the custom fabrication.

(ii) To perform a public works contract each contractor or subcontractor who employs workers for custom fabrication work related to a public work project shall maintain certified payrolls and shall comply with sections two hundred twenty-i and two hundred twenty-j of this article.

(iii) For the purposes of this subdivision the term "custom fabrication" shall include the fabrication of exterior or interior wall panel systems, woodwork, electrical, plumbing, heating, cooling, ventilation or exhaust duct systems, rebar cages, and mechanical insulation solely and specifically designed and engineered for a specified public work project. The term "custom fabrication" does not include components, portions, modules, or materials that are otherwise stocked or readily available absent a specified public work project.

(iv) The provisions of this paragraph shall not include any highway, structure, vehicle or watercraft used to support transporting persons; the foregoing notwithstanding, this paragraph shall include electrical, plumbing, heating, cooling, ventilation or mechanical insulation work in rest areas, transit stations or depots.

(v) Nothing in this paragraph shall be construed to apply the

requirements set forth in section two hundred twenty-four-a of this article to any custom fabrication associated with the creation or rehabilitation of any residential dwelling units or manufactured home parks that are exempted from the definition of "covered projects" as set forth in section two hundred twenty four-a of this article.

(vi) The contractor awarded a public work contract, or a subcontractor thereto, shall be required to report to the department of jurisdiction the intent to utilize custom fabrication in a form and manner prescribed by the fiscal officer. Such reports shall identify the public work contract, the name and location of the custom fabrication entity, and description of the custom fabrication work. The contractor awarded a public work contract, or subcontractor thereto, shall notify any additional party contracted with for custom fabrication that the contract is subject to this subdivision. The department of jurisdiction, as defined in subdivision three-a of this section and including any entity to whom such department of jurisdiction delegates their authority, shall be required to report to the fiscal officer the intention to contract for custom fabrication in a form and manner prescribed by the fiscal officer. Such reports shall identify the public work contract, the name and location of the custom fabrication entity, and description of the custom fabrication work. Reports submitted to the fiscal officer shall be subject to disclosure pursuant to article six of the public officers law.

3-a. a. (i) It shall be the duty of the department of jurisdiction as defined in this section to ascertain from the plans and specifications the classification of workers, mechanics and laborers to be employed on such project. Such department shall file with the fiscal officer, as defined in this section, the classification of workers, mechanics and laborers to be employed upon such public works project, together with a statement of the work to be performed by each such classification. From such statement it shall be the duty of the fiscal officer to make a proper classification of such workers, mechanics and laborers taking into account whether the work is heavy and highway, building, sewer and water, tunnel work or residential and to make a determination of the schedules of wages and supplements to be paid or provided, as the case may be, therefor.

(ii) The contractor and every sub-contractor on public works contracts shall post in a prominent and accessible place on the site where the work is performed a legible statement of all wage rates and supplements as specified in the contract to be paid or provided, as the case may be, for the various classes of mechanics, workers, or laborers employed on the work. Such posted statement shall be written in plain English and titled, in lettering no smaller than two inches in height and two inches in width, with the phrase "Prevailing Rate of Wages". Such posted statement shall be constructed of materials capable of withstanding adverse weather conditions. The contractor and every sub-contractor shall notify all laborers, workers or mechanics in their employ in writing of the prevailing rates of wages and supplements for their particular job classification. Such notification shall be given to every laborer, worker or mechanic upon hire, with their first pay stub and every pay stub thereafter. At the beginning of performance of every public works contract, and with the first paycheck after July first of each year, the contractor and every sub-contractor shall notify all laborers, workers, and mechanics in their employ in writing, in English and in the language identified by each laborer, worker, and mechanic as his or her primary language, in accordance with such form as is prescribed by the fiscal officer, of the telephone number and address for the fiscal officer. The notice shall also inform each laborer, worker, or mechanic of his or her right to contact the fiscal officer or some other representative if, at any time while working for the public works contractor or sub-contractor, he or she does not receive the proper prevailing rate of wages or supplements for his or her particular job classification that he or she is entitled to receive under the contract. If after investigation the fiscal officer finds that a contractor or sub-contractor has (1) failed to post the statement required under this subparagraph, (2) failed to provide any notification to laborers, workers and mechanics as required under this subparagraph, (3) willfully posted the incorrect prevailing wages and supplements, or (4) willfully set forth the incorrect prevailing wage or supplement with every pay stub, the fiscal officer shall, by an order which shall describe particularly the nature of the alleged violation, assess the contractor or sub-contractor a civil penalty of not more than fifty dollars upon the first finding of a violation, two hundred fifty dollars

upon the second finding of a violation, and five hundred dollars for each subsequent violation. In assessing the amount of the penalty, the fiscal officer shall give due consideration to the size of the employer's business, the good faith of the employer, and the gravity of the violation.

The fiscal officer shall prepare templates that comply with the notification requirements of this subparagraph. Each such template shall be dual-language, including English and one additional language. The fiscal officer shall determine, in his or her discretion, which languages to provide in addition to English, based on the size of the New York state population that speaks each language and any other factor that the fiscal officer shall deem relevant. All such templates shall be posted on the fiscal officer's website and made available for downloading by contractors and subcontractors. When any laborer, worker, or mechanic identifies his or her primary language and a template is not made available by the fiscal officer in that language, the contractor or subcontractor shall comply with this subparagraph by providing such laborer, worker, or mechanic an English-language notice or acknowledgment. A contractor or subcontractor shall not be penalized for errors or omissions in the non-English portions of any notice provided by the fiscal officer. The fiscal officer shall have discretion to waive or alter the notification requirements of this subparagraph for temporary help firms as defined in section nine hundred sixteen of this chapter.

(iii) The contractor and every sub-contractor shall keep original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, setting forth the names and addresses and showing for each worker, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided. Such payrolls or transcripts thereof shall be accompanied by a copy of each notice required under subdivision one or two of section one hundred ninety-five of this chapter for every laborer, worker or mechanic, which shall be subscribed and sworn to or affirmed as true under penalties of perjury and shall be deemed to be part of the original payrolls or transcripts thereof for purposes of this subdivision. Where the contractor or sub-contractor

maintains no regular place of business in New York state and where the amount of the contract is in excess of twenty-five thousand dollars such payrolls shall be kept on the site of the work. All other contractors or sub-contractors shall produce within five days on the site of the work and upon formal order of the commissioner or his or her designated representative such original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, as may be deemed necessary to adequately enforce the provisions of this article. Unless otherwise submitted pursuant to section two hundred twenty-j of this article, every contractor, and sub-contractor, shall submit to the department of jurisdiction within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record, as provided by this article, subscribed and sworn to or affirmed as true under the penalties of perjury. Any person who willfully fails to file such payroll records with the department of jurisdiction, commissioner, or the fiscal officer shall be guilty of a class E felony. In addition, any person who willfully fails to file such payroll records within the time specified in this subparagraph shall be subject to a civil penalty of up to one thousand dollars per day.

(iv) Unless otherwise submitted pursuant to section two hundred twenty-j of this article, the department of jurisdiction shall be required to collect and maintain such payroll records at the times specified in subparagraph (iii) of this paragraph. The original payrolls or transcripts shall be preserved by the department of jurisdiction for five years from the date of completion of the work on the awarded contract. The department of jurisdiction as herein referred to shall be the department of the state, board or officer in the state, or municipal corporation or commission or board appointed pursuant to law, whose duty it is to prepare or direct the preparation of the plans and specifications for a public work project. Each department of jurisdiction shall designate in writing an individual employed by such department responsible for the receipt, collection and review for facial validity of payrolls. Said designation shall be filed with the fiscal officer and posted in a conspicuous location at the project site. If the designated individual cannot perform the receipt, collection and review of certified payrolls duties as indicated above, for any reason,

including but not limited to reassignment, promotion or separation from employment, the department of jurisdiction must immediately designate another individual employed by such department to fulfill such responsibilities. In the event that a department of jurisdiction fails to name an individual responsible for the receipt, collection and review for facial validity of payrolls, as set forth above, then the individual so responsible shall be the individual who is the chief policy-making individual of such department of jurisdiction.

b. All departments of jurisdiction in respect of public work as to which the industrial commissioner is fiscal officer, as defined in this section, shall furnish to the industrial commissioner the following information immediately upon signing of a contract for such public work: (a) the name and address of the contractor engaged by said department of jurisdiction; (b) the date when the contract was let; (c) the approximate consideration stipulated for in said contract.

c. The fiscal officer may require any person or corporation performing such public work to file with the fiscal officer within ten days of receipt of said request, payroll records, sworn to as to their validity and accuracy, requested by the fiscal officer, for said public work or for any public or private work performed by said person or corporation during the same period of time as said public work. Such payroll records shall include a copy of each notice required under subdivision one or two of section one hundred ninety-five of this chapter for every laborer, worker or mechanic, which shall be subscribed and sworn to or affirmed as true under penalties of perjury. In addition, the fiscal officer may require such person or corporation to furnish proof of any supplements provided or amount paid to or on behalf of laborers, workers or mechanics in satisfaction of the obligation to provide supplements pursuant to this section. In the event said person or corporation fails to provide the requested information within the allotted ten days, the fiscal officer shall, within fifteen days, order the department of jurisdiction to immediately withhold from payment to said person or corporation up to twenty-five percent of the amount, not to exceed one hundred thousand dollars, to be paid to said person or corporation under the terms of the contract pursuant to which said public work is being

performed. Said amount withheld shall be immediately released upon receipt by the department of jurisdiction of a notice from the fiscal officer indicating that the request for records had been satisfied.

d. Any person who wilfully fails to file the requested payroll records within ninety days of a demand by the fiscal officer shall be guilty of a class A misdemeanor, provided, however, that a person who violates this subdivision after having previously been convicted of violating this subdivision within the past five years shall be guilty of a class E felony.

e. (i) Utility companies who, under local law or ordinance, are required, as a condition of issuance of a permit to use or open a street, to agree that none but competent workers, skilled in the work required of them shall be employed thereon and that prevailing scale of union wages shall be the prevailing wage for the similar titles as established by the fiscal officer pursuant to this section, paid to those so employed, shall be required to keep original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, setting forth the names and addresses and showing for each workman, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided as, and in the manner required by paragraphs a, b and c of this subdivision.

(ii) Utility company contractors and subcontractors to whom a permit may be issued, to use or open a street, shall be required to comply with section two hundred twenty-four-f of this article, as a condition of the issuance of a permit to use or open a street, to agree that none but competent workers, skilled in the work required of them shall be employed thereon and that prevailing scale of union wages shall be the prevailing wage for the similar titles as established by the fiscal officer pursuant to this section, paid to those so employed, shall be required to keep original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, setting forth the names and addresses and showing for each workman, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided

as, and in the manner required by paragraphs a, b and c of this subdivision.

f. Prevailing wage shall be paid for work performed on a public works worksite pursuant to this section for any work involving the delivery to and hauling from such worksites of aggregate supply construction materials, as well as any return hauls, whether empty or loaded and any time spent loading/unloading.

g. Prevailing wage shall be paid for work performed on a public works worksite pursuant to this section for any work involving the delivery to and hauling from such worksites of concrete and asphalt, as well as any return hauls, whether empty or loaded and any time spent loading/unloading, in the counties of Nassau, Putnam, Suffolk, and Westchester, and in the city of New York.

3-b. 1. Public work advisory board. There is hereby created in the department an advisory board on public work composed of six members to be appointed by the governor by and with the advice and consent of the senate. Two members of the advisory board shall be persons known to represent the interests of employers in the construction industry, two persons shall be known to represent the interest of employees therein, and two members shall be persons appointed to represent the public. The governor may remove any member when he or she ceases to represent the interests in whose behalf he or she was appointed. The commissioner of labor shall be an additional member of such board without any voting power and act as chairman thereof and shall designate an employee of the department to be secretary. The board shall meet at the call of the commissioner of labor and when engaged upon the work of the board each member, except the commissioner, shall not receive a salary or other compensation, but shall be reimbursed for reasonable traveling and other expenses to be audited by the state comptroller.

2. Terms of office. All members of the advisory board shall be appointed for a term of six years to begin at the expiration of the term of office of the member whom he is to succeed. Any member appointed to fill a vacancy occurring otherwise than by expiration of term shall be

appointed for the unexpired term of the member whom he is to succeed.

3-c. The advisory board shall adopt rules and regulations to govern its own proceedings, and to expedite the making by it of the examinations and determinations required by this chapter. The members of the advisory board shall have power:

1. To issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers, documents and other evidence;

2. To hear testimony and take or cause to be taken depositions of witnesses residing within or without this state in the manner prescribed by law for like depositions in civil actions in the supreme court. Subpoenas and commissions to take testimony shall be issued under the seal of the department.

3-d. The fiscal officer of any political subdivision of the state, wherein a public work project is proposed to be constructed, may request the industrial commissioner to make a classification by trades or occupations of laborers, workmen and mechanics required to perform the public work in its completed form. The board shall, when requested by the industrial commissioner, examine into proposed public work projects and determine the classification by trades or occupations of laborers, workmen and mechanics required to perform the public work in its completed form; and to determine which of same are skilled, semi-skilled or unskilled. The board shall file with the industrial commissioner its findings, determinations and recommendations.

3-e. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his work force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the New York State Department of Labor for the

classification of work he actually performed. The contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work.

4. This section shall not apply to:

a. Stationary firemen in state hospitals;

b. Other persons regularly employed in the state institutions, except mechanics;

c. Engineers, electricians and elevator men in the bureau of building management of the office of general services during the annual session of the legislature.

5. Definitions. a. The "prevailing rate of wage," for the intents and purposes of this article, shall be the rate of wage paid in the locality, as hereinafter defined, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed. The prevailing rate of wage shall be annually determined in accordance herewith by the fiscal officer no later than thirty days prior to July first of each year, and the prevailing rate of wage for the period commencing July first of such year through June thirtieth, inclusive, of the following year shall be the rate of wage set forth in such collective bargaining agreements for the period commencing July first through June thirtieth, including those increases for such period which are directly ascertainable from such collective bargaining agreements by the fiscal officer in his annual determination. In the event that it is determined after a contest, as provided in subdivision six of this section, that less than thirty percent of the workers, laborers or mechanics in a particular trade or occupation in the locality where the work is being performed receive a collectively

bargained rate of wage, then the average wage paid to such workers, laborers or mechanics in the same trade or occupation in the locality for the twelve-month period preceding the fiscal officer's annual determination shall be the prevailing rate of wage. Laborers, workers or mechanics for whom a prevailing rate of wage is to be determined shall not be considered in determining such prevailing wage.

b. "Supplements," for the intents and purposes of this article, means all remuneration for employment paid in any medium other than cash, or reimbursement for expenses, or any payments which are not "wages" within the meaning of the law, including, but not limited to, health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay life insurance, and apprenticeship training.

c. "Prevailing practices in the locality," for the intents and purposes of this article, shall be the practice of providing supplements, as hereinbefore defined, as provided by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality, as determined by the fiscal officer in accordance with the provisions herein.

With respect to each supplement determined to be one of the prevailing practices in the locality, the amount of such supplement shall be determined in the same manner and at the same times as the prevailing rate of wage is determined pursuant to this section.

d. "Locality" means such areas of the state described and defined for a trade or occupation in the current collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public and private work.

e. The "fiscal officer," as used herein, shall be deemed to be, on public work performed by or on behalf of the state or a public benefit corporation or a county or a village, or other civil division of the

state, except a city, with a population in excess of one million, the commissioner of labor; and on public work performed by or on behalf of a city with a population in excess of one million, the comptroller or other analogous officer of such city.

f. The term "verified complaint," as applied to a claim against a municipality, shall include a verified demand or verified notice of claim heretofore, and since the first day of January, nineteen hundred thirty-five, filed with the fiscal officer of such municipality in accordance with the provisions of the local charter or local laws or ordinances relating generally to the filing of claims or demands against such municipality; and any person who has filed such a demand or notice shall be deemed to have filed a verified complaint as of the date, not earlier than the first day of January, nineteen hundred thirty-five, mentioned in such notice or demand as the commencement of the period in relation to which such claim or demand is made.

g. "Substantially owned-affiliated entity" shall mean the parent company of the contractor or subcontractor, any subsidiary of the contractor or subcontractor, or any entity in which the parent of the contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the contractor or subcontractor individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any other indicia of control over the contractor or subcontractor or over which the contractor or subcontractor exhibits control, regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include, power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

h. "Entity" shall mean a partnership, association, joint venture, company, sole proprietorship, corporation or any other form of doing business.

i. "Parent company" shall mean an entity that directly controls the contractor or subcontractor.

j. "Subsidiary" shall mean an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or subcontractor or by the contractor's parent company.

k. "Successor" shall mean an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

l. "Person" shall mean a human being and shall also include an "entity" as defined in this article, including, but not limited to, a contractor or subcontractor.

6. The fiscal officer may, and on the written request of any interested person shall, require any person or corporation performing such public work to file with such fiscal officer schedules of the supplements to be provided and wages to be paid to such laborers, workmen or mechanics. Any such person or corporation shall, within ten days after the receipt of written notice of such requirement, file with the fiscal officer such schedules of wages and supplements. An employer may contest a determination by the fiscal officer under paragraphs a and c of subdivision five of this section. The employer must allege and prove by competent evidence, that the actual percentage of workers, laborers or mechanics is below the required thirty per centum and during the pendency of any such contest and until final determination thereof, the work in question shall proceed under the rate established by the fiscal officer.

7. Compliance investigations. The fiscal officer as herein defined shall on a verified complaint in writing of any person interested or of any employee organization pursuant to subdivision eight-d of this section, and may on his own initiative cause a compliance investigation to be made to determine whether the contractor or a subcontractor has paid the prevailing rate of wages and prevailing practices for

supplements in the same trade or occupation in the locality within the state where such public work is being performed, or the hours of labor performed by the workmen, laborers and mechanics employed on such public work, or both. The fiscal officer or his agents, examiners and inspectors may examine or cause to be examined the books and records pertaining to the rate of wages paid and supplements provided to the laborers, workmen and mechanics on said public work and the hours of labor performed by such laborers, workmen and mechanics on said public work. The fiscal officer in such investigation shall be deemed to be acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules. Such fiscal officer shall make either an order, determination or any other disposition, including but not limited to an agreed upon settlement and/or stipulation, within six months from the date of filing of such verified complaint, and where a compliance investigation is made without the filing of a verified complaint, within six months from the date a compliance investigation is initiated by such fiscal officer. Upon the making of said order or determination, or upon arriving at such agreed upon settlement and/or stipulation, a copy thereof shall be sent by certified mail, return receipt requested, by the fiscal officer: (i) to the person and employee organization, if any, who or which initiated the complaint, (ii) to the person or corporation, if any, against whom the complaint was brought, and (iii) where a compliance investigation is made without the filing of a complaint, to the person who or which was the subject of the compliance investigation.

7-a. The fiscal officer must make an inquiry as to the willfulness of the alleged violation which is the subject of a compliance investigation pursuant to subdivision seven of this section. In the event a formal hearing is held pursuant to subdivision eight of this section, the fiscal officer, upon a review of the entire record and a finding of credible evidence, must make a determination, as to the willfulness of said violation. No finding of willfulness made pursuant to the provisions of this subdivision shall be dispositive in a criminal prosecution initiated pursuant to section one hundred ninety-eight-a of this chapter, or paragraph (d) of subdivision three of this section, or

paragraph (c) of subdivision three-a of this section or any other provision of law.

8. Hearings. Before issuing an order or determination as provided in subdivision seven of this section, the fiscal officer shall order a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a copy of such complaint or the purpose thereof, or a statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on any person affected thereby; such person shall have an opportunity to be heard in respect to the matters complained of at the time and place specified in such notice, which time shall be not less than five days from the service of the notice personally or by mail. The fiscal officer in such hearing shall be deemed to be acting in a judicial capacity, and shall have the right to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules. Such hearing shall be expeditiously conducted and upon such hearing the fiscal officer shall determine the issues raised thereon and shall make and file an order in the office of the fiscal officer stating such determination, and forthwith serve a copy of such order, with a notice of the filing thereof, upon the parties to such proceeding, personally or by mail. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment, provided, however, that such interest rate shall not apply to subdivision eight-c of this section.

In addition to directing payment of wages or supplements including interest found to be due, such order may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping or other non-wage requirements. Where the fiscal officer

is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

Upon the entry of such order any party aggrieved thereby may commence a proceeding for the review thereof pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of the said order in the office of the fiscal officer. Said proceeding shall be commenced directly in the appellate division of the supreme court. If such order is not reviewed, or is so reviewed and the final decision is in favor of the complainant and the order involves or relates to the rate of wages paid or the supplements provided on such public work, the complainant or any other person affected may within six months after the service of notice of the filing of said order, or the notice of entry of said final decision on review, institute an action against the person found violating this act for the recovery of the difference between the sum actually paid or provided and the amount which should have been paid or provided, together with interest at the rate of interest provided herein, as determined by said order or decision, as the case may be, from and after the date of the filing of said verified complaint, with the fiscal officer or of the filing of the fiscal officer's report of investigation made on his own initiative. Provided that no proceeding for judicial review as provided herein shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer may file with the county clerk of the county where the employer resides or has a place of business the order of the fiscal officer containing the amount found to be due. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

8-a. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, the prior receipt without protest of the wages,

salary or supplements paid or provided, as the case may be, to the complainant or any other person affected by such final order, or his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the wages, salary or supplements received by him is received under protest, or to indicate in any other way his protest against the amount thereof, or that the amount so paid does not constitute payment in full of the wages or salary due him for the period covered by such payment, or that the supplements provided do not constitute the full supplements due him, shall not be a bar to his right to recover, in accordance with the provisions of subdivision eight, the difference between the sum actually paid or provided, as the case may be, and the amount which should have been paid or provided, as the case may be, as determined by such final order.

8-b. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, an employee of a municipal corporation, irrespective of the title of his position or employment, whose salary or wage or supplement is fixed by reference to a prevailing rate of wage determined or to a prevailing practice for supplements determination and established by a final order in a proceeding instituted under this section, shall not be barred from his right to recover, in accordance with the terms of such fixation, the difference between the amount actually paid to him and the amount which should have been paid to him or provided, as the case may be, pursuant to such fixation, because of the prior receipt by him without protest of the salary, wages or supplements paid or provided to him, as the case may be; or because he did not previously protest his prior failure to be provided with any supplement whatsoever; or on account of his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the salary or wages or supplements received by him is received under protest, or on account of his failure to indicate his protest against the amount or non-provision thereof or that the amount so paid or provided does not constitute payment or provision, as the case may be, in full of the salary, wages or supplement due him for the period covered by such payment.

8-c. Interest at six percentum per annum shall begin to accrue sixty days after a final determination made by a fiscal officer on the difference between the prevailing wages so determined, and which should have been paid to an employee of a municipal corporation, and the amount actually received by him. Said accumulated interest shall be paid to the employee when back pay based on the determination is paid to him.

8-d. Notwithstanding any inconsistent provision of this chapter or of any other law, in a city of one million or more, where a majority of laborers, workmen or mechanics in a particular civil service title are members of an employee organization which has been certified or recognized to represent them pursuant to the provisions of article fourteen of the civil service law or a local law enacted thereunder, the public employer and such employee organization shall in good faith negotiate and enter into a written agreement with respect to the wages and supplements of the laborers, workmen or mechanics in the title. If the parties fail to achieve an agreement, only the employee organization shall be authorized to file a single verified complaint pursuant to subdivision seven herein, on behalf of the laborers, workmen or mechanics so represented. Such employee organization shall be the sole and exclusive representative of such laborers, workmen or mechanics at any hearing pursuant to subdivision eight herein, and shall be the sole complainant in the proceeding for all purposes therein, including review pursuant to article seventy-eight of the civil practice law and rules. Service by the fiscal officer on the employee organization shall be sufficient notice to the laborers, workmen or mechanics so represented for all purposes of subdivision eight herein, except that the issuance and enforcement of subpoenas shall be regulated by the civil practice law and rules. Any order, compromise, or settlement determining the issues raised upon such a proceeding, which has not been taken up for review by the employee organization, shall be binding upon the laborers, workmen or mechanics represented by the employee organization. Nothing herein shall be construed to limit the rights of any laborer, workman or mechanic who has on file a verified complaint prior to the effective date of this subdivision.

9. When a final determination has been rendered, any person that

wilfully refuses thereafter to pay the rate of wages or to provide the supplements determined to be prevailing, or wilfully employs on such public work, laborers, workmen or mechanics more than the hours per day determined by said order until modified by order of the fiscal officer or court and thereby violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished, in accordance with the penal law. A person who violates this subdivision after having previously been convicted of violating this subdivision within the past five years shall be guilty of a class E felony, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such person shall be entitled to receive any sum nor shall any officer, agent or employee of the state or of a municipal corporation pay the same or authorize its payment from the funds under his charge or control to any such person for work done upon any contract, on which the contractor has been convicted of second offense in violation of the provisions of this section.

§ 220-a. Statements showing amounts due for wages and supplements to be filed--Verification. 1. Subcontractors engaged by a public improvement contractor or its subcontractor shall upon receipt from the public improvement contractor or its subcontractor of a copy of the schedule of wages and supplements specified in the public improvement contract, or of a subsequently issued schedule, provide to such contractor or its subcontractor a verified statement attesting that the subcontractor has received and reviewed such schedule of wages and supplements, or subsequently issued schedule, and agrees that it will pay the applicable prevailing wages and will pay or provide the supplements specified therein. Such verified statement shall be filed in the manner described in subdivisions two and four of this section. It shall be a violation of this article for any contractor or its subcontractor to fail to provide to its subcontractor a copy of the schedule of wages and supplements specified in the contract as well as any annually determined rate issued subsequent to the schedule specified in the contract.

2. Before final payment is made by or on behalf of the state, county,

city, town, village or other civil division of the state for any sum or sums due on account of a contract for a public improvement, it shall be the duty of the comptroller of the state or the financial officer of the municipal corporation or other officer or person charged with the custody and disbursement of the corporate funds applicable to the contract under and pursuant to which payment is made to require the contractor to file every verified statement required to be obtained by the contractor from its subcontractors pursuant to subdivision one of this section and to file a statement in writing in form satisfactory to such officer certifying to the amounts then due and owing from such contractor filing such statement to or on behalf of any and all laborers for daily or weekly wages or supplements on account of labor performed upon the work under the contract, setting forth therein the names of the persons whose wages or supplements are unpaid and the amount due to each or on behalf of each respectively. Such statement shall also set forth the amounts known by the contractor to be then due and owing from each subcontractor, or from a subcontractor of such subcontractor, for wages or supplements, or shall certify that the contractor has no knowledge of such amounts owing to or on behalf of any laborers of its subcontractors, and that in the event it is determined by the commissioner that the wages or supplements or both of any employees of such subcontractors have not been paid or provided pursuant to the appropriate schedule of wages and supplements, the contractor shall be responsible for payment of such wages or supplements pursuant to the provisions of section two hundred twenty-three of this article. Such statement so to be filed shall be verified by the oath of the contractor that he or she has read such statement subscribed by him or her and knows the contents thereof, and that the same is true of his or her own knowledge except with respect to wages and supplements owing by subcontractors which may be certified upon information and belief.

§ 220-b. Amounts due for wages and supplements may be withheld for benefit of laborers. 1. In case any interested person shall have previously filed a protest in writing objecting to the payment to any contractor or subcontractor to the extent of the amount or amounts due or to become due to him for daily or weekly wages or supplements for

labor performed on the public improvement for which such contract was entered into, or if for any other reason it may be deemed advisable, the comptroller of the state or the financial officer of the municipal corporation or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract for such public improvement may deduct from the whole amount of any payment on account thereof the sum or sums admitted by any contractor or subcontractor in such statement or statements so filed to be due and owing by him on account of labor performed on such public improvement before making payment of the amount certified for payment in any estimate or voucher, and may withhold the amount so deducted for the benefit of the laborers, workmen or mechanics whose wages or supplements are unpaid or not provided, as the case may be, as shown by the verified statements filed by any contractor or subcontractor, and may pay directly to any person the amount or amounts shown to be due to him or his duly authorized collective bargaining labor organization, as the case may be, for such wages or supplements by the statements filed as hereinbefore required, thereby discharging the obligation of the contractor or subcontractor to the person or his duly authorized collective bargaining labor organization receiving such payment to the extent of the amount thereof, or

2. a. (1) When any interested person shall file a written complaint with the fiscal officer, as herein defined, alleging unpaid wages or supplements due for labor performed on a public improvement for which a contract has been entered into, and said labor is alleged to have been performed within the two-year period immediately preceding the date of the filing of said complaint, or if, on the fiscal officer's own initiative, unpaid wages or supplements appear to be due, the fiscal officer shall immediately so notify the financial officer of the civil division interested, or, if there are insufficient moneys still due to the contractor or subcontractor to satisfy said wages and supplements, including interest and penalty, the financial officer of another civil division which has entered or subsequently enters into a public improvement contract with the contractor or subcontractor, who shall withhold from any payment due or earned the contractor or subcontractor executing any public improvements, sufficient moneys to satisfy said

wages and supplements, including interest at the rate provided herein, and any civil penalty that may be assessed as provided herein, pending a final determination. The financial officer shall immediately confirm in writing to the fiscal officer the amount of money withheld.

(2) If there are still insufficient moneys due or earned to the contractor or subcontractor, as a result of work performed, to satisfy such wages and supplements, including interest and penalties, the financial officer shall immediately notify the fiscal officer, who may issue a notice of intent to withhold any of the following:

(i) any substantially-owned affiliated entity or any successor or subsidiary of the contractor or subcontractor;

(ii) any of the partners, if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or

(iii) any officer of the contractor or subcontractor who knowingly participated in the violation of this article.

(3) The notice of intent to withhold shall provide that the fiscal officer intends to instruct the financial officer, not less than ten days following service of the notice by mail, to withhold sufficient moneys to satisfy unpaid wages and supplements, including interest at the rate provided in this article, and any civil penalty that may be assessed as provided in this article, from any payment due or earned the notified party under any public improvement contract pending final determination. The notice of withholding shall provide that within thirty days following the date of the notice of withholding the notified party may contest the withholding on the basis that the notified party is not a partner or top five shareholder of the subcontractor or contractor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, a substantially-owned affiliated entity, or successor. If the notified party fails to contest the notice of withholding, or if the fiscal officer, after reviewing the information provided by the notified party in such contest, determines that the notified party is a partner or top five shareholder, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a substantially-owned affiliated entity, or successor, the fiscal officer may instruct the financial officer to withhold sufficient moneys to satisfy said wages and

supplements, including interest at the rate provided in this article, and any civil penalty that may be assessed as provided in this article from any payment due the notified party under any public improvement contract pending the final determination.

(4) The financial officer shall immediately implement the notice of withholding and confirm in writing to the fiscal officer the amount of money to be withheld. If the notified party contests the withholding after a withholding has been effected, and if the fiscal officer determines, that the notified party is not a partner or top five shareholder, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a substantially-owned affiliated entity or successor, the fiscal officer shall immediately notify the financial officer to release all payments being withheld from the notified party and the financial officer shall implement the notice.

b. Moneys withheld pursuant to this section shall be held by the financial officer for the sole and exclusive benefit of the workers employed on said public improvement and for payment of any civil penalty that may be assessed as provided herein and shall not be used for any other purpose except upon court order. Any person, partnership, association, corporation or governmental body who files a lien or commences a judicial proceeding with respect to any monies withheld pursuant to this section shall notify the fiscal officer in writing of the lien or claim on or before the date of filing of the lien or commencement of the judicial proceeding. In any proceeding to obtain moneys withheld pursuant to this section by any person, partnership, association, corporation or governmental body, the fiscal officer shall have the right to appear and be heard.

c. The fiscal officer shall cause an investigation to be made to determine whether any amounts are due to the laborers, workmen or mechanics, or on their respective behalves, on such public improvement, for labor performed after the commencement of the three-year period immediately preceding the filing of the complaint or the commencement of the investigation on his own initiative, as the case may be, and shall order a hearing thereon at a time and place to be specified and shall give notice thereof, together with a copy of such complaint, or a

statement of the facts disclosed upon such investigation, which notice shall be served personally or by mail on all interested persons, including the person complained against and upon the financial officer of the civil division interested; such person complained against shall have an opportunity to be heard in respect to the matters complained of, at the time and place specified in such notice, which time shall be not less than five days from the service of said notice. The fiscal officer in such an investigation shall be deemed to be acting in a judicial capacity and shall have the rights to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules. Such investigation and hearing shall be expeditiously conducted, and upon such hearing and investigation, the fiscal officer shall determine the issues raised thereon and shall make and file an order in his office stating such determination and forthwith serve a copy of such order, either personally or by mail, together with notice of filing, upon the financial officer of the civil division interested, and the parties to such proceedings and, if the fiscal officer be the comptroller or other analogous officer of a city, upon the commissioner. Such order shall direct payment of wages or supplements found to be due, including interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the date of the underpayment to the date of the payment.

d. In addition to directing payment of wages or supplements including interest found to be due, the order of the fiscal officer may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer or any successor or substantially-owned affiliated entity or any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, and any officer of the contractor or subcontractor who knowingly participated in the violation of this

article, and the failure to comply with recordkeeping or other non-wage requirements. Upon the fiscal officer's determination of the penalty, where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

e. Upon the entry and service of such order, the financial officer of the civil division interested shall pay to the claimant, from the moneys due to the contractor or subcontractor, the amount of the claim as determined by the fiscal officer and the amount of the civil penalty, if any, shall be paid as provided herein, provided that no proceeding pursuant to article seventy-eight of the civil practice law and rules for review of said order is commenced by any party aggrieved thereby within thirty days from the date said order was filed in the office of the fiscal officer. Said proceeding shall be commenced directly in the appellate division of the supreme court. Where the fiscal officer is the commissioner, the civil penalty shall be paid to the commissioner for deposit in the state treasury; where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury. In the event that such a proceeding for review is instituted, moneys sufficient to satisfy the claim and civil penalty shall be set aside by the financial officer interested as provided in paragraph b of this subdivision, subject to the order of the court.

f. If the financial officer of the civil division interested fails to pay to the claimant the amount of the claim as determined by the fiscal officer within ten days after the expiration of the contractor's time to commence a proceeding for review of the fiscal officer's order or, if such a proceeding has been commenced, within ten days after entry and service of a court order confirming the fiscal officer's order, the civil division interested shall pay to the claimant interest on the claim at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law from the date the financial officer was required to pay the claim as provided herein to the date of payment; provided, however,

this paragraph shall not apply if the failure of the financial officer of the civil division interested to pay the amount of the claim is pursuant to court order.

g. When a final determination has been made in favor of a complainant and the contractor or subcontractor found violating this article has failed to make payment as required by the order of the fiscal officer, and provided that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of any of the following:

(i) any substantially-owned affiliated entity or any successor of the contractor or subcontractor;

(ii) any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or

(iii) any officer of the contractor or subcontractor who knowingly participated in the violation of this article; provided, however, that the fiscal officer shall within five days of the filing of the order provide notice thereof to the partner or top five shareholders or successor or substantially-owned affiliated entity or other entity determined to have violated any provision of subdivision five of section two hundred twenty of this article or this subdivision; the notified party may contest the filing on the basis that it is not a partner or top five shareholder, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, or successor or substantially-owned affiliated entity. If, after reviewing the information provided by the notified party in support of such contest, the fiscal officer determines that the notified party is not subject to the provision of this paragraph, the fiscal officer shall immediately withdraw his filing of the order.

The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect, as that prescribed by the civil practice law and

rules for the enforcement of a money judgment.

h. When a final determination has been made against a subcontractor in favor of a complainant and the contractor has made payment to the complainant of any wages and interest due the complainant and any civil penalty that has been assessed, and providing that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the contractor may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of the subcontractor. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The judgment may be docketed in favor of the contractor who may proceed as a judgment creditor against the subcontractor for the recovery of all monies paid by the contractor under such order.

Provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the fiscal officer containing the amount found to be due. The filing of such an order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

2-a. The fiscal officer shall make an inquiry as to the willfulness of the alleged violation which is the subject of an investigation pursuant to subdivision two of this section. In the event a formal hearing is held pursuant to this section, the fiscal officer, upon a review of the entire record and a finding of credible evidence, must make a determination, as to the willfulness of such violation. No finding of willfulness made pursuant to the provisions of this subdivision shall be dispositive for the purposes of section one hundred ninety-eight-a of this chapter or of the last undesignated paragraph of subdivision three of section two hundred twenty of this article.

3. a. When a final determination has been made and such determination is in favor of the complainant, said complainant may in addition to any other remedy provided by this article, institute an action in any court of appropriate jurisdiction against the person or corporation found violating this article, any substantially-owned affiliated entity or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, for the recovery of the difference between the sum, if any, actually paid to him by the aforesaid financial officer pursuant to said order and the amount found to be due him as determined by said order. Such action must be commenced within three years from the date of the filing of said order, or if the said order is reviewed in a proceeding pursuant to article seventy-eight of the civil practice law and rules, within three years after the termination of such review proceeding.

b. (1) When two final determinations have been rendered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor or any successor within any consecutive six-year period determining that such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has wilfully failed to pay the prevailing rate of wages or to provide supplements in accordance with this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered

simultaneously, such contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from the second final determination, provided, however, that where any such final determination involves the falsification of payroll records or the kickback of wages or supplements, the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the shareholders who own or control at least ten per centum of the outstanding stock of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation or public body for a period of five years from the first final determination.

(2) When any person or corporation, or any officer or shareholder who owns or controls at least ten per centum of the outstanding stock of such corporation, has been convicted of a felony offense for conduct relating to obtaining or attempting to obtain, or performing or attempting to perform a public work contract with the state, any municipal corporation, public benefit corporation or public body, and such felony offense is a violation of:

(i) this chapter; or

(ii) coercion in the first degree as defined in section 135.65 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal

possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, insurance fraud in the fourth degree as defined in section 176.15 of the penal law, insurance fraud in the third degree as defined in section 176.20 of the penal law, insurance fraud in the second degree as defined in section 176.25 of the penal law, insurance fraud in the first degree as defined in section 176.30 of the penal law, aggravated insurance fraud as defined in section 176.35 of the penal law, commercial bribing in the first degree as defined in section 180.03 of the penal law, commercial bribe receiving in the first degree as defined in section 180.08 of the penal law, bribing a labor official as defined in section 180.15 of the penal law, bribe receiving by a labor official as defined in section 180.25 of the penal law, criminal impersonation in the second degree as defined in section 190.25 of the penal law, criminal impersonation in the first degree as defined in section 190.26 of the penal law, criminal usury in the second degree as defined in section 190.40 of the penal law, criminal usury in the first degree as defined in section 190.42 of the penal law, scheme to defraud in the first degree as defined in section 190.65 of the penal law, bribery in the third degree as defined in section 200.00 of the penal law, bribery in the second degree as defined in section 200.03 of the penal law, bribery in the first degree as defined in section 200.04 of the penal law, bribe receiving in the third degree as defined in section 200.10 of the penal law, bribe receiving in the second degree as defined in section 200.11 of the penal law, bribe receiving in the first degree as defined in section 200.12 of the penal law, rewarding official misconduct in the second degree as defined in section 200.20 of the penal law, rewarding official misconduct in the first degree as defined in section 200.22 of the penal law, bribe giving for public office as defined in section 200.45 of the penal law, or the

attempted commission of any of the offenses set forth in this paragraph, provided that such offense constitutes a felony; or

(iii) criminal solicitation in the second degree as defined in section 100.10 of the penal law, conspiracy in the fourth degree as defined in section 105.10 of the penal law, conspiracy in the second degree as defined in section 105.15 of the penal law, or criminal facilitation in the second degree as defined in section 115.05 of the penal law, provided that such offense is a felony and was committed in connection with one or more of the crimes listed in clause (ii) of this subparagraph; or

(iv) article twenty-two of the general business law; or

(v) assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law and murder in the second degree as defined in section 125.25 of the penal law, provided that the victim was an employee of such person or corporation and further provided that such offense arose from actions or matters related to the protection of the health or safety of employees at a work site;

such person shall be ineligible to submit a bid on or be awarded any public works contract with the state, any municipal corporation, public benefit corporation or public body for a period of five years from the date of conviction.

* (3)(i) When any contractor, subcontractor, or person is listed by the federal government as excluded from receiving federal contracts and certain subcontracts, assistance or benefits, pursuant to 48 C.F.R. Subpart 9-4, such contractor, subcontractor, or person shall be ineligible to submit a bid on or be awarded any public work contract with the state, any municipal corporation, public benefit corporation or public body during such period of exclusion, unless the department having jurisdiction determines, after public notice and comment, that there is a compelling reason, consistent with 48 C.F.R. § 9.405, to allow such contractor, subcontractor, or person to submit a bid or to be

awarded a particular public work contract. Public notice shall include notice provided to the department, which shall post such notice on its website.

(ii) When the fiscal officer determines that a contractor, subcontractor or person is a "substantially owned-affiliated entity," as defined by paragraph g of subdivision five of section two hundred twenty of this article, in relation to a contractor, subcontractor, or person ineligible to submit a bid or be awarded a public work contract under clause (i) of this subparagraph, such substantially owned-affiliated entity shall be ineligible to submit a bid or be awarded any public work contract with the state, any municipal corporation, public benefit corporation for the duration of the remaining period of exclusion of the contractor, subcontractor, or person under clause (i) of this subparagraph. In order for a substantially owned-affiliated entity to be debarred pursuant to this clause, such substantially owned-affiliated entity must have had substantial involvement in the day to day management of the contractor, subcontractor or person debarred under clause (i) of this subparagraph. Such substantially owned-affiliated entity shall be provided with written notice from the fiscal officer of the proposed determination and shall be afforded an opportunity to be heard regarding the ineligible determination by the fiscal officer within thirty calendar days of the written notice. In addition, the department having jurisdiction may determine, after public notice and comment, that there is a compelling reason, consistent with 48 C.F.R. § 9.405, to allow such substantially owned-affiliated entity to submit a bid or to be awarded a particular public work contract. Public notice shall include notice provided to the department, which shall post such notice on its website.

(iii) Any determinations made pursuant to this subparagraph shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

* NB Repealed March 18, 2027

c. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts except that the ineligibility for submission of any bid or receipt of any award of public work set forth in this chapter shall

not be subject to any mitigation or judicial abatement, including, but not limited to, the provisions of article twenty-three of the correction law, and such ineligibility shall continue in full force and effect for the entire period set forth above.

§ 220-c. Contractor or subcontractor verifying false statement guilty of perjury.

Any contractor or subcontractor who shall upon his oath verify any statement required to be filed under this act which is known by him to be false shall be guilty of perjury and punishable as provided by the penal law.

§ 220-d. Minimum rate of wage and supplement. The advertised specifications for every contract for the construction, reconstruction, maintenance and/or repair of public work to which the state, county, town and/or village is a party shall contain a provision stating the minimum hourly rate of wage which can be paid and the minimum supplement that can be provided, as shall be designated by the industrial commissioner, to the laborers, workingmen or mechanics employed in the performance of the contract, either by the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workingmen or mechanics shall be paid not less than such hourly minimum rate of wage and provided supplements not less than the prevailing supplements.

Any person or corporation that wilfully pays after entering into such contract, less than such stipulated minimums regarding wages and supplements shall be guilty of a misdemeanor and upon conviction shall be punished, for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such person or corporation shall be entitled

to receive any sum nor shall any officer, agent or employee of the state pay the same or authorize its payment from the funds under his charge or control to any person or corporation for work done upon any contract, on which the contractor has been convicted of second offense in violation of the provisions of this section.

§ 220-e. Provisions in contracts prohibiting discrimination on account of race, creed, color or national origin in employment of citizens upon public works. Every contract for or on behalf of the state or a municipality for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies shall contain provisions by which the contractor with the state or municipality agrees:

(a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

(b) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, disability, sex or national origin;

(c) That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(d) That this contract may be cancelled or terminated by the state or municipality, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and

(e) The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be

limited to operations performed within the territorial limits of the state of New York.

§ 220-f. Labor policy of the state with regard to public work contracts; participation in an international boycott prohibited. It shall be the labor policy of the state that contracts for the construction, reconstruction, maintenance and/or repair of public work or for services performed or to be performed or for goods sold or to be sold in an amount exceeding five thousand dollars to which the state or any public department, agency or official thereof intends to be a party shall not be executed with any person, firm, partnership or corporation which is participating or has participated at any time in an international boycott in violation of the provisions of the United States export administration act of nineteen hundred sixty-nine, as amended, or the export administration act of nineteen hundred seventy-nine, as amended, or the regulations of the United States department of commerce promulgated thereunder.

§ 220-g. Additional enforcement of article. For the purpose of enforcing this article, the affected employee may bring an action to recover from the bond which is required by section one hundred thirty-seven of the state finance law, of the contractor, the subcontractor or both, unpaid wages and supplements, including interest as provided for in subdivision eight of section two hundred twenty of this article, due to persons furnishing labor to either the contractor or subcontractor. Said action may be brought against the contractor, the subcontractor, or the issuer of such bond, without prior notice, within one year of the date of the last alleged underpayment, or within one year of the date of the filing of an order by the commissioner or other fiscal officer determining a wage or supplement underpayment. The employee may permit an employee organization or the commissioner or other fiscal officer to commence such action on his behalf.

§ 220-h. Occupational Safety and Health Administration (OSHA)

construction safety and health course. The advertised specifications for every contract for the construction, reconstruction, maintenance and/or repair of public work to which the state or a municipality is a party, where the total cost of all work to be performed under the contract is at least two hundred fifty thousand dollars, shall contain a provision requiring that all laborers, workers, and mechanics employed in the performance of the contract on the public work site, either by the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, shall be certified prior to performing any work on the project as having successfully completed a course in construction safety and health approved by the United States department of labor's occupational safety and health administration that is at least ten hours in duration.

§ 220-i. Registration system for contractors and subcontractors. 1. As used in this section:

a. "Contractor" means any entity entering into a contract to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

b. "Subcontractor" means any entity subcontracting with a contractor to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

c. "Covered project" means any project subject to the provisions of this article, including but not limited to, public work projects and those subject to the provisions of sections two hundred twenty-four-a and two hundred twenty-four-d of this article.

2. a. In accordance with subdivision six of this section, a contractor or subcontractor shall register in writing with the commissioner on a form provided by the commissioner. The form shall require the following information:

i. The name, principal business address and telephone number of the contractor or subcontractor.

ii. Whether the contractor is a person, partnership, association, joint stock company, trust, corporation, or other form of business entity.

iii. The name and address of each person with an ownership interest in the contractor or subcontractor and the percentage interest, except that if the contractor or subcontractor is a publicly-traded corporation, the contractor or subcontractor shall supply the names and addresses of the corporation's officers.

iv. The contractor's or subcontractor's tax identification number, unemployment insurance registration number, and workers' compensation board employer number.

v. Whether the contractor or subcontractor has any outstanding wage assessments against it, pursuant to this article.

vi. Whether the contractor or subcontractor has been debarred under New York or federal law within the last eight years.

vii. Whether the contractor or subcontractor has been debarred pursuant to the laws of any other state within the last eight years.

viii. Whether the contractor or subcontractor has been finally determined by the appropriate authority to have violated any labor laws or employment tax laws including, but not limited to, the requirement to have workers' compensation coverage, payment of workers' compensation premiums, deduction and payment of income taxes, payment of unemployment insurance contributions or payment of prevailing wage.

ix. Whether the contractor or subcontractor has been finally determined by the appropriate authority to have violated any laws establishing workplace safety standards including the federal

Occupational Safety and Health Act.

x. Whether or not the contractor or subcontractor is associated, or a signatory to, an apprenticeship program under article twenty-three of this chapter. If so, the apprenticeship program shall be provided by the contractor or subcontractor.

xi. Whether or not the contractor or subcontractor is a minority or women-owned business enterprise pursuant to the provisions of article fifteen-A of the executive law.

b. At the time of registration, and upon request, the contractor or subcontractor shall submit to the commissioner documentation demonstrating that the contractor or subcontractor has workers' compensation insurance coverage for all workers as required by law, including any and all declarations and information pages related to such policy which shall be electronically accessible and searchable to the public, provided however, that in no event shall a worker's name or other personal identifying information be included in such database. This information shall be made readily available to the public by the commissioner within forty-eight hours of the initial public request.

3. The contractor or subcontractor shall pay a non-refundable registration fee of two hundred dollars to the commissioner which shall be paid to the general fund. The commissioner, through regulations, shall reduce the registration fee associated with minority or women-owned business enterprises in order to promote the use of such businesses on covered projects.

4. Unless the commissioner determines a contractor or subcontractor unfit to be registered, the commissioner shall issue a certificate of registration to the contractor or subcontractor upon receipt of the fee, form and documentation required by this section. A registration certificate shall be valid for two calendar years from the date of registration. Registrations may be renewed not less than ninety days before the expiration date of the immediately preceding registration. The commissioner shall promulgate regulations to determine under what

circumstances a contractor or subcontractor would be unfit to be registered pursuant to this section; provided that a contractor or subcontractor shall not be determined to be unfit solely because a contractor or subcontractor was debarred within the last eight years, unless such contractor or subcontractor is currently debarred or ineligible pursuant to subdivision three of section two hundred twenty-b of this article or section one hundred forty-one-b of the workers' compensation law or such contractor or subcontractor is subject to a final administrative or court order for violation of state or federal prevailing wage law which has not been fully satisfied, provided further that a contractor that has made payment for unpaid wages on behalf of a subcontractor shall not be determined unfit solely as a result of actions of a subcontractor. The commissioner shall, before making a determination of unfitness, notify the contractor or subcontractor in writing of the reasons for such proposed determination and afford the contractor or subcontractor an opportunity to cure or be heard prior to the determination. Such notice shall notify the contractor or subcontractor that a request for a hearing must be made within thirty days after issuance of such notification. If a hearing is requested, such hearing shall be held at such time and place as the commissioner shall prescribe. If the contractor or subcontractor fails to make a written request for a hearing within thirty days after issuance of such notification, then the notification of determination shall become the final determination of the commissioner. Any documents, reports, or information that form a basis for such determination shall be provided to the contractor or subcontractor no less than ten days before the hearing. For purposes of this subdivision, the term "unfit" shall mean a contractor or subcontractor who the commissioner determines to be unable to lawfully adhere to contractual obligations of this article and responsibilities including prevailing wage requirements pursuant to this article. Such determination shall be based on a clearly documented history, official record of past dealings, or a present demonstrable inability to lawfully adhere to such obligations and responsibilities.

5. If the registration of a contractor or subcontractor lapses while performing contracted work on a covered project, that contractor or subcontractor shall not be prohibited from completing its contracted

work on such covered project. For a contractor or subcontractor who has been determined unfit while performing contracted work on a covered project at the time of such determination, then the continuation of its contracted work shall only continue if a monitor is appointed to oversee the work completed at the sole expense of such contractor or subcontractor. Nothing herein shall prevent a contractor or subcontractor from fulfilling contractual obligations solely based on receiving a notice of proposed determination of unfitness. Such monitor must be approved by the commissioner.

6. No contractor shall bid on a contract for public work unless such contractor is registered pursuant to this section. In the case of a covered project subject to section two hundred twenty-four-a or two hundred twenty-four-d of this article, or other projects that are privately owned and subject to provisions of this article, contractors must register prior to commencing any work on a covered project. Subcontractors must be registered prior to commencing any work on a covered project. Further, each contractor must submit their certificate of registration at the time the bid is made. Applications for registration shall not be accepted as a substitute for a certificate of registration for the purposes of this section.

7. For covered projects as defined in section two hundred twenty-four-a or two hundred twenty-four-d of this article or other projects that are privately owned and subject to provisions of this article, the owner or developer of such covered project must ensure that any contractor that is hired, or subcontractor that is hired, to perform work on such project is registered pursuant to this section prior to that contractor or subcontractor commencing work on the covered project for which it was contracted.

8. a. A contractor who bids on a contract for public work knowing that it is not registered, or allows a subcontractor to commence work on a covered project that it knows or should have known is not registered pursuant to subdivision six of this section shall, after notice and a hearing, be subject to a civil penalty of up to one thousand dollars. For covered projects performed under private contract, as defined in

section two hundred twenty-four-a or two hundred twenty-four-d of this article, or for other projects that are privately owned and subject to the provisions of this article, an owner or developer who commences work with a contractor or subcontractor that it knows or should have known is not registered pursuant to subdivision six of this section shall, after notice and hearing, be subject to a civil penalty of up to one thousand dollars. A contractor or subcontractor who commences work on a covered project knowing that it is not registered or contracts with a subcontractor that it knows or should have known is not registered for work on a covered project shall, after notice and hearing be subject to a civil penalty of up to one thousand dollars.

b. The commissioner may revoke or suspend a registration if a contractor or subcontractor has been finally determined to be in violation of the prevailing wage requirements of this article, provided however that such contractor or subcontractor shall be afforded a hearing prior to any revocation or suspension.

c. Nothing in this section shall be construed to limit or supersede the authority of any state or municipal entity to enforce existing labor laws, safety standards, regulations, codes or any other existing laws relative to public work.

d. A registration pursuant to this section is not necessary for a bid or work on a contract for public work and penalties pursuant to this section shall not apply when a state of emergency is declared pursuant to section twenty-four of the executive law, when the governor declares a disaster emergency pursuant to section twenty-eight of the executive law, or when the President issues a major disaster or emergency declaration and such work arises from or is in connection with the actual or impending declared emergency or disaster or pursuant to an emergency construction contract, or other contract entered into due to an urgent and unexpected event where public safety or the conservation of public resources is at risk, as authorized by law, including but not limited to the public buildings law, the state finance law, the general municipal law, or the public authorities law.

9. The commissioner shall establish and maintain an online system to make available all registrations and disclosures required by this section, except for any personally identifiable information, including home address and percentages of ownership interest in privately held entities.

10. The commissioner shall prescribe regulations necessary to carry out the provisions of this section.

§ 220-j. Payroll reporting requirements. 1. As used in this section:

a. "Contractor" means any entity entering into a contract to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

b. "Fiscal officer" for purposes of this section shall have the same meaning as set forth in paragraph e of subdivision five of section two hundred twenty of this article.

c. "Subcontractor" means any entity subcontracting with a contractor to perform construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication, which is subject to the provisions of this article.

d. "Covered project" means any project subject to the provisions of this article, including but not limited to, public work projects, privately owned prevailing wage projects and those subject to the provisions of sections two hundred twenty-four-a, two hundred twenty-four-d and sections two hundred twenty-four-f of this article.

e. "Monthly" means at least once every thirty days while work is being performed on a covered project and within thirty days after the final day of work was performed on the covered project.

2. Each contractor and subcontractor working on a covered project

shall furnish records consistent with subparagraph (iii) of paragraph a of subdivision three-a of section two hundred twenty of this article directly to the fiscal officer in the following manner:

a. submit records monthly unless such covered project contract requires more frequent reporting requirements;

b. in an electronic format, in a manner prescribed by the commissioner, on the department's website;

c. provide documentation of each fund, plan or program where any supplement has been paid or provided for; and

d. provide a copy of the payment bond required by section one hundred thirty-seven of the state finance law, including all information open to public inspection.

2-a. For purposes of subparagraphs (iii) and (iv) of paragraph a of subdivision three-a of section two hundred twenty of this article, the furnishing of electronic records consistent with subdivision two of this section by a contractor or subcontractor shall satisfy the requirement that such contractor or subcontractor submit a transcript of the original payroll record and that the appropriate department of jurisdiction collect and maintain such payroll records.

3. a. A contractor or subcontractor who fails to furnish records pursuant to this section relating to its employees, shall be subject to a penalty by the fiscal officer of one hundred dollars for each day such contractor or subcontractor is in violation of this section.

b. The fiscal officer shall not level a penalty pursuant to this subdivision until such contractor or subcontractor fails to furnish such electronic records fourteen days after the requirements set forth in paragraph a of subdivision two of this section.

c. Such penalties pursuant to this subdivision shall only accrue to the actual contractor or subcontractor who failed to furnish such

required records.

d. All penalties collected pursuant to this section shall be used by the fiscal officer for prevailing wage enforcement.

e. The fiscal officer shall undertake activities it deems necessary to monitor and enforce compliance with this section.

4. No later than December thirty-first, two thousand twenty-five, the department shall develop and implement an online database of electronic certified payroll records submitted pursuant to this section. Such database shall be publicly accessible, but not include personally identifiable information. Such database shall be searchable, including each available payroll record subset. In a city with a population in excess of one million, the commissioner shall ensure access to such online database is provided to the fiscal officer in a manner that allows such officer to monitor and enforce the provisions of this section.

5. Within thirty days of the effective date of this section, the mayor of a city with a population in excess of one million shall notify the commissioner that such city elects to develop and implement an online database of electronic certified payroll records submitted pursuant to this section for every contractor and subcontractor working on a public work subject to section two hundred twenty of this article performed by or on behalf of the city. Such database shall be publicly accessible on the city's website and through the department's website, shall not include personally identifiable information and shall comply with all provisions of this chapter. The city comptroller shall have access to such online database in a manner that allows such officer to monitor and enforce the provisions of this section. Where such city comptroller determines that such database does not comply with all provisions of this chapter, or where such city fails to develop such database by December first, two thousand twenty-five, upon notice to the commissioner, all such city agency projects shall be covered by the commissioner's database and such contractors and subcontractors shall furnish records to the commissioner in accordance with this section.

§ 221. Company stores. No person engaged in construction of public work under contract with the state or with any municipal corporation either as a contractor or subcontractor shall, directly or indirectly, conduct what is commonly known as a company store if there is any store selling supplies within two miles of the place where such contract is being executed. Charges for groceries, provisions, board, lodging or clothing shall not be a valid off-set in behalf of the employer against wages.

§ 221-a. Permits required. No person or persons shall conduct what is commonly known as a company store or a labor camp for the purpose of selling provisions or clothing or for providing board and/or lodging to workmen in the employ of a contractor, subcontractor or other person doing the whole or a part of the work contemplated by a contract awarded by the state or a municipal corporation without a permit from the industrial commissioner.

§ 221-b. Issue of permits. 1. An application for a permit shall be made to the commissioner upon blanks furnished by him, and shall state under oath:

- a. Name of owner or lessee of the property.
- b. A list of the provisions and clothing it is intended to sell.
- c. The maximum number of boarders or lodgers it is intended to accommodate.

2. With the application there shall be presented to the commissioner proof of the applicant's citizenship and moral character, and if a corporation, similar proof concerning its officers.

3. The applicant shall pay to the commissioner a permit fee of fifty

dollars.

4. On approval of the application, the commissioner shall issue a permit only for the place designated in the application, and shall not be transferable. The commissioner may revoke the permit on notice and for cause shown.

5. Every operator of such a store or camp shall keep prominently posted in a conspicuous place on the premises a statement printed in the English language and in the language understood by the majority of the patrons, specifying the rate of charges by the day and week for lodging, meals, clothing and provisions supplied, and a copy thereof shall be filed with the commissioner.

§ 222. Project labor agreements. 1. Definition. "Project labor agreement" shall mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.

2. Contracts. Notwithstanding the provisions of any general, special or local law, or judicial decision to the contrary:

(a) Any agency, board, department, commission or officer of the state of New York, or of any political subdivision thereof as defined in section one hundred of the general municipal law, municipal corporation as defined in section sixty-six of the general construction law, public benefit corporation, or local or state authority as defined in section two of the public authorities law having jurisdiction over the public work may require a contractor awarded a contract, subcontract, lease, grant, bond, covenant or other agreement for a project to enter into a project labor agreement during and for the work involved with such project when such requirement is part of the agency, board, department, commission or officer of the state of New York, political subdivision,

municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work request for proposals for the project and when the agency, board, department, commission or officer of the state of New York, political subdivision, municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement.

(b) Any contract, subcontract, lease, grant, bond, covenant or other agreement for projects undertaken pursuant to this section shall not be subject to the requirements of separate specifications (referred to as the Wicks Law) when the agency, board, department, commission or officer of the state of New York, or political subdivision thereof, municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work has chosen to require a project labor agreement, pursuant to paragraph (a) of this subdivision.

(c) Whenever the agency, board, department, commission or officer of the state of New York, or political subdivision thereof, municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work enters into a contract, subcontract, lease, grant, bond, covenant or other agreement for the construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement for a project undertaken pursuant to this section, it shall be deemed to be a public works project for the purposes of this article, and all the provisions of this article shall be applicable to all the work involved with such project including, but not limited to, the enforcement of prevailing wage requirements by the fiscal officer as defined in paragraph (e) of subdivision five of section two hundred twenty of this article.

(d) Every contract entered into by any agency, board, department, commission or officer of the state of New York, or any political subdivision thereof, municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work for a project shall contain a provision that the design of such project

shall be subject to the review and approval of the entity and that the design and construction standards of such project shall be subject to the review and approval of such state entity, if applicable. In addition, every such contract shall contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor and materials pursuant to the requirements of any contracts for a project undertaken pursuant to this section and a performance bond for the faithful performance of the project, which shall conform to the provisions of state or local law, and that a copy of such performance and payment bonds shall be kept by such entity and shall be open to public inspection.

(e) Any contract, subcontract, lease, grant, bond, covenant, or other agreement for construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement with respect to each project undertaken pursuant to this section, the entity shall consider the financial and organizational capacity of contractors and subcontractors in relation to the magnitude of work they may perform, the record of performance of contractors and subcontractors on previous work, the record of contractors and subcontractors in complying with existing labor standards and maintaining harmonious labor relations, and the commitment of contractors to work with minority and women-owned business enterprises pursuant to article fifteen-A of the executive law through joint ventures of subcontractor relationships. With respect to any contract for construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement in excess of three million dollars in the counties of the Bronx, Kings, New York, Queens, and Richmond; one million five hundred thousand dollars in the counties of Nassau, Suffolk and Westchester; and five hundred thousand dollars in all other counties within the state; the entity shall further require that each contractor and subcontractor shall participate in apprentice training programs in the trades of work it employs that have been approved by the department for not less than three years and shall have graduated at least one apprentice in the last three years and shall have at least one apprentice currently enrolled in such apprenticeship training program. In addition, it must be demonstrated that the program has made significant efforts to attract

and retain minority apprentices, as determined by affirmative action goals established for such program by the department.

§ 222-a. Prevention of dust hazard in public works. In the construction of public works by the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law wherein a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the board of standards and appeals, a provision shall be inserted in each contract for the construction of such work requiring the installation, maintenance and effective operation of such appliances and methods, and a further provision shall be inserted in such contract that if this section is not complied with, the contract shall be void. In the construction of public works performed directly by the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law wherein a harmful dust hazard is created for which appliances or methods for the elimination of silica dust or other harmful dust have been approved by the board of standards and appeals, the department, board or officer in the state, public benefit corporation, or municipal corporation or commission or board appointed pursuant to law, having jurisdiction over the construction of such work shall provide for the effective use of such approved appliances or methods in connection therewith. A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both fine and imprisonment.

§ 223. Enforcement of article. If the fiscal officer as defined herein finds that any person contracting with the state, a municipal corporation, or any commission appointed pursuant to law, for the performance of any public work fails to comply with or evades the provisions of this article, he shall present evidence of such non-compliance or evasion to the officer, department, board or commission having charge of such work for enforcement. Wherein such evidence indicates a non-compliance or evasion on the part of a

sub-contractor, the contractor shall be responsible for such non-compliance or evasion. It shall be the duty of any officer, department, board or commission in charge of the construction of such public work contracts to enforce the provisions of this article.

§ 224. Contracting for public work; enforcement. 1. The commissioner shall have the power to enforce any provision of law requiring the preparation of separate specifications for public work contracts. Whenever the commissioner determines that an agency, board, department, commission or officer of the state of New York, or of any political subdivision thereof as defined in section one hundred of the general municipal law, municipal corporation as defined in section sixty-six of the general construction law, public benefit corporation, or local or state authority as defined in section two of the public authorities law having jurisdiction over a public work contract for which the preparation of separate specifications is required has failed to prepare such separate specifications, the commissioner may issue a stop-bid order, which shall take effect as to such public work bid or contract when served upon such agency, board, department, commission or officer of the state of New York, political subdivision, municipal corporation, public benefit corporation or local or state authority. Such stop-bid order shall be served by regular mail, and a second copy may be served by telefacsimile or by electronic mail, with service effective upon receipt of any of such notices. The order shall remain in effect until the commissioner directs that the stop-bid order be removed, upon a determination that the agency, board, department, commission or officer of the state of New York, political subdivision, municipal corporation, public benefit corporation or local or state authority has complied with the separate specifications requirement. The agency, board, department, commission or officer of the state of New York, political subdivision, municipal corporation, public benefit corporation or local or state authority may within thirty days after notice of the stop-bid order make an application in affidavit form for a redetermination review of such order. The commissioner shall make a decision in writing on the issues raised in such application within thirty days of receipt of such application.

2. The commissioner may file a complaint in the supreme court of any county where venue is proper to enjoin any agency, board, department, commission or officer of the state of New York, political subdivision, municipal corporation, public benefit corporation or local or state authority from violating a stop-bid order. In any action brought by the commissioner pursuant to this section in which it prevails, the court may award costs, including the reasonable costs of investigation and reasonable attorneys' fees.

3. In any court proceedings under this section, the commissioner shall be represented by the attorney general.

§ 224-a. Prevailing wage requirements applicable to construction projects performed under private contract. 1. Subject to the provisions of this section, each "covered project" as defined in this section shall be subject to prevailing wage requirements in accordance with section two hundred twenty and two hundred twenty-b of this article. A "covered project" shall mean construction work done under contract which is paid for in whole or in part out of public funds as such term is defined in this section where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs and where such project costs are over five million dollars except as provided for by section two hundred twenty-four-c of this article.

2. For purposes of this section, "paid for in whole or in part out of public funds" shall mean any of the following:

a. The payment of money, by a public entity, or a third party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;

b. The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements,

tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity;

c. Money loaned by the public entity that is to be repaid on a contingent basis;

d. Credits that are applied by the public entity against repayment of obligations to the public entity; or

e. Benefits under section four hundred sixty-seven-m of the real property tax law.

3. For purposes of this section, "paid for in whole or in part out of public funds" shall not include:

a. Benefits under section four hundred twenty-one-a of the real property tax law;

b. Funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, which would otherwise be captured in subdivision two of this section;

c. Funds used to incentivize or ensure the development of a comprehensive sewage system, including connection to existing sewer lines or creation of new sewage lines or sewer capacity, provided, however, that such work shall be deemed to be a public work covered under the provisions of this article;

d. tax benefits provided for projects the length or value of which are not able to be calculated at the time the work is to be performed;

e. tax benefits related to brownfield remediation or brownfield redevelopment pursuant to section twenty-one, twenty-two, one hundred eighty-seven-g or one hundred eighty-seven-h of the tax law, subdivision seventeen or eighteen of section two hundred ten-B of the tax law,

subsection (dd) or (ee) of section six hundred six of the tax law, or subdivision (u) or (v) of section fifteen hundred eleven of the tax law;

f. funds provided pursuant to subdivision three of section twenty-eight hundred fifty-three of the education law;

g. any other public monies, credits, savings or loans, determined by the public subsidy board created in section two hundred twenty-four-c of this article as exempt from this definition; and

h. benefits under section four hundred eighty-five-x of the real property tax law.

4. For purposes of this section "covered project" shall not include any of the following:

a. Construction work on one or two family dwellings where the property is the owner's primary residence, or construction work performed on property where the owner of the property owns no more than four dwelling units;

b. Construction work performed under a contract with a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law, other than a not-for-profit corporation formed exclusively for the purpose of holding title to property and collecting income thereof or any public entity as defined in this section, where the not-for-profit corporation has gross annual revenue and support less than five million dollars;

c. Construction work performed on a multiple residence and/or ancillary amenities or installations that is wholly privately owned in any of the following circumstances except as provided for by section two hundred twenty-four-c of this article:

(i) where no less than twenty-five percent of the residential units are affordable and shall be retained subject to an anticipated regulatory agreement with a local, state, or federal governmental entity, or a not-for-profit entity with an anticipated formal agreement

with a local, state, or federal governmental entity for purposes of providing affordable housing in a given locality or region provided that the period of affordability for a residential unit deemed affordable under the provisions of this paragraph shall be for no less than fifteen years from the date of construction; or

(ii) where no less than thirty-five percent of the residential units involves the provision of supportive housing services for vulnerable populations provided that such units are subject to an anticipated regulatory agreement with a local, state, or federal governmental entity; or

(iii) any newly created programs for affordable or subsidized housing as determined by the public subsidy board established by section two hundred twenty-four-c of this article.

d. Construction work performed on a manufactured home park as defined in paragraph three of subdivision a of section two hundred thirty-three of the real property law where the manufactured home park is subject to a regulatory agreement with a local, state, or federal governmental entity for no less than fifteen years;

e. Construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization;

f. Construction work performed on projects funded by section sixteen-n of the urban development corporation act or the downtown revitalization initiative;

g. Construction work and engineering and consulting services performed

in connection with the installation of a renewable energy system, renewable heating or cooling system, or energy storage system, with a capacity equal to or under five megawatts alternating current;

h. Construction work performed on supermarket retail space built or renovated with tax incentives provided under the food retail expansion to support health (FRESH) program through the New York city industrial development agency;

i. Construction work performed for interior fit-outs and improvements under ten thousand square feet through small business incubation programs operated by the New York city economic development corporation;

j. Construction work on space to be used as a school under sixty thousand square feet, pursuant to a lease from a private owner to the New York city department of education and the school construction authority; or

k. Construction work performed on projects that received tax benefits related to historic rehabilitation pursuant to subdivision twenty-six of section two hundred ten-B of the tax law, subsection (oo) or (pp) of section six hundred six of the tax law, or subdivision (y) of section fifteen hundred eleven of the tax law.

5. For purposes of this section, "public entity" shall include, but shall not be limited to, the state, a local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.

6. For purposes of this section, "construction" means work which shall be as defined by the public subsidy board to require payment of prevailing wage, and which may involve the employment of laborers, workers, or mechanics.

7. For purposes of this section and section two hundred twenty-four-b of this article, the "fiscal officer" shall be deemed to be the commissioner.

8. The enforcement of any construction work deemed to be a covered project pursuant to this section, and any additional requirements, shall be subject, in addition to this section, only to the requirements of sections two hundred twenty, two hundred twenty-four-b, two hundred twenty-four-c, and two hundred twenty-b of this article and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered project as otherwise being considered public work pursuant to this article; and further provided:

a. The owner or developer of such covered project shall certify under penalty of perjury within five days of commencement of construction work whether the project at issue is subject to the provisions of this section through the use of a standard form developed by the fiscal officer.

b. The owners or developers of a property who are undertaking a project under private contract, may seek guidance from the public subsidy board contained in section two hundred twenty-four-c of this article, and such board may render an opinion as to whether or not the project is a covered project within the meaning of this article. Any such determination shall not be reviewable by the fiscal officer, nor shall it be reviewable by the department pursuant to section two hundred twenty of this article.

c. The owner or developer of a covered project shall be responsible for retaining original payroll records in accordance with section two hundred twenty of this article for a period of six years from the

conclusion of such work. All payroll records maintained by an owner or developer pursuant to this section shall be subject to inspection on request of the fiscal officer. Such owner or developer may authorize the prime contractor of the construction project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All records obtained by the fiscal officer shall be subject to the Freedom of Information Law.

d. Each public entity providing any of the public funds listed in subdivision two of this section to an owner, developer, contractor or subcontractor of a project shall identify the nature and dollar value of such funds and whether any such funds are excluded under subdivision three of this section and shall so notify the recipient of such funds of such determination and of their obligations under paragraph a of this subdivision.

e. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.

9. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law. The department in consultation with the directors of the division of minority and women's business development and of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on covered projects achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.

10. a. The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-two, and annually thereafter, on the participation of minority and women-owned business enterprises in relation to covered projects and contracts for public work subject to the provisions of this section and section two hundred twenty of this article respectively as well as the diversity practices of contractors and subcontractors employing laborers, workers, and mechanics on such projects.

b. Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner.

c. The fiscal officer may require any owner or developer to disclose information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered project. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

11. If construction work is not deemed to be a covered project, whether by virtue of an exclusion of such project under subdivision four of this section, or by virtue of not receiving sufficient public money to be deemed "paid for in whole or in part out of public funds", such project shall not be subject to the requirements of sections two hundred twenty and two hundred twenty-b of this article.

§ 224-b. Stop-work orders. Where a complaint is received pursuant to this article, or where the fiscal officer upon his or her own

investigation, finds cause to believe that any person, in connection with the performance of any contract for public work pursuant to section two hundred twenty of this article or any covered project pursuant to section two hundred twenty-four-a of this article, has substantially and materially failed to comply with or intentionally evaded the provisions of this article, the fiscal officer may notify such person in writing of his or her intention to issue a stop-work order. Such notice shall (i) be served in a manner consistent with section three hundred eight of the civil practice law and rules; (ii) notify such person of his or her right to a hearing; and (iii) state the factual basis upon which the fiscal officer has based his or her decision to issue a stop-work order. Any documents, reports, or information that form a basis for such decision shall be provided to such person within a reasonable time before the hearing. Such hearing shall be expeditiously conducted.

Following the hearing, if the fiscal officer issues a stop-work order, it shall be served by regular mail, and a second copy may be served by telefacsimile or by electronic mail, with service effective upon receipt of any such order. Such stop-work order shall also be served with regard to a worksite by posting a copy of such order in a conspicuous location at the worksite. The order shall remain in effect until the fiscal officer directs that the stop-work order be removed, upon a final determination on the complaint or where such failure to comply or evade has been deemed corrected. If the person against whom such order is issued shall within thirty days after issuance of the stop-work order makes an application in affidavit form for a redetermination review of such order the fiscal officer shall make a decision in writing on the issues raised in such application. The fiscal officer may direct a conditional release from a stop-work order upon a finding that such person has taken meaningful and good faith steps to comply with the provisions of this article.

§ 224-c. Public subsidy board. 1. A board on public subsidies, hereinafter "the board", is hereby created, to consist of thirteen members. The thirteen members shall be appointed by the governor as follows: one member upon the recommendation of the temporary president

of the senate, one member upon the recommendation of the speaker of the assembly, the commissioner, the president of the empire state development corporation, the director of the division of the budget, two members representing employees in the construction industry, of whom one shall be a representative of the largest statewide trade labor association representing building and construction workers, and one shall be a representative of the largest trade labor association representing building and construction workers with membership in New York City, and two members representing employers in the construction industry, of whom one shall be a representative of the largest statewide organization representing building owners and developers, either for-profit or not-for-profit, and one shall be a representative of a statewide organization representing building owners and developers, either for-profit or not-for-profit, representing a region different than the region primarily represented by the initial employer representative. The commissioner shall act as the chair. The members shall serve at the pleasure of the authority recommending, designating, or otherwise appointing such member and shall serve without salary or compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

2. The board shall meet on an as needed basis and shall have the power to conduct public hearings. The board may also consult with employers and employees, and their respective representatives, in the construction industry and with such other persons, including the commissioner, as it shall determine. No public officer or employee appointed to the board shall forfeit any position or office by virtue of appointment to such board. Any proceedings of the board which relate to a particular individual or project shall be confidential.

3. The board may examine and make recommendations regarding the following:

(a) the minimum threshold percentage of public funds set forth in subdivision one of section two hundred twenty-four-a of this article, but no lower than that which is set forth in such subdivision;

(b) the minimum dollar threshold of projects set forth in subdivision one of section two hundred twenty-four-a of this article, but no lower

than that which is set forth in such subdivision;

(c) construction work excluded as a covered project, as set forth in subparagraphs (i), (ii) and (iii) of paragraph c of subdivision four of section two hundred twenty-four-a of this article;

(d) the definition of construction for purposes of section two hundred twenty-four-a of this article; or

(e) particular instances of benefits, monies or credits as to whether or not they should constitute public funds.

4. Prior to making any recommendation intended to apply to all projects, the board shall hold a public hearing. The board shall announce each public hearing at least fifteen days in advance. The announcement shall contain an agenda of the topics the board will discuss. At each hearing, the board may hear testimony and/or review written documents from any interested stakeholders related to the planned agenda of the meeting. The board shall make any such recommendations in writing. In making its recommendations, the board shall examine the impact of such thresholds and circumstances on private development in light of available public subsidies, existing labor market conditions, prevailing wage and supplement practices, and shall consider the extent to which adjustments to such thresholds and circumstances could ameliorate adverse impacts, if any, or expand opportunities for prevailing wage and supplement standards on publicly subsidized private construction projects in any region or regions of the state.

5. The board shall be empowered to issue binding determinations to any public entity, or any private or not-for-profit owner or developer as to any particular matter related to an existing or potential covered project. In such instances the board shall make a determination based upon documents, or testimony, or both in its sole discretion. Any such proceedings shall be confidential, except that publication of such decisions shall be made available on the department's website, subject to redaction or confidentiality as the board shall deem warranted in accordance with any applicable federal or state statutory or regulatory requirement governing confidentiality and personal privacy.

6. Any recommendation rendered by the board pursuant to this section shall be subject to the provisions of article seventy-eight of the civil practice law and rules.

7. In the event that the board finds that there is or likely would be a significant negative economic impact of implementing the prevailing wage requirements provided for in section two hundred twenty-four-a of this article, the board may temporarily delay the implementation of such requirements beyond January first, two thousand twenty-two. Such a delay may be effective statewide or effective only in a region of the state as defined by the regional economic development councils. In making such a determination to delay, the board shall consult the department, the department's division of research and statistics, the United States department of labor, the federal reserve bank of New York and other economic experts. The board will reference well-established economic indexes and accepted economic factors tied to the construction industry, including but not limited to construction industry employment, wages, and overall construction activity.

§ 224-d. Wage requirements for certain renewable energy systems. 1. For purposes of this section, a "covered renewable energy system" means (a) a renewable energy system, as such term is defined in section sixty-six-p of the public service law, with a capacity of one or more megawatts alternating current and which involves the procurement of renewable energy credits by a public entity, or a company or corporation provided in subdivisions twenty-three and twenty-four of section two of the public service law, or a third party acting on behalf and for the benefit of a public entity; (b) any "thermal energy network" as defined by subdivision twenty-nine of section two of the public service law; (c) any offshore wind supply chain project, including but not limited to port infrastructure, primary component manufacturing, finished component manufacturing, subassembly manufacturing, subcomponent manufacturing, or raw material producers, or a combination thereof receiving direct funding from the New York state energy research and development authority pursuant to an award under a New York state energy research and development authority solicitation; or (d) a "major utility

transmission facility" as such term is defined by section one hundred twenty of the public service law.

2. Notwithstanding the provisions of section two hundred twenty-four-a of this article, a covered renewable energy system shall be subject to prevailing wage requirements in accordance with sections two hundred twenty and two hundred twenty-b of this article. Provided that a renewable energy system defined in section sixty-six-p of the public service law which is not considered to be covered by this section, may still otherwise be considered a "covered project" pursuant to section two hundred twenty-four-a of this article if it meets such definition.

3. For purposes of this section, a covered renewable energy system shall exclude construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself, and/or its affiliates, as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project provided, however, this subdivision shall not apply to any covered renewable energy systems defined in paragraph (d) of subdivision one of this section.

4. For purposes of this section, the "fiscal officer" shall be deemed to be the commissioner. The enforcement of any covered renewable energy system pursuant to this section shall be subject to the requirements of sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-three, two hundred twenty-four-b, and two hundred twenty-seven of this chapter and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered renewable energy system as otherwise being considered public work pursuant to this article.

5. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b

of this article.

6. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of certified minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and certified service-disabled veteran-owned businesses pursuant to article three of the veterans' services law. The department in consultation with the commissioner of the division of minority and women's business development and the director of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on covered renewable energy systems to achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.

7. a. The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-two, and annually thereafter, on the participation of minority and women-owned business enterprises in relation to covered renewable energy systems subject to the provisions of this section as well as the diversity practices of contractors and subcontractors employing laborers, workers, and mechanics on such projects.

b. Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner.

c. The fiscal officer may require any owner or developer to disclose

information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered renewable energy system. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

8. A covered renewable energy system shall require all contractors and subcontractors performing construction work to have apprenticeship agreements, as defined by article twenty-three of this chapter, and any thermal energy network covered by this section shall additionally require such contractors and subcontractors to have agreements with pre-apprenticeship direct entry providers registered with the department.

§ 224-e. Wage requirements for certain broadband projects. 1. For purposes of this section, a "covered broadband project" means a broadband project funded by programs established pursuant to subdivisions seven and eight of section sixteen-gg of the New York state urban development corporation act.

2. Notwithstanding the provisions of section two hundred twenty-four-a of this article, a covered broadband project shall be subject to prevailing wage requirements in accordance with sections two hundred twenty and two hundred twenty-b of this article, provided that a covered broadband project may still otherwise be considered a covered project pursuant to section two hundred twenty-four-a of this article if it meets the definition therein.

3. For purposes of this section, the "fiscal officer" shall be deemed to be the commissioner. The enforcement of any covered broadband project under this section shall be subject to the requirements of sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-three, two hundred twenty-four-b of this article, and section two hundred twenty-seven of this chapter and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section

shall be deemed to construe any covered broadband project as otherwise being considered public work pursuant to this article.

4. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.

5. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of certified minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and certified service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law. The department in consultation with the directors of the division of minority and women's business development and of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises undertaking covered broadband projects to achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.

6. (a) The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-three and annually thereafter, on the participation of minority and women-owned business enterprises undertaking covered broadband projects subject to the provisions of this section as well as the diversity practices of contractors and subcontractors employing workers on such projects.

(b) Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of

contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner.

(c) The fiscal officer may require any owner or developer to disclose information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered broadband project. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

*** § 224-f. Wage requirements for certain climate risk-related and energy transition projects.** 1. For purposes of this section, a "covered climate risk-related and energy transition project" means a construction project that receives at least one hundred thousand dollars of funds from the New York climate action fund climate investment account established pursuant to section ninety-nine-qq of the state finance law or the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law.

2. A covered climate risk-related and energy transition project shall be subject to prevailing wage requirements in accordance with sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-i, two hundred twenty-three, and two hundred twenty-four-b of this article, provided that a covered climate risk-related and energy transition project may still otherwise be considered a covered project pursuant to section two hundred twenty or two hundred twenty-four-a of this article if it meets the definition therein.

3. For purposes of this section, a covered climate risk-related and energy transition project shall exclude:

a. Privately owned construction work performed under a pre-hire collective bargaining agreement between an owner or developer and a bona fide building and construction trades labor organization which has

established itself, and/or its affiliates, as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project; or

b. Construction work on one- or two-family dwellings where the property is the owner's primary residence, or construction work performed on property where the owner of the property owns no more than four dwelling units; or

c. Construction work performed on a multiple residence and/or ancillary amenities or installations that is wholly privately owned in any of the following circumstances:

(i) where no less than twenty-five percent of the residential units are affordable and shall be retained subject to an anticipated regulatory agreement with a local, state, or federal governmental entity, or a not-for-profit entity with an anticipated formal agreement with a local, state, or federal governmental entity for purposes of providing affordable housing in a given locality or region provided that the period of affordability for a residential unit deemed affordable under the provisions of this paragraph shall be for no less than fifteen years from the date of construction; or

(ii) where no less than thirty-five percent of the residential units involves the provision of supportive housing services for vulnerable populations provided that such units are subject to an anticipated regulatory agreement with a local, state, or federal governmental entity.

4. As a condition of receiving funds from the New York climate action fund climate investment account established pursuant to section ninety-nine-qq of the state finance law or from the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law for a covered climate risk-related and energy transition project, the owner or developer of such covered climate risk-related and energy transition project, or a third party acting on such owner's or developer's behalf, shall agree to enter into a labor

peace agreement with at least one bona fide labor organization either:

- a. where such bona fide labor organization is actively representing non-construction employees who will be working within the covered climate risk-related and energy transition project once built; or
- b. upon notice by a bona fide labor organization that is attempting to represent such non-construction employees.

5. For purposes of this section "labor peace agreement" means an agreement between an owner and/or developer and labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference.

6. The owner or developer using funds from the New York climate action fund climate investment account established pursuant to section ninety-nine-qq of the state finance law or from the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law for a covered climate risk-related and energy transition project pursuant to this section shall:

- a. require the use of apprenticeship agreements as defined by article twenty-three of this chapter; or for industries without apprenticeship programs, require the use of workforce training, preferably in conjunction with a bona fide labor organization; and
- b. consider use of registered pre-apprenticeship direct entry programs for the recruitment of local and/or disadvantaged workers.

7. For purposes of this section, the "fiscal officer" shall be deemed to be the commissioner. The enforcement of any covered climate risk-related and energy transition project under this section shall be subject to the requirements of sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-i, two hundred twenty-three, two hundred twenty-four-b of this article, and section two hundred twenty-seven of this chapter and within the jurisdiction of the

fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered climate risk-related and energy transition project as otherwise being considered public work pursuant to this article.

8. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.

9. For any building service work on a covered climate risk-related and energy transition project, prevailing wage shall be paid consistent with article nine of this chapter.

10. Any public entity receiving at least five million dollars in funds from the New York climate action fund climate investment account established pursuant to section ninety-nine-qq of the state finance law or from the climate change adaptation fund established pursuant to section ninety-seven-m of the state finance law for a project which involves the construction, reconstruction, alteration, maintenance, moving, demolition, excavation, development or other improvement of any building, structure or land, shall be subject to section two hundred twenty-two of this article.

* NB There are 2 § 224-f's

*** § 224-f. Workers on excavations.** 1. For the purposes of this section:

a. "Covered excavation project" shall mean construction work for which a permit may be issued to a contractor or subcontractor of a utility company by the state, a county or a municipality to use, excavate, or open a street. A "covered excavation project" shall exclude construction work for which a permit may be issued to a service provided as defined by subdivision twenty-three of section one thousand twenty-b of the public authorities law.

b. "Department of jurisdiction" shall mean the department of the state, board or officer in the state, or municipal corporation or commission or board appointed pursuant to law, whose duty it is to issue a permit to a utility company, or its contractors or subcontractors, for a covered excavation project.

c. "Fiscal officer" shall mean the commissioner; except for covered excavation projects performed pursuant to a permit issued by a city with a population in excess of one million in which case the "fiscal officer" shall be the comptroller or other analogous officer of such city.

d. "Utility company" shall have the same meaning as subdivision twenty-three of section two of the public service law.

2. Each contractor or subcontractor to a utility company shall be required to pay not less than the prevailing rate of wage in the same trade or occupation in the locality within the state where such covered excavation project is situated to each laborer, worker, or mechanic in the employ of the contractor or subcontractor to a utility company, performing work on the project in accordance with sections two hundred twenty and two hundred twenty-b of this article. No permit shall be issued for a covered excavation project until an agreement confirming the payment of wages as required by this section has been contractually mandated and filed with the department of jurisdiction, and all permits issued after the effective date of this section shall include therein a copy of this section.

3. The enforcement of any covered excavation project pursuant to this section shall be subject to the requirements of sections two hundred twenty, two hundred twenty-a, two hundred twenty-b, two hundred twenty-three and two hundred twenty-four-b of this article and section two hundred twenty-seven of this chapter and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered excavation project as otherwise being considered public work pursuant to this article.

4. The fiscal officer may issue rules and regulations governing the

provisions of this section. Any violation of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.

* NB There are 2 § 224-f's

*** § 224-g. Wage requirements for reporting and scheduling pay. 1.**

Notwithstanding any law, rule or regulation to the contrary, for any construction projects covered by sections two hundred twenty, two hundred twenty-b, two hundred twenty four-a, two hundred twenty four-d, two hundred twenty four-e, two hundred twenty four-f as added by section three of part TT of chapter fifty-six of the laws of two thousand twenty-three, or two hundred twenty four-f as added by chapter two hundred seventy-eight of the laws of two thousand twenty-three, each laborer, worker or mechanic in the employ of a contractor who by request or permission of an employer reports for work on any day shall be paid no less than four hours at the prevailing rate of wages, including supplements, as defined in this article for the employee's regularly scheduled classification of work, however, this section shall not be applicable if the posted prevailing rate of wages provides for reporting pay wages or benefits greater than set forth in this section. Payments owed to an employee pursuant to this section shall be deemed prevailing rate of wages or supplements as defined in this article.

2. Notwithstanding any law, rule or regulation to the contrary, each laborer, worker or mechanic in the employ of a contractor who by request or permission of an employer is scheduled to report for work on any day shall be paid for two hours at the prevailing rate of wages, including supplements, as defined in this article for the regularly scheduled classification of work when such scheduled shift is cancelled on less than twelve hours' notice to the employee.

* NB Effective December 8, 2026

ARTICLE 8-A

**GRADE CROSSING ELIMINATION WORK;
HOURS, WAGES, EMPLOYMENT AND GENERAL**

REQUIREMENTS

- Section 225. Hours of labor and wages on work of elimination of grade crossings.
- 225-a. General requirements making applicable certain provisions of article eight and providing for enforcement thereof.
226. Wages for such work; prevailing rate.
227. Enforcement of the provisions of this article.

§ 225. Hours of labor and wages on work of elimination of grade crossings. All work of every kind upon the elimination of railroad grade crossings under article seven, section fourteen of the constitution, under chapters six hundred and seventy-seven, six hundred and seventy-eight, eight hundred and six, eight hundred and twenty-five of the laws of nineteen hundred twenty-eight and chapter six hundred and eighty-one of the laws of nineteen hundred twenty-nine, or acts amendatory of or supplemental thereto, or under acts which such statutes amended or supplemented, or under the railroad law, the highway law, or any other general or special law, for the cost of which work the state and/or its civil divisions is liable in any proportion is hereby declared to be public work for the state and/or for its civil divisions, and the wages, the hours of work and labor and days of employment of all laborers, workmen or mechanics employed on such work whether by the state or by a municipality or by a board or commission appointed pursuant to law or by a railroad or other corporation intrusted with the performance of such work or by any contractor or subcontractor on such work shall hereafter be subject to and in accord with the provisions of article eight of this chapter, and every contract for such elimination work hereafter entered into shall contain a stipulation that no laborer, workman or mechanic in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency caused by fire, flood or danger to life or property. No such person shall be employed more than eight hours in any day or more than five days in any one week

except in such emergency.

§ 225-a. General requirements making applicable certain provisions of article eight and providing for enforcement thereof. All work of every kind to which the preceding section is applicable shall hereafter be subject to application of all the provisions of sections two hundred and twenty, two hundred and twenty-one and two hundred and twenty-two of article eight of this chapter. Every contract hereafter entered into for such elimination work shall require compliance with the regulations of such sections. If the fiscal officer as defined herein finds that in the performance of any such elimination work that any person contracting with the state, a municipal corporation, board, any commission appointed pursuant to law, their agent or other person carrying on such work to which state funds are applied for payment fails to comply with or evades the provisions of this section, he shall present evidence of such non-compliance or evasion to the officer, department, board or commission having charge of such work for enforcement. Wherein such evidence indicates a non-compliance or evasion on the part of a sub-contractor, the contractor shall be responsible for such non-compliance or evasion. It shall be the duty of any officer, department, board or commission in charge of the construction of such grade crossing elimination contracts to enforce the provisions of this article.

§ 226. Wages for such work; prevailing rate. The wages to be paid for a day's work of eight hours as referred to hereinbefore, to laborers, workmen or mechanics upon such public works shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where such public work on, about or in connection with which such labor is performed in its final or completed form is to be situated, erected or used and shall be paid in cash. Every contract for such elimination work, hereafter entered into, shall contain a provision that each laborer, workman or mechanic, employed by a contractor, subcontractor or other person about or upon such public work, shall be paid the wages herein provided.

§ 227. Enforcement of the provisions of this article. The procedure for ascertaining and determining the hours of labor and the prevailing rate of wage shall be as prescribed by section two hundred and twenty of this chapter, except that the "fiscal officer," referred to therein shall in every instance, for the purposes of this article be the state industrial commissioner.

Upon the entry of any order of the industrial commissioner affecting either such hours of labor or rate of wages, any party to the proceeding aggrieved thereby may bring a proceeding for review pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of such order in the office of the industrial commissioner. If such order is not reviewed or is so reviewed and confirmed and the determination is in favor of the complainant and involves or relates to the rate of wages paid on such public work, the complainant or any other person affected may within three months after the service of notice of the filing of such order, or the judgment if the order is reviewed, institute an action against the person or corporation found violating this article for the recovery of the difference between the sum actually paid and the amount which should have been paid as determined by such order for the period following the date of the filing with the industrial commissioner of the complaint or of the report of investigation made by the industrial commissioner on his own initiative.

When an order of the industrial commissioner has been made, any person or corporation that wilfully refuses thereafter to pay the prevailing rate of wages determined by said order or wilfully employs on such public work, laborers, workmen or mechanics more than the hours per day determined by such order until such order has been changed by the industrial commissioner or by the court after adjudication upon the merits, shall be guilty of a misdemeanor and upon conviction shall be punished, for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a second offense by a fine of one thousand dollars or

by imprisonment for not more than ninety days or by both such fine and imprisonment, and after conviction of a second offense no such person or corporation shall be entitled to receive any sum of money nor shall any officer, agent or employee of the state or of a municipal corporation or of a board or commission appointed pursuant to law pay the same or authorize its payment from the funds under his charge or control to any such person or corporation or to any other person or corporation for or on account of work done upon any such contract.

ARTICLE 9

PREVAILING WAGE FOR BUILDING SERVICE EMPLOYEES

- Section 230. Definitions.
231. Prevailing wage.
232. Overtime.
233. Record keeping.
234. Powers of the fiscal officer.
235. Investigation and hearing.
236. Failure to protest underpayments.
237. Statements showing amounts due for wages.
238. Penalties.
239. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age or sex.
- 239-a. Enforcement of article.

§ 230. Definitions. As used in this article:

1. "Building service employee" or "employee" means any person performing work in connection with the care or maintenance of an existing building, or in connection with the transportation of office furniture or equipment to or from such building, or in connection with the transportation and delivery of fossil fuel to such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars and the principal purpose of which is to furnish services through the use of building service employees.

"Building service employee" or "employee" includes, but is not limited, to, watchman, guard, doorman, building cleaner, porter, handyman, janitor, gardener, groundskeeper, stationary fireman, elevator operator and starter, window cleaner, and occupations relating to the collection of garbage or refuse, and to the transportation of office furniture and equipment, and to the transportation and delivery of fossil fuel but does not include clerical, sales, professional, technician and related occupations.

"Building service employee" or "employee" also does not include any employee to whom the provisions of articles eight and eight-a of this chapter are applicable.

2. "Building service work" or "service work" means work performed by a building service employee, but does not include work performed for a contractor under a contract for the furnishing of services by radio, telephone, telegraph or cable companies; and any contract for public utility services, including electric light and power, water, steam and gas.

3. "Public agency" means the state, any of its political subdivisions, a public benefit corporation, a public authority or commission or special purpose district board appointed pursuant to law, and a board of education.

4. "Contractor" means any employer who employs employees to perform building service work under a contract with a public agency and shall include any of the contractor's subcontractors.

5. "Wage" includes: (a) basic hourly cash rate of pay; and (b) supplements. The term "supplements" means fringe benefits including medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by federal, state or local law to be provided by the contractor or

subcontractor.

6. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. In no event shall the basic hourly cash rate of pay be less than the statutory minimum wage established by article nineteen of this chapter, or, in a city with a local law requiring a higher minimum wage on city contract work, less than the minimum wage specified in such local law.

7. "Locality" means the state, a town, city, village or other civil division or area of the state as determined by the fiscal officer. The fiscal officer may fix a different geographic area in determining the locality for the prevailing basic hourly cash rate of pay and the locality for prevailing supplements.

8. "Fiscal officer" means the industrial commissioner, except for building service work performed by or on behalf of a city, in which case "fiscal officer" means the comptroller or other analogous officer of such city.

9. "Fossil fuel" shall mean coal, petroleum products and fuel gases. "Coal" shall include bituminous coal, anthracite coal and lignite. "Fuel gases" shall include but not be limited to methane, natural gas, liquefied natural gas and manufactured fuel gases. "Petroleum products" shall include all products refined or rerefined from synthetic or crude oil or oil extracted from other sources, including natural gas liquids. Provided that nothing in this subdivision shall affect the exclusion for public utility services set forth in subdivision two of this section.

10. "Substantially-owned affiliated entity" shall mean the parent company of the contractor or subcontractor, any subsidiary of the contractor or subcontractor, or any entity in which the parent of the contractor or subcontractor owns more than fifty percent of the voting stock, or an entity in which one or more of the top five shareholders of the contractor or subcontractor individually or collectively also owns a controlling share of the voting stock, or an entity which exhibits any

other indicia of control over the contractor or subcontractor or over which the contractor or subcontractor exhibits control, regardless of whether or not the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include: power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

11. "Entity" shall mean a partnership, association, joint venture, company, sole proprietorship, corporation or any other form of doing business.

12. "Parent company" shall mean an entity that directly controls the contractor or subcontractor.

13. "Subsidiary" shall mean an entity that is controlled directly, or indirectly through one or more intermediaries, by a contractor or subcontractor or the contractor's parent company.

14. "Successor" shall mean an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

§ 231. Prevailing wage. 1. Every contractor shall pay a service employee under a contract for building service work a wage of not less than the prevailing wage in the locality for the craft, trade or occupation of the service employee.

2. The obligation of a contractor to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the fiscal officer.

3. Each contract for building service work shall contain as part of

the specifications thereof a schedule of the wages required to be paid to the various classes of service employees on such work, and each such contract shall further contain a provision obligating the contractor to pay each employee on such work not less than the wage specified for his craft, trade or occupation in such schedule.

4. The public agency, or appropriate officer or agent thereof, whose responsibility it is to prepare or direct the preparation of the plans and specifications for a contract for building service work, shall ascertain from such plans and specifications the classifications of employees to be employed on such work and shall file a list of such classifications with the fiscal officer, together with a statement of the work to be performed. The fiscal officer shall determine the crafts, trades and occupations required for such work and shall make a determination of the wages required to be paid in the locality for each such craft, trade or occupation. A schedule of such wages shall be annexed to and form a part of the specifications for the contract prior to the time of the advertisement for bids on such contract and shall constitute the schedule of wages referred to in subdivision three of this section.

5. Upon the award of a contract for building service work by a public agency other than a city, the contracting public agency shall immediately furnish to the commissioner: (a) the name and address of the contractor to whom the contract was awarded; (b) the date when the contract was awarded; and (c) the approximate consideration stipulated for in the contract.

6. No later than the first day upon which work on said contract is performed by any employee, the contractor shall post in a prominent and accessible place on the site of the work a legible statement of the wages to be paid to the workmen employed thereon.

7. (a) An apprentice in a craft or trade may be permitted to work at a wage lower than that established for the journeymen in such craft or trade only if all of the following conditions have been met:

(1) such apprentice has been individually registered in an

apprenticeship program which is duly registered with the industrial commissioner in conformity with the provisions of article twenty-three of this chapter;

(2) such apprentice's registration occurred prior to his employment as an apprentice on such service work; and

(3) written proof of such individual registration is submitted to the contracting public agency prior to such apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates.

(b) In no event shall the ratio of apprentices to journeymen employed on such service work be greater than the lesser of the following ratios:

(1) the ratio permitted in the apprenticeship program approved by the industrial commissioner; or

(2) the ratio prevailing in the locality where the service work will be performed.

(c) The rate of wages established for apprentices shall be the prevailing rate as determined in accordance with this article.

§ 232. Overtime. An employee, employed by a contractor, who works more than eight hours in any one day or more than forty hours in any workweek shall be paid wages for such overtime at a rate not less than one-and-one-half times his prevailing basic cash hourly rate.

§ 233. Record keeping. 1. In all cases where service work is being performed pursuant to a contract therefor the contractor shall keep original payrolls or transcripts thereof, subscribed and confirmed by him as true, under penalties of perjury, showing the hours and days worked by each employee, the craft, trade or occupation at which he was employed, and the wages paid.

2. Where the wages paid include sums which are not paid directly to the workmen weekly and which are expended for supplements, the records required to be maintained shall include a record of such hourly payment on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment

has been made. In all such cases, the contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made.

3. The records required to be maintained shall be kept on the site of the work during all of the time that work under the contract is being performed.

4. All records required to be maintained shall be preserved for a period of three years after the completion of work.

§ 234. Powers of the fiscal officer. 1. In addition to the powers enumerated elsewhere in this article, the fiscal officer shall have the power:

(a) to cause an investigation to be made to determine the wages prevailing in any locality in all crafts, trades and occupations involved in service work; in making such investigation, the fiscal officer may utilize wage and fringe benefit data from various sources including, but not limited to, data and determinations of federal, state or other governmental agencies;

(b) to institute and conduct inspections at the site of the work or elsewhere in aid of the effective administration and enforcement of the provisions of this article;

(c) to examine the books, documents and records pertaining to the wages paid to, and the hours of work performed by, service employees;

(d) to hold the hearings provided for in this article, and in connection therewith to issue subpoenas, administer oaths and examine witnesses. The enforcement of a subpoena issued under this section shall be regulated by the civil practice law and rules;

(e) to make a classification by craft, trade or other generally recognized occupational category of the service employees involved and to determine whether such work has been performed by the employees in such classification;

(f) to require a contractor to file with the fiscal officer a record of the wages actually paid by such contractor to the employees and of

their hours of work;

(g) to delegate any of the foregoing powers to his deputy or other authorized representative;

(h) to provide such reasonable limitations from any or all provisions of this article as he may find necessary and proper in the public interest or to avoid serious impairment of the conduct of government business;

(i) to propose, and after public hearing held before him or his designee, to promulgate such rules as he shall consider necessary for the proper execution of the duties, responsibilities and powers conferred upon him by the provisions of this article. Such rules may allow such reasonable variations, tolerances and exemptions to and from any or all provisions of this article as the fiscal officer may find necessary and proper in the public interest, or to avoid serious impairment of the conduct of government business.

2. For all work for which the industrial commissioner is the fiscal officer, the industrial commissioner shall additionally have all the powers granted him elsewhere in this chapter.

§ 235. Investigation and hearing. 1. Whenever the fiscal officer has reason to believe that a service employee has been paid less than the wages stipulated in the contract, or if such contract has no wage schedule attached thereto and the fiscal officer has reason to believe that a service employee has been paid less than the wages prevailing for his craft, trade or occupation, the fiscal officer may, and upon receipt of a written complaint from an employee employed thereon, shall conduct a special investigation to determine the facts relating thereto.

2. a. At the start of such investigation the fiscal officer may notify the financial officer of the public agency interested who shall, at the direction of the fiscal officer, forthwith withhold from any payment due to the contractor executing the contract sufficient money to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein, or, if there are insufficient moneys still due or earned to the contractor or subcontractor to safeguard the

rights of the service employees and to cover the civil penalty that may be assessed as provided herein, the financial officer of another civil division which has entered or subsequently enters into a building service work contract with the contractor or subcontractor, who shall withhold from any payment due the contractor or subcontractor executing any building service work, sufficient moneys to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein.

b. If there are still insufficient moneys still due or earned to the contractor or subcontractor to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein, the financial officer shall immediately so notify the fiscal officer, who may issue a notice of withholding to any of the following: any substantially-owned affiliated entity or successor or subsidiary of the contractor or subcontractor; an officer of the contractor or subcontractor who knowingly participated in the violation of this article, any of the partners, if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer.

c. The notice of withholding shall provide that the fiscal officer intends to instruct the financial officer, not less than ten days following service of the notice by mail, to withhold sufficient moneys to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein, from any payment due the notified party under any building service work contract pending final determination. The notice of withholding shall provide that within thirty days following the date of the notice of withholding the notified party may, contest the withholding on the basis that the notified party is not a partner or one of the five largest shareholders of the subcontractor or contractor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, a substantially-owned affiliated entity or successor. If the notified party fails to contest the notice of withholding, or if the fiscal officer, after reviewing the information provided by the notified party in such contest, determines that the notified party is a partner

or one of the five largest shareholders, a substantially-owned affiliated entity, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, or a successor, the fiscal officer may instruct the financial officer to immediately withhold sufficient moneys to safeguard the rights of the service employees and to cover the civil penalty that may be assessed as provided herein from any payment due the notified party under any building service work contract pending the final determination.

d. The financial officer shall immediately implement the notice of withholding and confirm in writing to the fiscal officer the amount of money withheld.

e. If the notified party contests the withholding after a withholding has been effected, and if the fiscal officer determines that the notified party is not a partner or one of the five largest shareholders, a substantially-owned affiliated entity or successor, an officer of the contractor or subcontractor who knowingly participated in the violation of this article the fiscal officer shall immediately notify the financial officer to release all payments being withheld from the notified party.

f. The money shall be held in trust pending completion of the investigation.

3. If, despite the requirements of law, the contract for the service work has been awarded without the annexation thereto of the schedule of wages provided for in this article, the fiscal officer shall determine in the proceeding before him the wages prevailing at the time the work was performed for the crafts, trades or occupations of the employees involved.

4. In an investigation conducted under the provisions of this section, the inquiry of the fiscal officer shall not extend to work performed more than two years prior to: (a) the filing of the complaint, or (b) the commencement of the investigation upon the fiscal officer's own volition, whichever is earlier in point of time.

5. a. The investigation and hearing shall be expeditiously conducted and upon the completion thereof the fiscal officer shall determine the issues raised and shall make and file an order in his office stating such determination and forthwith serve personally or by mail a copy of such order and determination together with a notice of filing upon all parties to the proceeding and upon the financial officer of the public agency involved.

b. In addition to directing payment of wages found to be due, such order of the fiscal officer may direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due. In assessing the amount of the penalty, due consideration shall be given to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer, successor or substantially-owned affiliated entity or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, of such underpayment of wages or supplements, and any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and the failure to comply with recordkeeping or other non-wage requirements. Where the fiscal officer is the commissioner, the penalty shall be paid to the commissioner for deposit in the state treasury. Where the fiscal officer is a city comptroller or other analogous officer, the penalty shall be paid to said officer for deposit in the city treasury.

c. If the order directs the payment to specified employees of wages found to be due and unpaid, including interest at a rate not less than six per centum per year and not more than the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to section fourteen-a of the banking law per annum from the time such wages should have been paid, the financial officer of such public agency shall, upon the service to him of such order, pay to such

employees from the trust money withheld the amounts specified in such order and shall pay the civil penalty as provided herein, provided no review proceeding pursuant to the provisions of article seventy-eight of the civil practice law and rules is commenced within thirty days of the date said order was filed in the office of the fiscal officer. If such review is timely commenced, the money withheld shall remain in trust pending final disposition of the review proceeding. In determining the rate of interest to be imposed the fiscal officer shall consider the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations of the employer, successor or substantially-owned affiliated entity or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, and the failure to comply with recordkeeping or other non-wage requirements.

6. When a final determination has been made and such determination is in favor of an employee, such employee may, in addition to any other remedy provided by this article, institute an action in any court of appropriate jurisdiction against the person or corporation found to have violated this article, any substantially-owned affiliated entity or any successor of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, and any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer, for the recovery of the difference between the sum, if any, actually paid to him by the aforesaid financial officer pursuant to said order and the amount found to be due him as determined by said order. Such action must be commenced within three years from the date of the filing of said order, or if the said order is reviewed in a proceeding pursuant to article seventy-eight of the civil practice law and rules, within three years after the termination of such review proceeding.

Provided that no proceeding for judicial review as provided in this section shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer may file with the county clerk of the county where the employer resides or has a place of business the order of the fiscal officer containing the amount found to be due. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

7. When, pursuant to the provisions of this section, two final orders have been entered against a contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article within any consecutive six-year period determining that such contractor or subcontractor and/or its successor, substantially-owned affiliated entity of the contractor or subcontractor, any of the partners or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article has willfully failed to pay the prevailing wages in accordance with the provisions of this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public building service contracts are rendered simultaneously, such contractor, subcontractor, successor, and if the contractor, subcontractor, successor, or any substantially-owned affiliated entity of the contractor or subcontractor, any of the partners if the contractor or subcontractor is a partnership, or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article, or any successor is a corporation, any officer of such corporation who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any public building service work for a period of five years from the date of the second

order, provided, however, that where any such final order involves the falsification of payroll records or the kickback of wages, the contractor, subcontractor, successor, substantially-owned affiliated entity of the contractor or subcontractor, any partner if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, any officer of the contractor or subcontractor who knowingly participated in the violation of this article shall be ineligible to submit a bid on or be awarded any public building service contract or subcontract with the state, any municipal corporation or public body for a period of five years from the date of the first final order. Nothing in this subdivision shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts.

8. a. When a final determination has been made in favor of a complainant and the contractor or subcontractor found violating this article has failed to make payment as required by the order of the fiscal officer, and provided that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the fiscal officer may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of any of the following:

(i) any substantially-owned affiliated entity or any successor of the contractor or subcontractor;

(ii) any of the partners if the contractor or subcontractor is a partnership or any of the five largest shareholders of the contractor or subcontractor, as determined by the fiscal officer; or

(iii) any officer of the contractor or subcontractor who knowingly participated in the violation of this article; provided, however, that the fiscal officer shall within five days of the filing of the order provide notice thereof to the partner or top five shareholder or successor or substantially-owned affiliated entity. The notified party may contest the filing on the basis that it is not a partner or five largest shareholders, an officer of the contractor or subcontractor who knowingly participated in the violation of this article, successor or substantially-owned affiliated entity. If, after reviewing the

information provided by the notified party in support of such contest, the fiscal officer determines that the notified party is not within the definitions described herein, the fiscal officer shall immediately withdraw his filing of the order.

b. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the fiscal officer in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

9. When a final determination has been made against a subcontractor in favor of a complainant and the contractor has made payment to the complainant of any wages and interest due the complainant and any civil penalty, and providing that no relevant proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the contractor may file a copy of the order of the fiscal officer containing the amount found to be due with the county clerk of the county of residence or place of business of the subcontractor. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The judgment may be docketed in favor of the contractor who may proceed as a judgment creditor against the subcontractor for the recovery of all monies paid by the contractor under such order.

§ 236. Failure to protest underpayments. Notwithstanding any inconsistent provision of this chapter or of any other general, special or local law, ordinance, charter or administrative code, a service employee shall not be barred from his right to recover the difference between the amount actually paid to him and the amount which should have been paid to him pursuant to an order entered under the provisions of this article because of the prior receipt by him without protest of wages paid or on account of his failure to state orally or in writing upon any payroll or receipt which he is required to sign that the wages received by him are received under protest, or on account of his failure to indicate his protest against the amount, or that the amount so paid

does not constitute payment in full of wages due him for the period covered by such payment.

§ 237. Statements showing amounts due for wages. 1. Subcontractors engaged for service work by a contractor or its subcontractor shall, upon receipt from the contractor or its subcontractor of the schedule of wages and supplements specified in the contract, provide to the contractor or its subcontractor a verified statement attesting that the subcontractor has received and reviewed such schedule of wages and supplements, and agrees that it will pay the applicable prevailing wages and will pay or provide the supplements specified therein. Such verified statement shall be filed in the manner described in subdivision three of this section. It shall be a violation of this article for any contractor or its subcontractor to fail to provide for its subcontractor a copy of the schedule of wages and supplements specified in the contract.

2. Before payment is made by or on behalf of a public agency of any sums due on account of a contract for service work, it shall be the duty of the comptroller of the state or the financial officer of such public agency or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract under and pursuant to which payment is made, to require the contractor to file a statement in writing in form satisfactory to such officer certifying to the amounts then due and owing from such contractor filing such statement to or on behalf of any and all service employees for daily or weekly wages on account of labor performed upon the work under the contract, setting forth therein the names of the persons whose wages are unpaid and the amount due to or on behalf of each respectively, which statement so to be filed shall be verified by the oath of the contractor that he or she has read such statement subscribed by him or her and knows the contents thereof, and that the same is true of his or her own knowledge.

3. Before payment is made by or on behalf of a public agency of any sums due on account of a contract for service work and representing the final portion of twenty percent of the total consideration payable under

the contract, it shall be the duty of the comptroller of the state or the financial officer of such public agency or other officer or person charged with the custody and disbursement of the state or corporate funds applicable to the contract under and pursuant to which payment is made to require the contractor to file every verified statement required to be obtained by the contractor from its subcontractors pursuant to subdivision one of this section and to file a statement in writing in form satisfactory to such officer setting forth the amounts known by the contractor to be then due and owing from a subcontractor, or from a subcontractor of such subcontractor, for such wages and supplements, or certifying that the contractor has no knowledge of such amounts owing to or on behalf of any service employees of its subcontractors, and that in the event it is determined by the commissioner that the wages or supplements or both of any employees of such subcontractors have not been paid or provided pursuant to the appropriate schedule of wages and supplements, the contractor shall be responsible for payment of such wages or supplements pursuant to the provisions of section two hundred thirty-nine-a of this article. Before final payment is made of any sums due on account of such service work contract, the contractor shall be required to file a supplemental statement setting forth any additional amounts known by the contractor to be then due and owing by each subcontractor for such wages or supplements, or that the contractor has no knowledge of such amounts owing to or on behalf of any employee of its subcontractors. Such statements so to be filed shall be verified by the oath of the contractor that he or she has read such statements subscribed by him or her and knows the contents thereof, and that the same is true of his or her own knowledge, except with respect to wages and supplements owing by subcontractors which may be certified upon information and belief.

4. If any interested person shall have previously filed a protest in writing objecting to the payment to any contractor or subcontractor to the extent of the amount or amounts due or to become due to him for daily or weekly wages for labor performed on the work for which such contract was entered into, or if for any other reason it may be deemed advisable, the comptroller of the state or the financial officer of the public agency or other officer or person charged with the custody and

disbursement of the state or corporate funds applicable to the contract for such work, may deduct from the whole amount of any payment on account thereof the sum or sums admitted by any contractor or subcontractor in such statement or statements as filed to be due and owing by him or her on account of labor performed on such work before making payment of the amount certified for payment in any estimate or voucher, and may withhold the amount so deducted for the benefit of the service employees whose wages are unpaid as shown by the verified statements filed by any contractor or subcontractor, and may pay directly to any person the amount or amounts shown by the statements filed as hereinbefore required to be due to him or her or his or her duly authorized collective bargaining labor organization receiving such payment to the extent of the amount thereof.

§ 238. Penalties. 1. Any contractor or subcontractor who shall upon his oath verify any statement required to be filed under this article which is known by him to be false shall be guilty of perjury and punishable as provided by the penal law.

2. When a contract for service work contains as part thereof a schedule of wages as provided for in this article, any contractor who, after entering into such contract, and any subcontractor of such contractor who fails to pay to any service employee the wages stipulated in such wage schedule is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days or by both fine and imprisonment; for a second offense by a fine of one thousand dollars, and in addition thereto the contract on which the violation has occurred shall be forfeited; and no such contractor shall be entitled to receive any sum, nor shall any officer, agent or employee of the contracting public agency pay any such sum or authorize its payment from the funds under his charge or control to such contractor for work done upon the contract on which the contractor has been convicted of a second offense. If the contractor or subcontractor is a corporation, any officer of such corporation who knowingly permits the corporation to fail to make such payment shall also be guilty of a misdemeanor and the criminal and civil

penalties herein shall attach to such officer upon conviction.

§ 239. Provisions in contracts prohibiting discrimination on account of race, creed, color, national origin, age or sex. Every contract for service work shall contain provisions by which the contractor agrees:

(1) that in the hiring of employees for the performance of work under the contract or any subcontract thereunder within the territorial limits of this state, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color, national origin, age, sex or disability, discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates;

(2) that no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, color, national origin, age, sex or disability;

(3) that there may be deducted from the amount payable to the contractor by the public agency under the contract a penalty of fifty dollars for each person for each day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(4) that the contract may be cancelled or terminated by the public agency, and all moneys due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract.

§ 239-a. Enforcement of article. If the fiscal officer, as defined herein, finds that any contractor on service work fails to comply with or evades the provisions of this article, he shall present evidence of such noncompliance or evasion to the public agency having charge of such work for enforcement. Where such evidence indicates a noncompliance or evasion on the part of a subcontractor, the contractor shall be responsible for such noncompliance or evasion. It shall be the duty of the public agency in charge of such service work to enforce the provisions of this article.

ARTICLE 10
**BUILDING CONSTRUCTION, DEMOLITION
AND REPAIR WORK.**

- Section 240. Scaffolding and other devices for use of employees.
241. Construction, excavation and demolition work.
- 241-a. Protection of workmen in or at elevator shaftways, hatchways and stairwells.
- 241-b. Marking of transparent glass doors required.
242. Application and enforcement of article.

§ 240. Scaffolding and other devices for use of employees. 1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

No liability pursuant to this subdivision for the failure to provide protection to a person so employed shall be imposed on professional engineers as provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers or architects or landscape architects arising under the common law or any other provision of law.

2. Scaffolding or staging more than twenty feet from the ground or floor, swung or suspended from an overhead support or erected with

stationary supports, except scaffolding wholly within the interior of a building and covering the entire floor space of any room therein, shall have a safety rail of suitable material properly attached, bolted, braced or otherwise secured, rising at least thirty-four inches above the floor or main portions of such scaffolding or staging and extending along the entire length of the outside and the ends thereof, with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.

3. All scaffolding shall be so constructed as to bear four times the maximum weight required to be dependent therefrom or placed thereon when in use.

§ 241. Construction, excavation and demolition work. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

1. If the floors are to be arched between the beams thereof, or if the floors or filling in between the floors are of fireproof material, the flooring or filling in shall be completed as the building progresses.

2. If the floors are not to be filled in between the beams with brick or other fireproof material, the underflooring shall be laid on each story as the building progresses.

3. If double floors are not to be used, the floor two stories immediately below the story where the work is being performed shall be kept planked over.

4. If the floor beams are of iron or steel, the entire tier of iron or steel beams on which the structural iron or steel work is being erected shall be thoroughly planked over, except spaces reasonably required for proper construction of the iron or steel work, for raising or lowering

of materials or for stairways and elevator shafts designated by the plans and specifications.

5. If elevators, elevating machines or hod-hoisting apparatus are used in the course of construction, for the purpose of lifting materials, the shafts or openings in each floor and at each landing level shall be inclosed or fenced in on all sides by a barrier of suitable height, except on two sides which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than three nor more than four feet from the floor and not less than two feet from the edges of such shafts or openings.

6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

7. The commissioner may make rules to provide for the protection of workers in connection with the excavation work for the construction of buildings, the work of constructing or demolishing buildings and structures, and the guarding of dangerous machinery used in connection therewith, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

8. The commissioner, as deemed necessary, shall promulgate rules designed for the purpose of providing for the reasonable and adequate protection and safety of persons passing by all areas, buildings or structures in which construction, excavation or demolition work is being performed, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith. The

provisions of this subdivision shall not apply to cities having a population of one million or more.

9. No liability for the non-compliance with any of the provisions of this section shall be imposed on professional engineers as provided for in article one hundred forty-five of the education law, architects as provided for in article one hundred forty-seven of such law or landscape architects as provided for in article one hundred forty-eight of such law who do not direct or control the work for activities other than planning and design. This exception shall not diminish or extinguish any liability of professional engineers, architects or landscape architects arising under the common law or any other provision of law.

10. Prior to advertising for bids or contracting for or commencing work on any demolition work on buildings covered under this section except agricultural buildings as defined in regulations promulgated by the commissioner and except buildings the construction of which was begun on or after January first, nineteen hundred seventy-four, all owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall conduct or cause to be conducted a survey to determine whether or not the building to be demolished contains asbestos or asbestos material as defined in section nine hundred one of this chapter. Such surveys shall be conducted in conformance with rules and regulations promulgated by the commissioner. Information derived from such survey shall be immediately transmitted to the commissioner and to the local governmental entity charged with issuing a permit for such demolition under applicable state or local laws or, if no such permit is required, to the town or city clerk. If such survey finds that a building to be demolished contains asbestos or asbestos material as defined by section nine hundred one of the chapter, no bids shall be advertised nor contracts awarded nor demolition work commenced by any owner or agent prior to completion of an asbestos remediation contract performed by a licensed asbestos contractor as defined by section nine hundred one of this chapter.

§ 241-a. Protection of workmen in or at elevator shaftways, hatchways

and stairwells. Any men working in or at elevator shaftways, hatchways and stairwells of buildings in course of construction or demolition shall be protected by sound planking at least two inches thick laid across the opening at levels not more than two stories above and not more than one story below such men, or by other means specified in the rules of the board.

§ 241-b. Marking of transparent glass doors required. All transparent glass doors in mercantile establishments and in public and commercial buildings and structures shall be marked in such manner as shall be calculated to warn persons using the same that such doors are glass doors. The board shall make such rules as it may deem proper or necessary to carry into effect the provisions of this section.

§ 242. Application and enforcement of article. Notwithstanding any other law or regulation, local or general, the provisions of this article and the rules issued thereunder shall be applicable exclusively throughout the state and the commissioner shall have exclusive authority to enforce this article and the rules issued thereunder.

ARTICLE 11

FACTORIES

Title 2. Accident prevention (Secs. 255-257.)

3. Fire hazard (Secs. 260-283.)

4. Sanitation (Secs. 291-300.)

5. Foundries (Sec. 310.)

6. Duties of owners and occupiers (Secs. 315-316.)

TITLE 2

ACCIDENT PREVENTION

Section 255. Elevators and hoistways.

257. Illumination.

§ 255. Elevators and hoistways. Every elevator used in connection with a factory, the elevator opening and the machinery connected therewith, and every hoistway, hatchway and well-hole shall be so constructed, guarded, equipped, maintained and operated as to be safe for all persons. The board shall adopt rules to carry into effect the provisions of this section.

§ 257. Illumination. 1. In every factory proper lighting shall be provided during working hours for:

a. All places where persons work or pass, or may have to work or pass in emergencies;

b. All elevator cars and entrances;

c. All halls and stairs leading to workrooms;

d. All moving parts of machinery not required to be guarded by section two hundred and the rules of the board, and which are dangerous because of their location.

2. In every factory workroom the lighting shall be such as will not cause strain on the vision or glare in the eyes of workers.

3. In the public hallway upon each floor of every factory building a proper light shall be kept burning near the stairs during each working day from the opening of the building until its closing, except when natural light suffices. Such lights shall be arranged to operate reliably when through accident or other cause other lights of the building are extinguished.

TITLE 3

FIRE HAZARD

Section 260. Incombustible, fireproof and fire-resisting or

fire-resistive material.

- 261. Fire door.
- 262. Fireproof window or fire window.
- 263. Fireproof partition or fire partition.
- 264. Fireproof building.
- 265. Fire wall.
- 266. Exterior enclosed fireproof stairway.
- 267. Horizontal exit.
- 268. Exterior screened stairway.
- 269. Application of provisions.
- 270. Construction of buildings erected after October first, nineteen hundred and thirteen.
- 271. Requirements for buildings erected before October first, nineteen hundred and thirteen.
- 272. Additional requirements for all buildings.
- 273. Fire-escapes erected after October first, nineteen hundred and thirteen, on buildings theretofore erected.
- 274. Fire-escapes erected before October first, nineteen hundred and thirteen.
- 275. Special laws and local ordinances.
- 276. Inspection of buildings and approval of plans.
- 277. Notice of issue of local construction permit.
- 278. Limitation of number of occupants.
- 279. Fire alarm signal systems and fire drills.
- 280. Automatic fire extinguishing systems.
- 281. Fireproof receptacles.
- 282. Gas jets and other lights.
- 283. Smoking.

§ 260. Incombustible, fireproof and fire-resisting or fire-resistive material. 1. "Incombustible material" means material which will not burn or support combustion as determined and specified in the rules of the board.

2. "Fireproof material" means material capable of resisting the effect of fire to a sufficient extent to insure the safety of the occupants of

the building. The board shall determine and specify in its rules what materials are fireproof materials.

3. "Fire-resisting material" or "fire-resistive material" means material conforming to the requirements of the board which shall determine and specify in its rules what materials, not being fireproof materials, are fire-resisting or fire-resistive materials.

§ 261. Fire door. "Fire door" means a door constructed of such fire-resisting material as shall be specified in the rules of the board. The board shall determine and specify in its rules the materials and the manner of construction and erection of such doors, the sills thereof, and the automatic or self-closing device requirements of such doors. Electric contacts or interlocks of a type approved by the board may be accepted in lieu of self-closing devices on fire doors at each entrance to elevator or dumbwaiter hoistways.

§ 262. Fireproof window or fire window. "Fireproof window" or "fire window" means a window with metal frame and sash, or frame and sash covered with metal, and provided with wired glass or of such other materials, construction and operation as the board shall specify in its rules.

§ 263. Fireproof partition or fire partition. "Fireproof partition" or "fire partition" means a partition built of brick, or concrete, or reinforced concrete, or cinder block, or concrete block, or tile, or terra cotta blocks conforming with the requirements of the board. The board shall determine and specify in its rules such other materials as may be used and such requirements as are necessary for the construction of fire partitions and the protection of supporting metal framework.

Each opening in any fire partition shall have a fire door unless otherwise specified by the board in its rules.

§ 264. Fireproof building. "Fireproof building" means a building conforming to the following requirements:

1. All exterior walls shall be constructed of brick, or stone, or concrete, or cinder block, or concrete block, or tile, or terra cotta or such other material as shall be specified in the rules of the board. The board shall determine and specify in its rules such requirements as it deems necessary for the construction of exterior walls.

2. All floors and roofs shall be built of brick, or cinder block, or concrete block, or tile, or terra cotta, or reinforced concrete supported by steel or reinforced concrete beams and girders. The board shall determine and specify in its rules such other materials, the manner of construction of floors and roofs and such other requirements as may be deemed necessary to carry into effect the intent of this chapter.

3. All structural metal shall be encased in fireproof material, of such thickness as shall be specified in the rules of the board.

4. All vertical openings leading from one floor to another, except one created by a mezzanine floor, shall be enclosed by fireproof or fire-resisting materials in a manner conforming to rules adopted by the board.

5. All stairways, landings, hallways, floor surfaces, furring, ceilings, partitions, sash, trim, window frames, doors and other interior finish, shall be constructed of incombustible material; but nothing in this section shall prevent the use of such combustible materials as the board shall determine and specify in its rules. Such rules shall also specify the circumstances or conditions under which combustible flooring, trim, acoustical material, insulating material or other interior finish may be used or applied to floors, walls, partitions or ceilings of fireproof buildings.

6. All windows shall be fire windows except:

a. In buildings less than seventy feet in height erected after October first, nineteen hundred and thirteen, where the windows are located more than thirty feet from another building or open on a court or space more than thirty feet wide;

b. In buildings less than one hundred and fifty feet in height erected before October first, nineteen hundred and thirteen, where the windows are located more than thirty feet from another building.

c. Fire windows may be provided with plate glass not less than one-fourth of an inch in thickness, no light of which shall exceed seven hundred and twenty square inches in area.

(1) If the windows are located more than thirty feet horizontally or fifty feet vertically from the nearest opening in the wall of another building.

(2) If the windows are located more than fifty feet in a vertical direction above the roof of a building within a horizontal distance of thirty feet of the wall in which the said windows are located.

7. Partitions. All partitions in the interior of fireproof buildings shall be of incombustible material. Nothing in this section shall prevent the use, in a building equipped with automatic sprinklers, of subdividing partitions of wood, or of wood and glass, in spaces used solely for office or show-room purposes, provided, however, that where such spaces are contiguous to any room or rooms in which manufacturing is carried on, such spaces shall be separated from such room or rooms by a dividing partition which, including doors, is constructed of incombustible material.

§ 265. Fire wall. "Fire wall" means a wall which subdivides a building or separates buildings to restrict the spread of fire, and which starts at the foundation and extends through all stories to or above the roof as may be specified in the rules of the board. The board shall determine and specify in its rules the material and the manner of construction and erection of fire walls and the nature and extent of the protection to be

afforded to openings therein.

§ 266. Exterior enclosed fireproof stairway. "Exterior enclosed fireproof stairway" means a stairway conforming to the following requirements:

1. It shall be completely enclosed from top to bottom by walls of fireproof material not less than eight inches thick extending from the sidewalk, court or yard level to the roof, and above the roof so as to form a bulkhead.

2. It shall in all other respects except as herein provided conform to the requirements of section two hundred and seventy in regard to the construction of stairways and their enclosures, except that stairways and landings in an exterior fireproof enclosed stairway not exceeding one hundred feet in height may be constructed of other than incombustible material to be approved by the board.

3. There shall be no opening in any wall separating it from the building.

4. Access shall be provided to the stairway from every floor of the building by means of an outside balcony or vestibule of steel, iron or masonry. Every such balcony or vestibule shall have an unobstructed width of at least forty-four inches and shall be provided with a fireproof floor and a railing of incombustible material not less than three feet high. Access to such balconies from the building and to the stairway from the balconies shall be by means of firedoors. The level of the balcony floor shall be not more than seven inches below the level of the door sill of the building. The doors shall swing outward onto the balcony and inward from the balcony to the stairway, and shall be provided with locks or latches with visible fastenings requiring no key to open them in leaving the building. The balconies shall be open on at least one side, upon an open space not less than one hundred square feet in area.

5. The landings shall be of such width that the doors in opening into the stairway shall not reduce the free passageway of the landings to a width less than the width of the stairs.

6. Such stairway shall be provided with a proper lighting system furnishing adequate light and shall be so arranged as to ensure its reliable operation, when through accident or other cause the regular factory lighting is extinguished.

§ 267. Horizontal exit. 1. "Horizontal exit" means the connection by one or more openings, protected by firedoors, through a fire wall in any building, or through a wall or walls between two buildings, which doors shall continuously be unlocked and the opening unobstructed whenever any person is employed on either side of the opening.

2. Exterior balconies and bridges not less than forty-four inches in width connecting two buildings and not having a gradient of more than one foot fall in six, may also be counted as horizontal exits when the doors opening out upon said balconies or bridges are fireproof doors and are level with the floors of the building, and when all doors of both buildings opening on such balconies or bridges are continuously kept unlocked and unobstructed whenever any person is employed on either side of the exit, and when such balconies or bridges are built of incombustible material and are capable of sustaining a live load of not less than ninety pounds per square foot with a factor of safety of four; and when such balconies or bridges are enclosed on all sides to a height of not less than six feet and on top and bottom by fireproof material, unless all windows or openings within thirty feet of such balconies in the connected buildings shall be encased in metal frames and sash and shall have wired glass where glass is used.

3. In any case there shall be on each side of the wall or partition containing the horizontal exit and independent of said horizontal exit, at least one stairway conforming to the requirements for a required exit.

§ 268. Exterior screened stairway. "Exterior screened stairway" means a stairway conforming to the following requirements:

1. It shall be built of incombustible material.
2. The risers of the stairs shall not be more than seven and three-quarters inches in height and the treads not less than ten inches wide.
3. On each floor there shall be a balcony connecting with the stairs.
4. Access to the balconies shall be by means of fire doors extending to the floor level and which shall slide freely or open outwardly so as not to obstruct the passageway.
5. All windows or other openings upon the course of such stairs shall be fireproof.
6. The level of the balcony floor shall not be more than seven inches below the level of the door sill.
7. The stairs shall continue from the roof to the ground level and shall lead (a) directly to a street, or (b) to a fireproof enclosed passageway independent of other exit from the building and leading to a street or road, or (c) to an open area having communication with a street or road.
8. The balconies and stairs shall be guarded on the sides by a screen of incombustible material.

§ 269. Application of provisions. 1. The provisions of sections two hundred and sixty-one, two hundred and sixty-two, two hundred and sixty-three, two hundred and sixty-five, two hundred and sixty-six, and two hundred and sixty-seven shall apply to all buildings erected after October first, nineteen hundred and thirteen, and to all construction

made after that date in buildings erected prior to that date. The board shall adopt rules affecting construction made before October first, nineteen hundred and thirteen, in buildings theretofore erected, requiring compliance with such of the requirements of said sections, or with such other or different requirements as it finds reasonable and adequate to protect persons employed in such buildings against fire.

2. Altered buildings. When changes are made to a building erected prior to October first, nineteen hundred thirteen, which are so material and extensive as to constitute a new building, such building shall comply with the provisions of section two hundred seventy. However, the words material or extensive shall not apply if the structure is altered by adding an extension horizontally in such manner as to increase any or all of its floor areas by not more than twenty-five per centum.

§ 270. Construction of buildings erected after October first, nineteen hundred and thirteen. No factory shall be conducted in a building erected after October first, nineteen hundred and thirteen, unless such building shall conform to the following requirements:

1. Fireproof construction. All buildings more than four stories in height shall be fireproof.

2. Roofs and walls. Roofs shall be covered either with incombustible material, or tar and slag, or plastic cement or such other materials as the board may approve, supported and laid according to its specifications. Cornices shall be constructed of incombustible material. All exterior walls within twenty-five feet of a non-fireproof building shall be built of brick, stone, concrete, cinder or concrete block or tile, terra cotta or other fireproof material acceptable to the state department of labor.

3. Required exits. a. On each floor used as a factory there shall be not less than two exits remote from each other, except that a single exit may be accepted by the commissioner from a floor or other area, of one thousand square feet or less, so long as no person is regularly

employed on such floor or other area. One such exit on each floor used as a factory shall be a grade exit, an interior or exterior enclosed fireproof stairway or ramp. The other shall be either such a grade exit, stairway, ramp, or a horizontal exit, except that unenclosed exterior stairways or ramps within the property line, extending up or down to grade may be substituted for enclosed stairways from a floor immediately above or below the ground or first floor. Elevated runways and working platforms on which there is no regular or permanent occupancy shall not be construed as floors.

b. No point in any floor above or below the ground or first floor shall be more than one hundred feet distant from the entrance to one such exit at that floor and in a sprinklered building more than one hundred and fifty feet distant from such exit. No point in any ground, or first floor shall be more than two hundred feet distant from an exit from that floor and in a sprinklered building more than two hundred and fifty feet distant from such exit; provided that no point in any ground, or first floor of a building erected after July first, nineteen hundred forty-eight, in which a factory is conducted, shall be more than one hundred fifty feet distant from an exit from that floor and in a sprinklered building more than two hundred feet distant from such exit.

c. In every building over one hundred feet in height there shall be at least one exterior fireproof enclosed stairway which shall be accessible from any point in the building.

4. Stairways and ramps. a. All required interior stairways and ramps shall be constructed of incombustible material. Two hour fire test enclosures shall be provided in buildings over two stories in height, and in all subgrade stories. One hour fire test enclosures shall be provided for all other stairs and ramps in buildings two stories or less in height. All stairways and ramps shall have an unobstructed width of at least forty-four inches throughout their length except that hand rails may project not more than three and one-half inches into such width. There shall be not more than twelve feet six inches in height between successive landings. The treads shall be not less than ten inches wide and the risers shall be closed and not more than seven and

three-fourths inches. No stairway with "winders" shall be permitted as a required exit. The treads shall be constructed and maintained so as to prevent persons from slipping thereon. Ramps used in place of required exit stairways shall have a slope not exceeding one foot in eight feet and shall comply with the requirements for stairways as to material, width, enclosure, ventilation, landings and shall have non-slip surfaces.

b. Every such required interior stairway shall be enclosed and ventilated in a manner conforming to rules adopted by the board, except that unenclosed stairways, no part of whose floor opening is more than twenty feet from an open side of the mezzanine and which lead to the floor immediately below, may be accepted from an unenclosed mezzanine not exceeding twenty-five hundred feet in area, unless otherwise specified by the board in its rules.

c. Exterior windows within twenty-five feet of a non-fireproof structure shall be fire windows. Skylights, unless provided with wired glass, shall have thereunder a shield of wire mesh in substantial frame work.

d. Whenever safe egress may be had from the roof of a building exceeding two stories in height to an adjacent structure all stairways serving as required exits shall extend to the roof, provided that in buildings over five stories in height at least one of the stairways serving as required exits shall extend to the roof. All stairways serving as required exits shall lead (a) continuously to the street, or (b) to a fireproof passageway independent of other exits from the building opening on a road or street, or (c) to an open area affording unobstructed passage to a road or street, except that unobstructed access to exits on the floor immediately below may be accepted for stairways from a mezzanine floor unless otherwise specified by the board in its rules. Provision shall be made for the adequate lighting of all stairways, ramps and passageways by artificial light. Where more than two stairways are provided in a building, not more than two may lead through a common fireproof passage to a street. Required stairways terminating at a floor below roof shall be connected at floor at which

such stairs terminate through a fireproof passage to at least one other required stairway.

5. Doors and doorways. All doors at required exits or that lead to required exits shall open outwardly. The width of the fireproof passageways and exit doorways including stops, leading to the street at the grade level shall be not less than the aggregate required width of all stairways and ramps leading to them. The aggregate capacity of all other required exit doorways shall be calculated on the basis of twenty-two inches for each fifty persons or fraction thereof to be served by such doorways, but no such doorway shall be less than thirty-six inches in width.

The provisions of this section shall not apply to a building, in a city having a population of more than one million, used exclusively by one employer and in which not more than one-tenth of all the persons employed therein are engaged in work for a factory and which, except for such factory work, would be classified as a mercantile establishment.

§ 271. Requirements for buildings erected before October first, nineteen hundred and thirteen. No factory shall be conducted in a building erected before October first, nineteen hundred thirteen, and not occupied or used as a factory building on July first, nineteen hundred forty-eight, unless such building shall conform to the requirements of section two hundred seventy. No factory shall be conducted in a building erected before October first, nineteen hundred thirteen and occupied or used as a factory building on July first, nineteen hundred forty-eight, unless such building shall conform to the following requirements:

1. Required exits. a. On each floor used as a factory there shall be at least two exits remote from each other, except that a single exit may be accepted by the commissioner from a floor or other area, of one thousand square feet or less, so long as no person is regularly employed on such floor or other area. One such exit on each floor shall be either a grade exit, an interior stairway enclosed as hereinafter provided or

ramp similarly enclosed, or an exterior fireproof enclosed stairway. The other shall be: either such a grade exit, stairway or ramp; or a horizontal exit; or an exterior screened stairway; or outside fire-escapes on a building six stories or less in height, except such fire-escapes shall not be accepted as a required exit in such buildings or particular classes thereof where the board finds that they will not in its opinion furnish adequate and safe means of escape for occupants in case of fire. Unenclosed exterior stairways or ramps extending up to grade may be substituted for enclosed stairways from a floor area below the ground floor.

b. No point on any floor above or below the ground floor shall be more than one hundred feet distant from the entrance to one such exit at that floor nor more than one hundred and fifty feet distant from such exit if the building has an automatic sprinkler system conforming to section two hundred and eighty and the rules of the board. No point in any ground floor area shall be more than two hundred feet distant from an exit from that floor and in a sprinklered building more than two hundred and fifty feet distant from such exit.

c. If safe egress may be had from the roof to an adjacent structure every stairway serving as a required exit in a building exceeding two stories in height shall be extended to the roof. All such stairways shall extend to the first story and lead to the street or to an unobstructed passageway leading to a street or road or to an open area affording safe passage to a street or road.

2. Stairway enclosures. All interior stairways serving as required exits and the landings, platforms and passageways connected therewith shall be enclosed on all sides by partitions of fire-resisting material extending continuously from the basement to the roof. Where the stairway continues to the top floor such partitions shall extend to three feet above the roof or to the roof if it is fireproof. All such partitions and doors provided for openings therein shall be constructed in accordance with rules adopted by the board.

3. Doors. Where five or more persons are employed on any floor of a

factory building all doors on such floor leading to or opening on any exit shall open outwardly or be double swinging doors. All exit doors in the first story, including the doors of the vestibule, shall open outwardly.

§ 272. Additional requirements for all buildings. No factory shall be conducted in any building unless such building shall be so constructed, equipped and maintained in all respects as to afford adequate protection against fire to all persons employed therein, nor unless in addition to the provisions of sections two hundred and seventy and two hundred and seventy-one such buildings shall conform to the following requirements:

1. Access to exits. Every exit shall be maintained in an unobstructed condition. Safe and continuous passageways with an unobstructed width of at least three feet throughout their length and leading directly to every exit including fire escapes and passenger elevators shall be maintained at all times on every floor of the building.

2. Stairways. Stairways shall be provided with proper hand rails. Where the stairway is enclosed by fireproof partitions the bottom of the enclosure shall be of fireproof material at least four inches thick, unless such partitions extend to the cellar bottom. If safe egress may be had from the roof to an adjacent structure all stairways serving as required exits and extending to the top story shall be continued to the roof.

3. Doors and windows. No door leading into or out of any factory or any floor thereof shall be locked, bolted or fastened during working hours. No door on any floor shall be obstructed by metal bars, grating or wire mesh. Metal bars, grating or wire mesh provided for any window or other opening shall be so constructed as to be readily movable or removable from the inside so as to afford free and unobstructed use thereof as a means of egress and they shall be left unlocked during working hours. Every door opening on a stairway or other exit shall open from both sides so as not to obstruct passage. Doors opening directly to the street or to yard or open area, may be provided with panic bolts of

an approved type.

4. Exit signs. An exit sign shall be placed over all openings leading to stairways and other exits. Such sign shall be legible and visible in accordance with rules, regulations or requirements established by the State of New York Board of Standards and Appeals.

5. Vertical openings. All vertical openings leading from one floor to another, except one created by a mezzanine floor, shall be enclosed by fire-proof or fire-resistive materials and ventilated in a manner conforming to rules adopted by the board.

6. Floors. Floors in buildings more than one and less than five stories in height erected after October first, nineteen hundred thirteen and in all buildings erected prior thereto shall be so constructed or provided with a protective ceiling as to have a fire-resistive rating of at least one hour. This subdivision shall not apply where factory buildings are provided throughout with an automatic fire extinguishing system approved in the city of New York by the fire commissioner in such city and elsewhere by the commissioner.

7. Regulations by board. The board may adopt rules and establish requirements and standards for construction, equipment and maintenance of factory buildings or of particular classes thereof and the means and adequacy of exit therefrom in order to carry out the purposes of this chapter, alternative or in addition to the requirements of this article, and not inconsistent with the spirit thereof.

§ 273. Fire-escapes erected after October first, nineteen hundred and thirteen, on buildings theretofore erected. All outside fire-escapes erected after October first, nineteen hundred and thirteen, on buildings theretofore erected and serving as required exits shall conform to the following requirements:

1. They shall be built of wrought iron or steel and shall be so designed, constructed and erected as to safely sustain on all platforms,

balconies and stairways a live load of not less than ninety pounds per square foot with a factor of safety of four.

2. Whenever practicable a continuous run or straight run stairway shall be built.

3. All openings leading thereto shall have an unobstructed width of at least two feet and an unobstructed height of at least six feet. Such openings shall extend to the floor level or within six inches thereof, shall be not more than seven inches above the floor of the fire-escape balcony and shall be provided with fire doors, except in buildings five stories or under in height complying with the provisions of subdivisions five and six of section two hundred and seventy-four.

4. All windows opening upon the course of the fire-escape shall be fireproof windows.

5. On every floor above the first there shall be a balcony firmly fastened to the building and embracing one or more easily accessible and unobstructed openings. The balconies shall have a width of at least four feet throughout their length and shall have a landing not less than twenty-four inches square at the head of every stairway. There shall be a passageway between the stairway opening and the side of the building at least eighteen inches wide throughout except where the stairways reach and leave the balconies at the ends or where double run stairways are used. The stairway openings of the balconies shall be of a size sufficient to provide clear headway and shall be guarded on the long side by an iron railing not less than three feet in height. Each balcony shall be surrounded by an iron railing not less than three feet in height properly braced.

6. The balconies shall be connected by stairways not less than twenty-two inches wide placed at an incline of not more than forty-five degrees, with steps of not less than eight-inch tread and not over eight-inch rise and provided with a handrail not less than three feet above the treads. The treads of such stairways shall be so constructed as to sustain a live load of four hundred pounds per step with a factor

of safety of four.

7. There shall be a similar stairway from the top floor balcony to the roof, except where the fire-escape is erected on the front of the building.

8. A similar stairway shall also be provided from the lowest balcony to a safe landing place beneath, which stairway shall remain down permanently or be arranged to swing up and down automatically by counter-balancing weights.

9. When not erected on the front of the building, safe and unobstructed egress shall be provided from the foot of the fire-escape by means of an open court or courts or a fireproof passageway having an unobstructed width of at least three feet throughout, leading to the street, or by means of an open area having communication with the street. Such fireproof passageway shall be adequately lighted at all times and the lights shall be so arranged as to insure their reliable operation when through accident or other cause the regular factory lighting is extinguished.

§ 274. Fire-escapes erected before October first, nineteen hundred and thirteen. All outside fire-escapes erected before October first, nineteen hundred and thirteen, and serving as required exits under the provisions of section two hundred and seventy-one shall conform to the following requirements:

1. There shall be balconies on each floor of the building connected with stairways placed at an angle of not more than sixty degrees.

2. A stairway shall lead from the top floor balcony to the roof, except when the fire-escapes are erected on the front of the building.

3. A stairway not less than twenty-two inches wide shall lead from the lowest balcony to a safe landing place beneath, which stairway shall remain down permanently or swing up and down by counterbalancing

weights.

4. A safe and unobstructed exit shall be provided to the street from the foot of such fire-escapes as required in subdivision nine of section two hundred and seventy-three.

5. Steps shall connect the sill of every opening leading to the fire-escapes with the floor wherever such sill is more than three feet above the floor level.

6. All openings leading to the fire-escapes shall be provided with fireproof windows or fire doors.

7. All windows opening upon the course of the fire-escape shall be fireproof windows.

§ 275. Special laws and local ordinances. The requirements of sections two hundred and seventy to two hundred and seventy-four, inclusive, are not in substitution for the requirements of any general or special law or local ordinance relating to the construction, equipment or maintenance of buildings, but the provisions of such general and special laws and local ordinances shall be observed as well as the provisions of said sections. The provisions of sections two hundred and seventy to two hundred and seventy-four, inclusive, shall supersede all provisions inconsistent therewith in any special law or local ordinance, and any provision of law or ordinance which gives power to any officer to establish requirements inconsistent with the provisions of such sections or the rules adopted by the board under the provisions of this chapter.

§ 276. Inspection of buildings and approval of plans. 1. Inspection of buildings. The officer of any city, village or town having power to inspect buildings therein to determine their conformity to the requirements of law or ordinance governing their construction shall, whenever requested by the commissioner, inspect any factory building therein and certify to the commissioner whether such building conforms

to the requirements of this chapter and the rules of the board. Such certificate shall be presumptive evidence of the truth of the matters therein stated.

2. Approval of plans. Before constructing or altering a building to be used for a factory, the plans and specifications therefor may be submitted to the commissioner in such form as he may require. If they comply with the requirements of this chapter and the rules of the board, the commissioner shall issue his certificate approving the same. No permit for the construction of any building or structure, which is required to conform to the structural requirements of the labor law or the rules adopted thereunder shall be issued by an enforcing authority in any city or village of this state except as provided by chapter five hundred and three of the laws of nineteen hundred sixteen as amended, until the plans have been approved by the commissioner. Nothing herein shall prohibit any local authority from issuing a temporary permit for excavation and foundations and such temporary permit also shall issue upon notice from the department of labor of the receipt of a request for a variation as provided for in section thirty of this chapter. Such certificate shall be presumptive evidence of the truth of the matters therein stated.

3. Certificate of compliance. After such construction or alteration shall be completed, the commissioner shall ascertain by inspection whether the building conforms substantially to the requirements of this chapter and the rules of the board. If the commissioner finds that it does so conform he shall issue his certificate to that effect. No building or structure hereafter erected, or altered, which is required to conform to the structural requirements of the labor law or the rules adopted thereunder, shall be used or occupied without such certificate.

§ 277. Notice of issue of local construction permit. The officer of any city, village or town having power to approve plans for the construction and alteration of buildings shall, immediately upon the issuance of a permit for the construction or alteration of a building to be used for a factory or mercantile establishment as defined by this

chapter, forward to the commissioner on forms provided by him a notice of the issue of such permit and such other information as he may require. The provisions of this section shall not apply to the city of New York.

§ 278. Limitation of number of occupants. The number of persons who may be employed in a factory building or portion thereof shall be limited to such number as can safely escape from the building by the exits provided in the building and shall not exceed the following:

1. In a building erected after October first, nineteen hundred and thirteen, fourteen persons for every full twenty-two inches in width of stairway provided for such floor and conforming to the requirements for required exits, except as to extension to the roof. No allowance shall be made for any excess in width of less than twenty-two inches.

2. In a building erected before October first, nineteen hundred thirteen, fourteen persons for every eighteen inches in width of stairway provided for such floor and conforming to the requirements for required exits except as to extension to the roof. For any excess in width of less than eighteen inches, a proportionate increase in the number of occupants shall be allowed. If a stairway has winders a deduction of ten per centum shall be made in computing the capacity of such stairway.

3. On any floor which is more than ten feet from the one immediately beneath, the number "fourteen" allowed in subdivisions one and two may be increased respectively by one person for every sixteen inches over ten feet between the two floors provided such stairways conform to the requirements for required exits except as to extension to the roof.

4. In addition to the number of persons allowed in subdivisions one, two and three, so many persons may be employed on any floor as can occupy the stair halls, allowing five square feet of unobstructed floor space per person where the stairways and stair halls are enclosed by partitions as required by sections two hundred and seventy and two

hundred and seventy-one.

5. The number of persons permitted to be employed on any floor under subdivisions one, two, three and four may be increased one hundred per centum where there is maintained throughout the building an automatic sprinkler system conforming to the requirements of section two hundred eighty and to the rules of the board and where, if required by subdivisions one and two of section two hundred seventy-nine, a fire alarm signal system is maintained and fire drills are conducted.

6. On any floor at which a horizontal exit is provided so many persons may be employed as can occupy the smaller of the spaces on either side of the fireproof partitions or fire walls, or as can occupy the floor of an adjacent building which is connected with such floor by openings in the wall or walls between the buildings or by exterior balconies or bridges in addition to the occupants of such connected floor in such adjacent building, allowing five square feet of unobstructed floor space per person. Openings constituting required exit doorways, or if such exits are balconies or bridges, the openings leading thereto shall be of sufficient aggregate width to allow eighteen inches in width of openings for each fifty persons or fraction thereof employed on such floor in the case of factory buildings erected before October first, nineteen hundred and thirteen, and twenty-two inches in the case of factory buildings erected after that date.

7. Where a floor is occupied by more than one tenant, the commission may prescribe how many of the persons allowed to occupy such floor under the provisions of this section may occupy the space of each tenant.

8. In every factory building the commissioner shall cause to be posted in a conspicuous place in every stairhall and workroom, notices specifying the number of persons that may occupy each floor thereof in accordance with the provisions of this section. If any floor is occupied by more than one tenant, such notices shall be posted in the space occupied by each tenant, and shall state the number of persons that may occupy such space. Every such notice shall bear the date when posted.

§ 279. Fire alarm signal systems and fire drills. 1. Fire alarm signal systems. Except as may otherwise be provided by the board in its rules, every factory building over two stories in height in which more than twenty-five persons are employed above the ground floor shall be equipped by the owner thereof with a fire alarm signal system having a sufficient number of signals clearly audible to all occupants of the building, and so arranged as to permit the sounding of all the alarms within the building whenever the alarm is sounded in any portion thereof. Such system shall be maintained in good working order and no person shall tamper with same or render ineffective any portion thereof except to repair it. A person discovering a fire shall cause an alarm to be sounded immediately. The board of standards and appeals in the city of New York and elsewhere the board may make rules and regulations relating to the installation of fire alarm signals and prescribing the number, character and location of the signals and the method and character of the installation including that of all appliances in connection therewith.

2. Fire drills. Except as may otherwise be provided by the board in its rules, in every factory building over two stories in height in which more than twenty-five persons are employed above the ground floor, a fire drill shall be conducted at least once a month in which all of the occupants of the building shall participate simultaneously and which shall conduct all such occupants to a place of safety. In New York city the fire commissioner and elsewhere the board shall make rules, regulations and special orders necessary or suitable to each situation and to secure the personal co-operation of all the tenants of the building in a fire drill of all the occupants thereof. Such rules, regulations and orders may require the posting of the same or an abstract thereof and may prescribe upon whom shall rest the duty of carrying them out.

3. Exceptions. Subdivisions one and two of this section shall not apply to a building in which every square foot of the floor area on all stories is protected with an automatic sprinkler system having two adequate sources of water supply and approved by the public authorities

having jurisdiction thereof and in which also the maximum number of occupants of any one floor does not exceed by more than fifty per centum the capacity of the exits, as determined by subdivisions one, two, three and four of section two hundred and seventy-eight. If the commissioner after investigation determines that the spirit of this chapter is observed and public safety secured he may permit in place of the automatic sprinkler system before specified an automatic sprinkler system having one adequate source of water supply and approved by the public authorities having jurisdiction thereof.

4. The provisions of this section shall be enforced in the city of New York by the fire commissioner of said city and elsewhere by the commissioner.

§ 280. Automatic fire extinguishing systems. Every factory building erected before October first, nineteen hundred thirteen, which is more than one story in height and which has any occupancy specified by the board in its rules as of medium or high hazard below its uppermost floor, shall be provided by the owner thereof with an automatic fire extinguishing system.

In every non-fireproof factory building constructed after October first, nineteen hundred thirteen, which is more than one story in height and which has any occupancy specified by the board in its rules as of high hazard below its uppermost floor, the story containing such occupancy and all stories above it shall be provided by the owner thereof with an automatic fire extinguishing system.

The automatic fire extinguishing systems required by this section shall be approved in the city of New York by the fire commissioner in such city and elsewhere in accordance with the rules of the board. The relative hazard of occupancies within said city shall be as determined by the board of standards and appeals thereof. The provisions of this section shall be enforced in the city of New York by the fire commissioner of said city and elsewhere by the commissioner.

§ 281. Fireproof receptacles. Every factory shall be provided with properly covered fireproof receptacles, the number, style and location of which shall be approved in the city of New York by the fire commissioner and elsewhere by the commissioner. There shall be deposited in such receptacles waste materials, cuttings and rubbish of an inflammable nature. No waste materials, cuttings or rubbish shall be permitted to accumulate on the floors of any factory but shall be removed therefrom not less than twice each day. All such waste materials, cuttings and rubbish shall be entirely removed from a factory building at least once a day, except that baled waste material may be stored in fireproof enclosures. All such baled waste material shall be removed from the building at least once a month.

§ 282. Gas jets and other lights. All gas jets and other lights in factories shall be properly enclosed by globes or wire cages or shall be otherwise properly protected in a manner approved in the city of New York by the fire commissioner of such city and elsewhere by the commissioner.

§ 283. Smoking. 1. No person shall smoke in a factory. A notice of such prohibition stating the penalty for violation thereof shall be kept posted in every entrance hall, elevator, stairhall and room of a factory in English, and in such other languages as the fire commissioner of the city of New York in such city and elsewhere the commissioner shall direct.

2. The board in its rules may permit smoking in protected portions of a factory, or in such classes of occupancies where in its opinion the safety of the employees will not be endangered thereby. The fire commissioner of the city of New York in such city and elsewhere the commissioner may issue such permits in accordance with rules adopted by the board.

3. The fire commissioner of the city of New York in such city and

elsewhere the commissioner shall enforce this section.

TITLE 4
SANITATION

Section 291. Cleanliness and safety of rooms.

292. Drinking water.

293. Washrooms.

294. Dressing rooms.

295. Waterclosets.

296. Laundries.

297. Unclean factories.

299. Ventilation, heating and humidity.

300. Size of rooms; air space per person.

§ 291. Cleanliness and safety of rooms. Every room in a factory and every part thereof and all fixtures therein shall at all times be kept in a safe and sanitary condition and in proper repair. No person shall expectorate upon the walls, floors or stairs of a factory or of the building in which it is located. Suitable receptacles shall be provided and used for the storage of waste and refuse. The walls and ceiling of the rooms and hallways in every factory shall be kept in a clean condition.

§ 292. Drinking water. There shall be provided in every factory at all times for the use of employees a sufficient supply of clean and pure drinking water, and if placed in receptacles the same shall be properly covered and kept clean.

§ 293. Washrooms. 1. There shall be provided and maintained for employees in every factory suitable and convenient washrooms separate for each sex, adequately equipped with washing facilities. Every washroom shall be adequately ventilated and heated and shall be lighted by artificial means where necessary.

2. In factories where lead, arsenic or other poisonous substances or injurious or noxious fumes, dust or gases are present as an incident or result of the business or occupation, hot water, soap and individual towels shall be furnished.

§ 294. Dressing rooms. There shall be provided in every factory where females are employed such dressing or emergency rooms as shall be specified in the rules of the board. All dressing rooms shall be separated from waterclosets by partitions, shall have adequate floor space in proportion to the number of employees, shall be provided with seats and with suitable means for hanging clothes, and shall be constructed, heated, ventilated, lighted and maintained in accordance with the rules of the board.

§ 295. Waterclosets. 1. There shall be provided for every factory a sufficient number of suitable and convenient waterclosets. All waterclosets shall be maintained inside the factory building, except where in the opinion of the commissioner it is impracticable.

2. There shall be separate watercloset compartments or toilet rooms for females, constructed and maintained in accordance with the rules of the board.

3. The use of any form of trough watercloset, latrine or school sink within any factory is prohibited.

4. All waterclosets, urinals, watercloset compartments and toilet rooms and the plumbing in connection therewith shall be properly constructed, installed, ventilated, lighted, heated and maintained in accordance with the rules of the board.

§ 296. Laundries. A shop, room or building where one or more persons are employed in doing public laundry work by way of trade or for

purposes of gain is a factory within the meaning of this chapter and subject to the provisions relating to factories. No such public laundry work shall be done in a room used for sleeping or living purposes. All such laundries shall be kept in a clean condition and free from vermin and from all impurities of an infectious or contagious nature. This section shall not apply to a female doing custom laundry work at her home for regular family trade.

§ 297. Unclean factories. 1. If the commissioner finds evidence of contagious disease in a factory, he shall affix to the articles therein exposed to contagion a label containing the word "unclean" and shall notify the local department or board of health, which after disinfecting the articles may remove such label.

2. If the commissioner finds that the factory or work room therein is unsanitary, the commissioner may, upon filing in his office a written order stating the reasons therefor, affix to any articles therein a label containing the word "unclean." Such label shall be removed only by an authorized representative of the commissioner and not until such articles are removed from the factory and cleaned, or until the factory or work room is made sanitary.

§ 299. Ventilation, heating and humidity. 1. Every work room in a factory shall be provided with proper and sufficient means of ventilation, natural or mechanical or both, as may be necessary, and there shall be maintained therein proper and sufficient ventilation and proper degrees of temperature and humidity at all times during the working hours. If owing to the nature of the manufacturing process carried on in the factory work room excessive heat be created therein, there shall be provided, maintained and operated such special means or appliances as may be required to reduce such excessive heat.

2. All machinery creating dust or impurities in quantities tending to injure the health of employees shall be equipped with proper hoods and pipes connected to an exhaust fan of sufficient capacity and power to

remove such dusts or impurities; such fan shall be kept running constantly while such machinery is in use. If the board decides that such apparatus is unnecessary for the health and welfare of the employees, or that other means of protection may be provided to safeguard the health and welfare of the employees against such injurious dusts or impurities, it may adopt rules excepting such machinery from the operation of this subdivision, or prescribing such requirements as will effectuate the intent of this subdivision.

3. If dust, gases, fumes, vapors, fibers or other impurities are generated or released in the course of the business carried on in any workroom of a factory, in quantities tending to injure the health of the employees, suction devices shall be provided which shall remove such impurities from the workroom, at their point of origin where practicable, by means of proper hoods connected to conduits and exhaust fans. Such fans shall be kept running constantly while the impurities are being generated or released.

4. The board shall make rules for and fix standards of ventilation, temperature and humidity in factories and shall prescribe the special means, if any, required for removing impurities or for reducing excessive heat, and the machinery, apparatus or appliances to be used for any of said purposes, and the construction, equipment, maintenance and operation thereof.

5. If any requirement of this section or any rule adopted thereunder be not complied with, the commissioner shall issue an order directing compliance therewith within thirty days after the service thereof. He may in such order require plans and specifications to be filed. In such case, before providing or making any change or alteration in any machinery or apparatus for any of the purposes specified in this section, the person upon whom such order is served shall file with the commissioner plans and specifications therefor and shall obtain his approval of the same.

§ 300. Size of rooms; air space per person. No greater number of

persons shall be employed in any room of a factory between six o'clock in the morning and six o'clock in the evening than will allow each person so employed two hundred and fifty cubic feet of air space nor, unless by written permit of the commissioner, than will allow four hundred cubic feet of air space for each person employed between six o'clock in the evening and six o'clock in the morning. Such rooms shall be lighted by electricity whenever persons are employed therein between six o'clock in the evening and six o'clock in the morning.

TITLE 5 **FOUNDRIES**

Section 310. Foundries.

§ 310. Foundries. Foundries shall conform to the provisions of this chapter relating to factories and also to the following requirements:

1. Entrances and windows shall be constructed and maintained so as to minimize drafts.

2. Gangways shall be constructed and maintained of sufficient width to make the use thereof by employees reasonably safe and shall not be obstructed during the progress of casting.

3. Smoke, steam or gases generated in foundries shall be effectively removed therefrom in accordance with rules adopted by the board. The milling and cleaning of castings and the milling of cupola cinders shall be done under such conditions to be prescribed by the rules of the board as will adequately protect the employees from dust. The use of heaters discharging smoke or gas into the work rooms is prohibited except that open fires may be used under conditions prescribed by the board in its rules. Suitable provision shall be made for drying the working clothes of employees.

4. All apparatus, tools, implements and equipment shall be kept in proper condition and repair.

5. A first aid kit shall be provided for the use of employees in case of burns or accidents.

6. Where ten or more persons are employed (a) there shall be provided suitable and convenient wash rooms adequately equipped with hot and cold water. Such wash rooms shall be kept clean and properly heated. (b) Lockers shall be provided for the employees' clothing. (c) If outside watercloset or privy accommodations are permitted by rules of the board, they shall be properly heated and the passageway leading from the foundry thereto shall be so constructed and protected that employees using the passageway shall not be exposed to the outdoor atmosphere.

TITLE 6

DUTIES OF OWNERS AND OCCUPIERS

Section 315. Definitions.

316. Duties of owners and occupiers.

§ 315. Definitions. Whenever used in this article:

1. "Owner" means the owner of the premises, or the lessee of the whole thereof, or the agent in charge of the property.

2. "Tenant-factory building" means a building, separate parts of which are occupied and used by different persons and one or more of which parts is used as a factory.

§ 316. Duties of owners and occupiers. 1. Except as in this article otherwise provided, the person operating a factory, whether as owner or lessee of the whole or a part of the building in which the same is situated or otherwise, shall be responsible for the observance of the provisions of this article, anything in any lease or agreement to the contrary notwithstanding.

2. The owner of a tenant-factory building, whether or not he is also one of the occupants instead of the respective tenants, shall be responsible for the observance of the following provisions of this article, anything in any lease to the contrary notwithstanding:

Section two hundred and fifty-five, elevators and hoistways; section two hundred and seventy, construction of buildings erected after October first, nineteen hundred and thirteen; section two hundred and seventy-one, requirements for buildings erected before October first, nineteen hundred and thirteen; section two hundred and seventy-two, additional requirements for all buildings, except subdivision one and the first three sentences of subdivision three; section two hundred and seventy-three, fire escapes erected after October first, nineteen hundred and thirteen, on buildings theretofore erected; section two hundred and seventy-four, fire escapes erected before October first, nineteen hundred and thirteen; section two hundred and seventy-nine, fire alarm signal systems and fire drills; section two hundred and eighty, automatic sprinklers; section two hundred and ninety-two, drinking water; section two hundred and ninety-three, washrooms, except subdivision two thereof; section two hundred and ninety-five, water closets. Except that the tenants shall also be responsible within their respective holdings for the observance of the provisions of the following sections: section two hundred and fifty-five, elevators and hoist ways; section two hundred and seventy, construction of buildings erected after October first, nineteen hundred and thirteen; section two hundred and seventy-one, requirements for buildings erected before October first, nineteen hundred and thirteen; section two hundred and seventy-two, additional requirements for all buildings; section two hundred and seventy-three, fire escapes erected after October first, nineteen hundred and thirteen, on buildings theretofore erected; section two hundred and seventy-four, fire escapes erected before October first, nineteen hundred and thirteen.

The owner shall also be responsible for all other provisions of this article in so far as they affect those portions of the tenant-factory building or its premises that are used in common or by more than one occupant.

3. The tenant of any part of a tenant-factory building shall permit the owner, his agents and employees to enter and remain upon the demised premises whenever and so long as may be necessary to comply with the provisions of law, the responsibility for which is by this section placed upon the owner; and his failure or refusal so to do shall be a cause for dispossessing said tenant by summary proceedings to recover possession of real property. Whenever by the terms of a lease any tenant has agreed to comply with or carry out any of such provisions, his failure or refusal so to do shall be a cause for dispossessing said tenant by summary proceedings as aforesaid.

ARTICLE 12

FAIR WAGES TASK FORCE

Section 330. Fair wages task force; definitions.

331. Establishment of a fair wages task force.

332. Duties.

333. Powers.

334. Task force training; assistance of agencies.

§ 330. Fair wages task force; definitions. As used in this article, the following terms shall have the following meanings:

(a) "Commissioner" shall mean the commissioner of labor;

(b) "Department" shall mean the department of labor; and

(c) "Task force" shall mean the fair wages task force within the department.

§ 331. Establishment of a fair wages task force. The commissioner is authorized to establish a fair wages task force for the purpose of concentrating enforcement of the provisions of this chapter affecting employees in manufacturing, service and other industries where there may be a concentration of workers at risk of exploitation in New York state and otherwise exercising the duties and powers set forth in sections three hundred thirty-two and three hundred thirty-three of this article.

Such task force shall be empowered to investigate and conduct inspections.

§ 332. Duties. The task force is charged with the following duties:

1. to inspect manufacturing, service and other industries with respect to their respective employees, for compliance with the provisions of this chapter; and

2. to ensure, with respect to their respective employees, compliance by manufacturing, service and other industries with orders of, and assessments of civil penalties by the commissioner pursuant to this article.

§ 333. Powers. Notwithstanding any other state or local law or regulation to the contrary, the task force shall have the following powers:

1. to inspect books, records and premises of employers, with respect to their respective employees to determine compliance with this chapter, including but not limited to, minimum wage, overtime compensation, unemployment insurance coverage and child labor; and

2. when in the course of inspections pursuant to subdivision one of this section, (a) to inspect books and records of employers with respect to their respective employees concerning the deduction and remittance to the proper authorities of all federal, state and local payroll taxes and to refer to the appropriate authorities any instance in which there is reasonable cause to believe that the payment of federal, state and local payroll taxes is being evaded; and

- (b) to take action authorized by this chapter necessary to implement its provisions.

§ 334. Task force training; assistance of agencies. 1. The task force

shall receive training to be provided by the state as is necessary to carry out the duties and powers of the task force.

2. The task force may request from any department, division, board, bureau, commission or other agency of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality of the state, such assistance as shall enable it to properly carry out its powers and duties under the provisions of this section.

ARTICLE 12-A

SPECIAL TASK FORCE FOR THE APPAREL INDUSTRY

- Section 340. Special task force for the apparel industry.
341. Registration.
- 341-a. Unlawfully manufactured apparel.
342. Establishment of a special task force.
343. Duties.
344. Powers.
345. Violations, penalties, procedures.
- 345-a. Liability of manufacturers and contractors.
- 345-b. Confiscation of goods.
346. Special task force training; assistance of agencies.
347. Report.
348. Powers of commissioner; surety bond; civil and criminal penalties.
- 349-a. Annual reports.

§ 340. Special task force for the apparel industry. Definitions. As used in this article, the following terms shall have the following meanings:

- (a) "Commissioner" shall mean the commissioner of labor;
- (b) "Department" shall mean the department of labor;
- (c) "Apparel industry" shall mean the making, cutting, sewing, finishing, assembling, pressing or otherwise producing, by any of the foregoing apparel industry services, any men's, women's, children's or

infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale, provided, however, that the apparel industry shall not include cleaning or tailoring after the apparel has been sold at retail;

(d) "Manufacturer" shall mean any person who (i) in fulfillment or anticipation of a wholesale purchase contract, contracts with a contractor to perform in New York state the cutting, sewing, finishing, assembling, pressing or otherwise producing any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which, pursuant to such contract, is to be sold or offered for sale to a retailer or other entity, or (ii) cuts, sews, finishes, assembles, presses or otherwise produces in New York state any men's, women's, children's or infants' apparel, or a section or component, designed or intended to be worn by any individual which is to be sold or offered for sale; provided, however, that "manufacturer" shall not mean a production employee employed for wages who does not employ others;

(e) "Contractor" shall mean any person who, in fulfillment of a contract with a manufacturer, performs in New York state the cutting, sewing, finishing, assembling, pressing or otherwise producing any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale. "Contractor" shall include, but not be limited to, a subcontractor, jobber, or wholesaler, but shall not include a production employee who is employed for wages but does not employ others;

(f) "Production employees" shall mean persons who are employed by a contractor or a manufacturer directly to perform the cutting, sewing, finishing, assembling, pressing or otherwise producing of any men's, women's, children's or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual which is to be sold or offered for sale;

(g) "Special task force" shall mean the special task force on the apparel industry within the department; and

(h) "Labor law" shall mean the labor law of New York state.

(i) "Retailer" shall mean any mercantile enterprise which sells to consumers or offers to sell to consumers any men's, women's, children's

or infants' apparel, or a section or component of apparel, designed or intended to be worn by any individual consumer.

§ 341. Registration. 1. No manufacturer or contractor shall engage in the apparel industry unless he or she registers with the commissioner, in writing, on a form provided by the commissioner, which shall contain the following information: whether it is a sole proprietorship, partnership or corporation, its name, address and number of production employees, the name, home address and social security number of each owner or partner, or if the registrant is a corporation, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, of each officer and of each of the ten largest shareholders thereof, how long it has been in business, its tax identification number, whether it is a manufacturer or contractor, the name and address of each person with a financial interest in the manufacturer's or contractor's business and the amount of that interest, except that if the manufacturer or contractor is a publicly-traded corporation, only the names and addresses of the corporation officers shall be required, whether it is in contractual relations with a labor organization and, if so, the name and address of such labor organization, a statement as to whether the registrant or any owner or partner in, or if the registrant is a corporation, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, any officer or any of the ten largest shareholders thereof has, within the last three years, been found by any court or administrative body to have violated this chapter and, if so, the nature and date of such violation and, if the registrant is a contractor, whether that contractor subcontracts the cutting or sewing of apparel or sections or components thereof. Such registration form shall also require that each owner or partner, or if the registrant is a corporation, then each officer, submit photographic proof of identity. Divisions, subsidiary corporations or related companies may, at the option of the manufacturer or contractor, be named and included under one omnibus registration. Such registration shall be filed on or before

January fifteenth of each year. The commissioner shall issue a certificate of registration, which shall be effective for a period of twelve months, upon receipt of a completed registration form accompanied by the requisite photographic proof of identity and documentation that such manufacturer or contractor has paid any surety bond required pursuant to subdivision eight of section three hundred forty-five of this article and that a workers' compensation insurance policy is in effect for the registrant's production employees working in New York state. The initial registration fee shall be two hundred dollars and each subsequent annual renewal registration fee shall be one hundred fifty dollars. With respect to new employers, such registration shall be filed upon the commencement of manufacturing or contracting in the apparel industry and shall be effective until the following January fifteenth. The commissioner may pro rate the initial annual registration fee in such instances.

2. Proof of registration shall be by an official department registration certificate which shall be posted where it may be read by employees during the workday.

§ 341-a. Unlawfully manufactured apparel. The commissioner shall have the power to affix to any article of apparel or component thereof, in the manufacture or assembly of which any employee was employed in violation of article six or nineteen of this chapter, a tag of no more than six inches in length bearing the words "unlawfully manufactured." Any person other than the commissioner, the commissioner's duly authorized representative or consumer of such article of apparel or component thereof who removes, alters, defaces or otherwise interferes with such a tag shall be guilty of a misdemeanor.

§ 342. Establishment of a special task force. The commissioner is authorized to establish a special task force for the purpose of concentrating enforcement of the labor law affecting production employees in the apparel industry in New York state and otherwise exercising the duties and powers set forth in sections three hundred

forty-three and three hundred forty-four of this article. Such special task force shall be empowered to investigate and conduct inspections at locations where an apparel industry contractor is operating.

The commissioner is further authorized to publish on the internet listings of those persons and entities investigated by the department or the special task force on the apparel industry and found not to be in compliance with the law. The listing shall include all relevant information concerning the violators included in the registration process in accordance with section three hundred forty-one of this article. The listing shall be updated regularly, not less than monthly, amended to be adjusted for new instances of non-compliance. Any retailer or manufacturer or contractor requesting verification of the registration status of a manufacturer or contractor shall be provided with a reference to this internet web site listing.

§ 343. Duties. The special task force is charged with the following duties: 1. To inspect manufacturers and contractors, with respect to their respective production employees, for compliance with the registration requirements of section three hundred forty-one of this article;

2. To inspect manufacturers and contractors, with respect to their respective production employees, for compliance with the labor law;

3. To insure, with respect to their respective production employees, compliance by manufacturers and contractors with the orders of, and assessments of civil penalties by, the commissioner pursuant to this article; and

4. To submit annual reports to the governor, the temporary president of the senate, the speaker of the assembly, and the chairpersons of the senate and assembly labor committees detailing:

(a) the number of complaints, investigations and dispositions by the task force including any resulting fines, restitution, referrals to the attorney general and criminal prosecutions;

(b) the number of investigators and other filled staff positions on the task force including the total number of authorized positions and whether any investigators are bilingual and, if so, in what language;

(c) the amount of money allocated annually by the department and the amount actually spent; and

(d) any recommendations for improving enforcement efforts against apparel manufacturers and contractors which violate the law.

§ 344. Powers. Notwithstanding any other state or local law or regulation to the contrary, the special task force shall have the following powers: 1. To inspect books, records and premises of manufacturers and contractors, with respect to their respective production employees, to determine compliance with this chapter, including but not limited to, minimum wage, overtime compensation, unemployment insurance coverage, child labor and industrial homework and, if the special task force determines that a manufacturer or contractor has violated any provision of this chapter with respect to its production employees, to assess and collect, on behalf of the commissioner, an administrative penalty. If the violation is of a provision of this chapter for which the assessment and collection of an administrative penalty is not otherwise authorized, the special task force may assess and collect a penalty of up to two hundred fifty dollars for a first violation and up to five hundred dollars for each subsequent violation. No penalty shall be levied pursuant to this subdivision unless the commissioner shall provide the violator with notification of such violation and of the amount of such administrative penalty by certified mail and with an opportunity to request a hearing within fifteen days following the receipt of such notice. If a hearing is requested, the commissioner may issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, such notice shall become a final order upon the expiration of the fifteen-day period. Payment of such administrative penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this subdivision may be recovered with costs upon an appeal to the appellate division of the supreme court pursuant to article seventy-eight of the civil practice law and rules and upon a

final determination that the finding by the commissioner was in error. Any penalty paid pursuant to this subdivision shall be applied to enforcement and administrative costs of the special task force;

2. When in the course of inspections pursuant to subdivision one above: (a) To inspect books and records of manufacturers and contractors, with respect to their respective production employees, concerning the deduction and remittance to the proper authorities of all federal, state and local payroll taxes and to refer to the appropriate authorities any instance in which there is reasonable cause to believe that the payment of federal, state and local payroll taxes is being evaded; and

(b) To inspect premises of manufacturers and contractors, with respect to their respective production employees, to determine compliance with concerning state or local building codes, state or local fire codes, laws or regulations and state or local health codes, laws or regulations and to refer to the appropriate authorities any instance in which there is reasonable cause to believe that a violation of such codes, laws or regulations exists; and to immediately evacuate and close any premises deemed by a special task force investigator trained in accordance with section three hundred forty-six of this article to recognize fire code violations, to be a serious violation of the applicable fire code; and to refer such violation immediately to the appropriate local authorities; and

(c) To take action authorized by this article necessary to implement its provisions.

§ 345. Violations, penalties, procedures. 1. Any manufacturer or contractor in the apparel industry who has failed to comply with the registration requirements of section three hundred forty-one of this article shall be deemed to have violated this article.

2. Any manufacturer or contractor in the apparel industry who has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section three hundred forty-one of this article shall be deemed to have

violated this article.

3. Any manufacturer or contractor in the apparel industry who contracts for the performance of any apparel industry service, as defined in section three hundred forty of this article, with any other manufacturer or contractor who is required to register, but whom the manufacturer or contractor knows has failed to register, failed to renew its registration or has had its registration revoked by the commissioner shall be deemed to have violated this article.

4. (a) The commissioner may impose a civil penalty upon a manufacturer or contractor of up to one thousand five hundred dollars for the initial violation of subdivision one, two or three of this section and up to three thousand dollars for the second or subsequent violation of subdivision one, two or three of this section. Instead of, or in addition to, such civil penalty, the commissioner may assess and collect an administrative penalty of not more than two hundred fifty dollars for the first violation and of not more than five hundred dollars for each subsequent violation. No administrative penalty shall be levied pursuant to this paragraph unless the commissioner provides the violator with notification of the violation and of the penalty by certified mail and with an opportunity to request a hearing within fifteen days following receipt of such notice. If a hearing is requested, the commissioner may issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, such notice shall become a final order upon the expiration of such fifteen-day period. Payment of such administrative penalty is due when a final order is issued or when the notice becomes a final order. Any administrative penalty imposed pursuant to this paragraph may be recovered with costs upon an appeal to the appellate division of the supreme court pursuant to article seventy-eight of the civil practice law and rules and upon a final determination that the finding of the commissioner was in error. Any civil or administrative penalty paid pursuant to this subdivision shall be applied to enforcement and administrative costs of the special task force. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the manufacturer's or contractor's business, its good faith, the gravity of the violation, the history of

previous violations of this article and the manufacturer's or contractor's compliance with the recordkeeping or other provisions of this chapter.

(b) The order imposing such civil penalty may be served personally or by certified mail. Such order shall be in writing and shall describe the nature of the violation, including reference to the provisions of subdivision one, two or three of this section alleged to have been violated.

5. (a) An order issued under this section shall be final and not subject to review by any court or agency unless review is had pursuant to section one hundred one of this chapter.

(b) Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6. If any manufacturer or contractor shall have failed to comply within twenty days of an order by the commissioner to register or renew registration, the commissioner may seek to enjoin such unlawful activity, pursuant to the civil practice law and rules.

7. (a) No manufacturer or contractor shall perform services or hold itself out as being able to perform services as a registered manufacturer unless such manufacturer or contractor holds a valid registration pursuant to this article. The intentional failure of an apparel manufacturer or contractor to comply with the registration requirements of section three hundred forty-one of this article shall be a class B misdemeanor. The officers and agents of any corporation who knowingly permit such corporation to violate the registration

requirements of section three hundred forty-one of this article shall be guilty of a class B misdemeanor.

(b) A manufacturer or contractor which knowingly violates paragraph (a) of this subdivision within three years of having been found guilty of violating this subdivision shall be guilty of a class A misdemeanor, as defined in the penal law.

8. (a) The commissioner may, after a hearing thereon, require, as a condition of continued registration, the payment of a surety bond or may revoke the registration of any manufacturer or contractor for any period ranging from thirty days to one year upon being found guilty of a second violation of the same provision of this article within any two-year period. In assessing whether to require a surety bond or revoke such registration, the commissioner shall give due consideration to the size of the manufacturer's or contractor's business, its good faith, the gravity of the violation, the history of previous violations and the manufacturer's or contractor's compliance with the recordkeeping or other provisions of this chapter.

(b) Such surety bond shall be payable to the state and shall be for the benefit of production employees damaged by any failure of a manufacturer or contractor to pay wages or benefits or otherwise comply with the provisions of this chapter. Such surety bond shall be in the sum and form that the commissioner shall deem to be necessary to protect such production employees but shall in no case exceed twenty-five hundred dollars per production employee.

9. Any manufacturer or contractor who contracts, for the second time within any three year period, for the performance of any apparel industry service, as defined in section three hundred forty of this article, with any other manufacturer or contractor whom the manufacturer or contractor knows has failed to comply with the registration requirements of section three hundred forty-one of this article shall, if such other manufacturer or contractor has failed to pay any civil penalty assessed under subdivision one of section three hundred forty-five of this article, be liable to pay a civil penalty equal to the civil penalty that such other manufacturer or contractor has been assessed. Nothing herein shall affect the right of any manufacturer to

possess or repossess any apparel, or sections or components of apparel, that are located at any contractor with whom it has contracted.

10. (a) Any manufacturer or contractor in the apparel industry who ships, delivers or sells any apparel or sections of apparel; who knew or should have known that such goods were produced in violation of article six or nineteen of this chapter, shall be deemed to have violated this article;

(b) Any retailer who sells any apparel or sections of apparel, who knew or should have known that such goods were produced in violation of article six or nineteen of this chapter, shall be deemed to have violated this article. Except that no violation of this article shall be deemed to have occurred if the retailer acquired the apparel or sections of apparel without notice from the commissioner of any violations of article six or nineteen of this chapter and with the written or electronically transmitted assurance of such manufacturer or contractor, given before or after production, whether as part of the retailer's vendor approval process, purchase contract requirements, electronically transmitted purchase order acknowledgments or invoices, or otherwise, that such goods would be, or were, produced in compliance with this article or, generally, all applicable laws; and

(c) Subject to the exceptions in paragraph (b) of this subdivision, the supreme court of the state shall have jurisdiction, upon petition of the attorney general, to restrain the shipping, delivery, sale or purchase by any manufacturer, contractor or retailer of apparel or sections of apparel upon a showing that such apparel or sections of apparel were, during the previous one hundred eighty days, produced in violation of article six or nineteen of this chapter or sold in violation of paragraph (a) or (b) of this subdivision. Such proceeding shall be brought in the county in which the violation is alleged to have taken place. In any such proceeding the court may make allowances to the attorney general provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules. In connection with such application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 345-a. Liability of manufacturers and contractors. 1. A manufacturer or contractor who contracts or subcontracts with another manufacturer or contractor for the performance of any apparel industry service within the meaning of subdivision (c) of section three hundred forty of this article and who knew or should have known with the exercise of reasonable care or diligence of such other manufacturer's or contractor's failure to comply with article six or nineteen of this chapter in the performance of such service shall be liable for such failure.

2. For the purposes of this section, the exercise of reasonable care or diligence by a manufacturer or contractor shall be presumed if, prior to the execution of such contract or subcontract, and annually thereafter, such manufacturer or contractor receives from the department written assurance of compliance with section three hundred forty-one of this article.

§ 345-b. Confiscation of goods. 1. The commissioner may, in addition to seeking civil, administrative or criminal penalties pursuant to this article, order the special task force to confiscate any partially or completely assembled articles of apparel and any equipment used in the assembly of apparel from any manufacturer or contractor who is violating any provision of this article and who has previously been found liable for a civil or administrative penalty for two or more separate violations of the provisions of this article during the immediately preceding three-year period. Such order of confiscation shall require that such articles of apparel and equipment shall be held in the premises at which such confiscation occurs and that such articles and equipment shall be secured by any means, including the use of a padlock, to render such articles and equipment inaccessible; provided, however, that the commissioner shall not secure any dwelling unit or other space lawfully used for residential purposes.

2. Such order of confiscation shall be posted upon the secured premises and shall give notice that removal of secured property is

prohibited by law. Removal of such posted order while it remains in force shall be punishable by a fine of five hundred dollars. Any attempt to remove secured articles and equipment while such order remains in force shall be punishable by a fine not to exceed one thousand dollars or by imprisonment not to exceed six months or both. The special task force shall deliver the keys to the fee owner, lessor or lessee of such premises if such owner, lessor or lessee is not the manufacturer or contractor who is in violation of the provisions of this article.

3. Such articles and equipment shall remain secured pursuant to subdivision one of this section until such order of confiscation becomes final or until a final determination of any appeal pursuant to subdivision four or five of this section of such order is rendered.

4. Within five days of confiscation pursuant to subdivision one of this section, the commissioner shall provide the manufacturer or contractor who is in violation of any provision of this article and whose articles of apparel and equipment have been confiscated with notification of such violation and confiscation by certified mail, return receipt requested, and with an opportunity to request from the commissioner by certified mail, return receipt requested, a hearing within fifteen days following receipt of such notice. If a hearing is requested, it shall be held within ten days following receipt of such request, and the commissioner may issue a final confiscation order upon such hearing and a finding that a violation has occurred. If a hearing is not requested, the commissioner shall issue a final confiscation order upon the expiration of such fifteen-day period. The manufacturer or contractor may appeal the final confiscation order to the appellate division of the supreme court within thirty days following the issuance of such final confiscation order.

5. Upon issuance of a final confiscation order or, if such order is appealed, upon a final resolution upholding such order, title to the confiscated articles and equipment shall vest in the state, and such items shall be sold at auction within sixty days from the vesting of title. Proceeds of the auction shall be applied to enforcement and administrative costs of the special task force. Any remaining items

shall be disposed of pursuant to regulations issued by the commissioner.

§ 346. Special task force training; assistance of agencies. 1. The special task force shall receive training to be provided by the state in each of the areas of the labor law, state or local building codes, state or local fire codes, laws or regulations and state or local health codes, laws or regulations in which potential violations exist and such other training as is necessary to carry out the duties and powers of the special task force, as defined in sections three hundred forty-three and three hundred forty-four of this article.

2. The special task force may request from any department, division, board, bureau, commission or other agency of the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality of the state, such assistance as will enable it to properly carry out its powers and duties hereunder.

§ 347. Report. Two years after the date on which this article takes effect, and on or before the thirty-first of January of each year thereafter, the special task force shall issue a report on its activities and on the apparel industry in New York state. This report shall be delivered to the labor committees and ways and means and finance committees of the legislature. The special task force shall report on a regular basis to the apparel industry advisory committee of the department, or its successor.

§ 348. Powers of commissioner; surety bond; civil and criminal penalties. 1. If an order has been issued by the commissioner pursuant to section two hundred eighteen or two hundred nineteen of this chapter within the previous five years to any person engaged as an employer in the apparel industry directing compliance with any provision of article six or nineteen of this chapter and such order has not been revoked or annulled on review and the time for review has expired, or if it shall appear to the commissioner that any person engaged as an employer or as

an agent or officer of a corporate employer in the apparel industry has within the previous five years been convicted of a violation of any provision of article six or nineteen of this chapter, or if it shall appear that any person engaged as an employer in the apparel industry has within the previous five years failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of this article, the commissioner may demand that such employer deposit with him a surety bond either in a sum equal to his annual payroll, as determined by the commissioner or in the discretion of the commissioner, in the sum of fifty thousand dollars. Such bond shall be payable to the commissioner and shall be conditioned that the employer and the officers thereof will, for a period of five years, maintain full compliance with this article and articles six and nineteen of this chapter, and shall be further conditioned upon the payment by the employer of all judgments which may be recovered against him pursuant to the provisions of this chapter. If within ten days after demand for such bond, which demand shall be either personally served or made by certified mail directed to the residence or last known business address of the employer, such employer shall fail to deposit the same, the employer shall be thereafter liable for a civil penalty of one thousand dollars per day until the furnishing of the bond or cessation of business by the employer, which civil penalty shall be payable to the commissioner. The commissioner may bring an action in any court of appropriate jurisdiction to compel the employer and the officers thereof to furnish such a bond and to recover all civil penalties accrued.

2. Every person engaged as an employer, or any officer or agent of any corporation in the apparel industry who knowingly fails to comply with an order issued under subdivision one of this section shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than one hundred nor more than ten thousand dollars or imprisoned for not more than one year or punished by both such a fine and imprisonment for each such offense.

§ 349-a. Annual reports. The commissioner shall publish, on or before February first, two thousand five and quarterly thereafter, a report

setting forth the names of all registered apparel industry manufacturers and contractors, and all of such manufacturers and contractors who were found to be in violation of this article within the past year. Such report shall be delivered to the governor, the speaker of the assembly, the temporary president of the senate, the chairs of the assembly labor committee and the senate labor committee, and in cities with a population of one million or more, to every community board where any such registered apparel industry manufacturer or contractor does business, and to every certified and authorized labor union representing employees working in the apparel industry. Such report shall include instructions on registration requirements and information on how to report unregistered apparel industry manufacturers or contractors to the special task force for the garment industry.

ARTICLE 13

INDUSTRIAL HOMEWORK

- Section 350. Legislative purpose and definitions.
351. Powers of the industrial commissioner and exceptions.
352. Permits required.
353. Fees.
354. Conditions of manufacture.
- 354-a. Distribution of homework to employees by employer.
355. Periodic inspection.
356. Notice of unlawful manufacture.
357. Unlawfully manufactured articles.
358. Revocation or suspension of permits and certificates.
- 358-a. Action and injunction.
359. Inspection of health records.
360. Notice and hearing.
361. Summary proceedings; when may be instituted.
- 361-a. Employment status of industrial homeworkers.
- 361-b. Civil penalties.
362. Rules and regulations.
363. Construction.

§ 350. Legislative purpose and definitions. 1. The employment of women and minors in industry in the state of New York under conditions resulting in wages unreasonably low and conditions injurious to their health and general welfare is a matter of grave and vital public concern. Any conditions of employment especially fostering such working conditions are therefore destructive of purposes already accepted as sound public policy by the legislature of the state and should be brought into conformity with that policy. Uncontrolled continuance of homework is such a condition; here wages are notoriously lower and working conditions endanger the health of the worker; the protection of factory industries, which must operate in competition therewith and of the women and minors employed therein and of the public interest of the community at large in their health and well-being, require strict control and gradual elimination of industrial homework. In the considered judgment of the legislature this article is constitutional.

2. Whenever used in this article: a. "Manufacture," "manufacturing," "manufactured" or "making" includes preparation, alteration, repair or finishing, in whole or in part, or handling in any way.

b. "Employer" means any person who either directly or through an employee, agent, independent contractor, or any other person, delivers or causes to be delivered to another person, any materials to be manufactured in a home, and which are thereafter to be returned to him, not for the personal use of himself or of a member of his family, or to be delivered, mailed, or shipped to others.

c. "Home" means a room or an apartment in any house.

d. "House" means any building in which one or more persons regularly sleep, and shall include outbuildings upon premises which include such building; but where only a person or persons or the family of a person or persons engaged in the service of the building, sleep in such building, the term "house" shall apply only to the separate room or rooms or to the apartment or apartments in which one or more of such persons sleep.

e. "Industrial homework" means the manufacturing in a home, in whole or in part, with or of material which has been furnished by an employer, of any article or articles to be returned to the said employer, or to be delivered, mailed, or shipped to others.

f. "Industrial homemaker" means any person who manufactures in a home, in whole or in part, with or out of material furnished by an employer for industrial homework, any article or articles to be returned to such employer directly or indirectly, or to be delivered, mailed or shipped to others.

g. "Person" includes a corporation, a copartnership or a joint stock association.

h. "Homework contractor or distributor" means any person who for the account or benefit of an employer delivers to a homemaker or any other person not engaged by such employer articles or materials to be manufactured in a home and thereafter to be returned to said person or otherwise disposed of in accordance with his direction.

§ 351. Powers of the industrial commissioner and exceptions. 1. The industrial commissioner shall, after proper study and consideration, determine within what industries conditions may permit of industrial homework as hereinbefore defined without unduly jeopardizing the factory workers in such industries as to both wages and working conditions and without unduly injuring the health and welfare of the industrial homemaker himself. The commissioner may then restrict the granting of permits and licenses for industrial homework as herein defined to such industries and may further issue rules and regulations designed to control and regulate industrial homework in the said permitted industries. In all other industries industrial homework is forbidden unless expressly permitted in writing by the industrial commissioner.

2. a. Exception to this article shall be made by the industrial commissioner in respect of clerical work done in a home. "Clerical work" shall mean typing, stenciling, transcribing, copying, bookkeeping and

stenographic work. Clerical work shall not mean inserting, collating, labeling, nesting, sorting, stamping or similar work.

b. Exception to this article may be made by the industrial commissioner in respect of such other provisions consonant with the general purpose of this article as the commissioner may on study determine to be warranted by conditions.

§ 352. Permits required. 1. An employer shall secure an employer's permit from the commissioner before delivering or causing to be delivered to another person any materials for manufacture by industrial homework, and shall not deliver or cause to be delivered any materials for industrial homework to a person who has not a certificate issued pursuant to this article or to be worked on in a home which is not licensed under this article.

§ 353. Fees. All fees and other monies derived from the operation of this article shall be paid into the state treasury to the credit of the general fund.

§ 354. Conditions of manufacture. 1. No person other than a person resident therein shall carry on industrial homework on any article in a home except as otherwise provided for under section three hundred fifty-one, subdivision two, paragraph b.

2. No person shall carry on industrial homework except in accordance with this article.

3. No child shall be employed in manufacture in a home except in accordance with articles four and five of this chapter.

4. No employer having an employer's permit shall deliver or cause to be delivered or received any articles for or as a result of homework manufacture unless he shall keep in such form and forward to the

commissioner at such intervals as he may by regulation prescribe and on such blanks as he may provide, a complete and accurate list of all persons engaged in industrial homework on materials furnished or distributed by him, of all places where such persons work, of all materials furnished and distributed to such persons described as the commissioner may require, of all goods which such persons have manufactured and of the wages paid to each industrial homeworker, and unless he shall attach to all materials delivered for homework manufacture a label bearing his name and address or place of business legibly written or printed in English.

5. No person shall do industrial homework, except in a home in which he resides, and unless his name is on a homeworker's certificate issued by the commissioner and permitting industrial homework to be done in such home, and unless such certificate is exposed clearly in the home in which industrial homework is being done.

6. No article of food, no dolls or dolls' clothing and no stuffed animals or other stuffed toys used in the same way as dolls shall be manufactured for a factory, either directly or through a contractor or for an employer, in a home.

§ 354-a. Distribution of homework to employees by employer. The employer shall, wherever homework is permitted, distribute directly to his homeworkers all material and articles of homework. No employer shall give out any material or articles for homework through any homework contractors or distributors. No homework contractors or distributors shall receive or distribute any materials or articles for or as a result of industrial homework.

This prohibition shall be deemed absolute; anything in this article to the contrary notwithstanding, and shall not be subject to the powers of the industrial commissioner under section three hundred fifty-one.

§ 355. Periodic inspection. 1. The commissioner shall inspect every

house in which industrial homework is permitted, and the materials issued to the industrial homemaker.

2. If the commissioner finds that any home in which homework is being done is not clean, he shall order the tenant at once to clean it.

3. If the commissioner finds that a house or any home in which homework is being done is in an unsanitary condition, or that there is an infectious or communicable disease therein, he shall at once notify the commissioner of health, or the chief health officer of the district in which such house or home is situated.

§ 356. Notice of unlawful manufacture. If the commissioner discovers any manufacture in a house contrary to the provisions of this article, he shall serve notice of such unlawful manufacture upon the employer.

§ 357. Unlawfully manufactured articles. The commissioner shall conspicuously affix to each or all articles unlawfully manufactured in a house a tag not less than four inches in length bearing in small pica capital letters the words "unlawfully made," or shall seize and hold such article until claimed by the owner thereof. Unless the person entitled to the possession of an article so seized shall claim it within thirty days thereafter the said article may be destroyed or otherwise disposed of. No person except the commissioner shall interfere with, remove or deface such tag.

§ 358. Revocation or suspension of permits and certificates. The commissioner may revoke or suspend the permit of any employer or any homemaker's certificate for a violation by such employer or by any person named in such certificate, of the terms of such permit or certificate, or of any provision of this chapter or of any regulation made by the commissioner, or for non-compliance with an order issued by the commissioner, within the time specified in such order.

§ 358-a. Action and injunction. 1. The industrial commissioner may maintain an action upon his own information or upon the complaint of a private person against any person, partnership, corporation or association, and any employee, agent, director or officer thereof who commits any act or engages in any conduct prohibited by this article. In any such action, the final judgment in favor of the plaintiff shall perpetually restrain the defendant from the commission or continuance of the act complained of. A temporary restraining order to restrain the commission or continuance thereof may be granted upon proof, by affidavit, that the defendant has violated any of the provisions of this article. The provisions of statute or rule relating generally to injunctions as provisional remedies in actions apply to such a temporary restraining order and the proceedings thereupon.

2. If the industrial commissioner fails to maintain an action pursuant to subdivision one hereof within fifteen days of being notified by certified mail of such an alleged violation, any industrial homemaker or any other person, partnership, corporation or association making such mailing who is aggrieved by such alleged violation may commence such an action and seek an injunction pursuant to the provisions of statute or rule relating generally to injunctions as provisional remedies.

§ 359. Inspection of health records. The commissioner may inspect such records of any department of health or of any health officer or any county board of health as will aid him in carrying out his duties under this article. Any health officer or officer of any such department or county board shall, at the commissioner's request, aid him in such inspection.

§ 360. Notice and hearing. No permit or certificate shall be refused, revoked or suspended unless the holder previously have reasonable notice, and an opportunity to be heard.

§ 361. Summary proceedings; when may be instituted. The carrying on of manufacture in a home or of industrial homework contrary to the provisions of this article shall be cause for dispossessing its occupants by summary proceedings to recover possession of real property. Upon receipt from the commissioner of a notice showing such manufacture or such industrial homework in a home, the owner or his agent shall cause such manufacture or industrial homework to cease within ten days and, if unable to do so, shall institute within fifteen days and faithfully prosecute proceedings to dispossess the occupants.

§ 361-a. Employment status of industrial homeworkers. All industrial homeworkers shall be presumed to be employees of their employer and not independent contractors.

§ 361-b. Civil penalties. 1. If after investigation the commissioner finds that an employer has violated any provision of this article, the commissioner, shall by an order which shall describe particularly the nature of the alleged violation, assess the employer a civil penalty of not more than three thousand dollars for each violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations and the failure to comply with record keeping or other requirements.

2. Any order issued under subdivision one of this section shall be deemed a final order of the commissioner and not subject to review by any court or agency unless within thirty days following service of the order the employer files a petition with the industrial board of appeals for a review of the order, pursuant to section one hundred one of this chapter.

3. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the employer resides or

has a place of business the order of the commissioner, or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

4. The civil penalty provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty provided for in this chapter.

§ 362. Rules and regulations. Rules and regulations necessary to carry out the provisions of this article shall be made by the commissioner.

§ 363. Construction. If any provision of this article or the application thereof to any person or circumstance is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 14

MERCANTILE AND OTHER ESTABLISHMENTS

Title 1. Sanitation. (Secs. 376-382.)

2. General. (Secs. 390-392.)

TITLE 1

SANITATION

Section 376. Mercantile establishments and restaurants.

377. Drinking water.

378. Washrooms.

379. Dressing rooms.

380. Lunchrooms.

381. Waterclosets.

382. Ventilation, temperature and humidity.

§ 376. Mercantile establishments and restaurants. Every mercantile establishment and restaurant shall be so constructed, equipped and maintained as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein and frequenting the same.

Every room in a mercantile establishment or restaurant and every part thereof and all fixtures therein shall at all times be kept sanitary. Floors shall be kept in safe condition. Suitable receptacles shall be provided and used for the storage of waste and refuse, and shall be maintained in a sanitary condition.

§ 377. Drinking water. Every mercantile establishment, restaurant, and every station, terminal or car barn where women employees of a street, surface, electric, subway or elevated railroad report for duty shall provide at all times for the use of employees a sufficient supply of clean and pure drinking water, and if placed in receptacles, the same shall be properly covered and kept clean.

§ 378. Washrooms. Every mercantile establishment, every restaurant, every office of a telegraph or messenger company in a city and every station, terminal or car barn where women employees of a street, surface, electric, subway or elevated railroad report for duty shall provide and maintain for employees adequate and convenient washrooms or washing facilities, separate for each sex wherever required by the rules of the board. Every washroom shall be adequately ventilated and heated and shall be lighted by artificial means where necessary.

§ 379. Dressing rooms. In every mercantile establishment or restaurant where more than five women are employed and in every terminal or car barn where more than five women employees of a street, surface,

electric, subway or elevated railroad report for duty a sufficient number of dressing rooms conveniently located shall be provided for their use. All dressing rooms shall be separated from waterclosets by partitions, shall have adequate floor space in proportion to the number of employees, shall be provided with seats and with suitable means for hanging clothes and shall be constructed, heated, ventilated, lighted and maintained in accordance with the rules of the board.

§ 380. Lunchrooms. No lunchroom in any mercantile establishment where females are employed shall be next to or adjoining a watercloset, unless a permit therefor is granted by the commissioner in a city or by the local board or department of health in a village. Such permit shall be granted if proper sanitary conditions exist and may be revoked at any time by the granting authority if the lunchroom is kept in such a manner or is so located as to be injurious to the health of the employees.

§ 381. Waterclosets. 1. There shall be provided for every mercantile establishment, every restaurant, every telegraph or messenger company in a city and every station, terminal or car barn where women employees of a street, surface, electric, subway, or elevated railroad report for duty a sufficient number of suitable and convenient waterclosets. They shall be maintained inside the building where the employees work, except where, in the opinion of the commissioner, it is impracticable.

2. There shall be separate watercloset compartments or toilet rooms for females, constructed and maintained in accordance with the rules of the board.

3. The use of any form of trough watercloset, latrine or school sink within any mercantile establishment or restaurant is prohibited.

4. All waterclosets, urinals, watercloset compartments and toilet rooms and the plumbing in connection therewith shall be properly constructed, installed, ventilated, lighted, heated and maintained in accordance with the rules of the board.

§ 382. Ventilation, temperature and humidity. Every mercantile establishment and every restaurant shall be provided with proper and sufficient means of ventilation by natural or mechanical means or both, as may be necessary, and there shall be maintained therein proper and sufficient ventilation and proper degrees of temperature and humidity at all times during working hours. The board shall make rules for and fix standards of ventilation, temperature and humidity in mercantile establishments and restaurants.

TITLE 2

GENERAL

Section 390. Contribution to benefit or insurance fund.

391. Jurisdiction over mercantile and other establishments.

392. Exit signs in mercantile establishments or restaurants.

§ 390. Contribution to benefit or insurance fund. 1. A corporation operating a mercantile establishment shall not by deduction from salary, compensation or wages, by direct payment or otherwise, compel any employee in such establishment to contribute to a benefit or insurance fund maintained or managed for the employees of such establishment by such corporation, or by any other corporation or person. Every contract or agreement whereby such contribution is exacted shall be void.

2. A corporation violating this section shall be liable to a penalty of one hundred dollars recoverable by the person aggrieved in any court of competent jurisdiction.

3. A director, officer or agent of a corporation which compels any employee to make a contribution in violation of this section or sign any agreement to make such contribution, or which imposes or requires such a contribution as condition of entering into or continuing in the employment of a mercantile establishment shall be guilty of a misdemeanor.

§ 391. Jurisdiction over mercantile and other establishments. 1. The commissioner shall have jurisdiction to enforce the provisions of this chapter relating to mercantile establishments, business offices, telegraph offices, restaurants, hotels, apartment houses, theaters or other places of public amusement, bowling alleys, barber shops, shoe polishing establishments, the distribution or transmission of merchandise, articles or messages, or the distribution or sale of articles.

2. The commissioner shall cause proper inspections to be made. No person shall interfere with or prevent such inspections. All persons connected with any such mercantile or other establishment herein specified shall properly answer all questions asked by such inspector with reference to any of the provisions of this article.

§ 392. Exit signs in mercantile establishments or restaurants. An employer having custody and control of a mercantile establishment or restaurant shall be required to post a legible sign marked "EXIT" over doors to be used for egress in the event of a fire emergency.

ARTICLE 15

MINES AND TUNNELS; QUARRIES; COMPRESSED AIR

Title 1. Mines, tunnels and quarries. (Secs. 400-404.)

2. Mines and tunnels only. (Secs. 410-417.)

3. Compressed air. (Secs. 425-432.)

4. Enforcement of article. (Secs. 435-437.)

TITLE 1

MINES, TUNNELS AND QUARRIES

Section 400. Notice of beginning.

401. Notice of abandonment or discontinuance.

402. Blasting.

403. Storage of inflammable supplies.

404. Washrooms.

§ 400. Notice of beginning. Every operator opening a new shaft, incline, tunnel or quarry shall report in writing its location and the name of its owner to the commissioner before the excavation reaches a depth of twenty-five feet.

§ 401. Notice of abandonment or discontinuance. Every operator abandoning or permanently discontinuing any shaft, incline, tunnel or quarry shall immediately notify the commission in writing of such abandonment or discontinuance.

§ 402. Blasting. When explosives are used in a mine, tunnel or quarry, the manner of storing, keeping, moving, charging and firing, or in any manner using such explosives, shall be in accordance with the rules prescribed by the board.

§ 403. Storage of inflammable supplies. No powder or oils shall be stored in any mine, tunnel or quarry, or in or around any shaft, engine or boiler house. All inflammable or destructive supplies shall be stored at safe distances from mine or tunnel openings.

§ 404. Washrooms. Every mine, tunnel or quarry with more than twenty-five employees shall maintain a washroom properly heated and equipped and accessible to its employees.

TITLE 2

MINES AND TUNNELS ONLY

Section 410. Riding on vehicles.

411. Ingress and egress.

- 413. Hoists.
- 414. Ways around shafts.
- 415. Head house and trap doors.
- 416. Timbering.
- 417. Ventilation.

§ 410. Riding on vehicles. No person shall ride upon, or be permitted to ride upon, any loaded car, cage or bucket into or out of any mine or tunnel in process of construction.

§ 411. Ingress and egress. The commissioner shall require that a mine operating through either a vertical or inclined shaft, or a horizontal tunnel, shall have not less than two adequate and accessible outlets, at least one hundred and fifty feet apart, as a condition precedent to employment of any person in the mine. The subterranean workings shall connect such outlets with each other. They shall at all times provide safe and separate passage between the subterranean workings and the surface.

§ 413. Hoists. Every engine, brake, cage, bucket, rope, and chain shall be kept in good order and shall be inspected daily. Every lift, hoist, rope and other mechanical device shall be capable of sustaining the weight intended to be borne by it, in accordance with factors of safety generally accepted by competent engineers. Every car and lift shall have a safety brake. No hoisting rope shall be subjected to a load heavier than one-fifth of the weight it can sustain without breaking.

§ 414. Ways around shafts. At necessary points traveling ways shall be cut out around the sides and bottom of each mine shaft to afford passage from side to side without crossing the shaft under or above the cage or hoist. Each such traveling way shall be at least five feet high and three feet wide.

§ 415. Head house and trap doors. Every underground working over forty feet deep shall have a proper head house and proper trap doors which, when installed subsequent to the effective date of this act, shall be constructed of fire-resistant material.

§ 416. Timbering. The roofs and sides of each passageway and working place in every mine and tunnel shall be properly timbered and shall be kept secure. No person shall work in an unsafe place except to make it safe.

§ 417. Ventilation. An air current sufficient to remove smoke and noxious gases and to insure the safety of every employee shall be conducted along every passageway and working place.

TITLE 3

COMPRESSED AIR

Section 425. Definition of pressure.

426. Equipment.

427. Officers and nurses.

428. Physical examinations.

429. Users of intoxicants.

430. Working time.

431. Decompression.

432. Rules of the board.

§ 425. Definition of pressure. The term "pressure" means gauge air pressure in pounds per square inch.

§ 426. Equipment. Every employer of persons for work in compressed air shall:

1. Connect at least two air pipes with the working chamber and keep such pipes in perfect working condition;
2. Attach to the working chamber in accessible positions all instruments necessary to show its pressure and keep such instruments in charge of competent persons, with a period of duty for each such person not exceeding eight hours in any twenty-four;
3. Place in each shaft a safe ladder extending its entire length;
4. Light properly and keep clear each passageway;
5. Provide independent lighting systems for the working chamber and shaft leading to it, when electricity is used for lighting;
6. Guard lights other than electric lights;
7. Protect workmen by a shield erected in the working chamber when such chamber is less than ten feet long and is suspended with more than nine feet space between its deck and the bottom of the excavation;
8. Provide for and keep accessible to employees working in compressed air a dressing room heated, lighted and ventilated properly and supplied with benches, lockers, sanitary waterclosets, bathing facilities and hot and cold water;
9. Establish and maintain a medical lock properly heated, lighted, ventilated and supplied with medicines and surgical implements, when the maximum air pressure exceeds seventeen pounds.

§ 427. Officers and nurses. Every employer of persons for work in compressed air shall:

1. Keep at the place of work at all necessary times one or more duly qualified medical officers to care for cases of illness and to strictly administer and enforce sections four hundred and twenty-six, four

hundred and twenty-eight and four hundred and twenty-nine.

2. Keep at a medical lock required by subdivision nine of section four hundred and twenty-six a certified nurse selected by the medical officer or officers required by subdivision one of this section and qualified to give temporary relief in cases of illness.

§ 428. Physical examinations. If an employee is a new employee, an absentee for ten or more successive days, an employee who has worked in compressed air continuously for three months or a beginner in compressed air who has worked but a single shift as required by section four hundred and thirty, the officer or officers required by subdivision one of section four hundred and twenty-seven shall examine him and declare him physically fit to work in compressed air before permitting him to enter or re-enter the working chamber.

§ 429. Users of intoxicants. Excessive users of intoxicants shall not be permitted to work in compressed air.

§ 430. Working time. The working time in compressed air in any twenty-four hours shall be specified by the board in its rules. No person shall be subjected to pressure exceeding fifty pounds except in emergency. The maximum number of hours for any pressure, shall be as specified by the board in its rules.

§ 431. Decompression. The employer or person in charge shall not permit any person to pass from compressed air to normal pressure without passing through a period of decompression. Such periods of decompression shall be as specified by the board in its rules.

§ 432. Rules of the board. The board shall adopt rules and establish further requirements and standards for work in compressed air to provide

reasonable and adequate protection to the lives, health and safety of those employed therein, in addition to the requirements of this title.

TITLE 4

ENFORCEMENT OF ARTICLE

Section 435. Responsibility.

436. Penalties.

437. Proceedings to restrain operation.

§ 435. Responsibility. Except as otherwise provided the owner, agent, lessee, manager, operator and superintendent shall be responsible for the observance of the provisions of this article.

§ 436. Penalties. Violation of or noncompliance with any provision of this article shall be a misdemeanor punishable by a fine of not less than two hundred and fifty dollars or by imprisonment for one year or by both.

§ 437. Proceedings to restrain operation. The commissioner may serve a written notice upon the owner, agent, manager or lessee of a mine or tunnel requiring him to comply with a specific provision of this article. The commissioner shall begin an action in the supreme court to enforce compliance with such provision, and upon such notice as the court directs an order may be granted restraining the working of such mine or tunnel during such time as may be therein specified.

ARTICLE 16

EXPLOSIVES

Section 450. Application of article.

451. Definitions.

452. Packing and labeling.

453. Storage.

- 454. Construction of magazines.
- 455. Magazine precautions.
- 456. Location of magazines.
- 457. Relocation of magazines.
- 458. Licenses and certificates.
- 459. Denial or revocation of license or certificate.
- 460. Seizure, impounding, destruction or disposition of explosives.
- 461. Record and notice of sales, deliveries or gifts.
- 462. Rules and regulations.
- 463. Review.
- 464. Costs and penalties.
- 464-a. Local laws.
- 466. Separability.

§ 450. Application of article. 1. This article shall apply to persons engaged in the manufacture, ownership, possession, storage, use, transportation, purchase, sale or gift of explosives as defined in subdivision one of section four hundred fifty-one of this article.

2. This article shall not apply to explosives while being transported in conformity with federal law or regulations, nor except as may be herein otherwise provided to persons who manufacture, own, possess, store, use, transport, purchase, sell or give explosives within the territorial boundaries of cities having more than one million inhabitants, nor to any of the following while in the performance of their official duties: the armed forces of the United States, the national guard, the state guard and duly constituted police and firefighting forces of the state and its civil and political subdivisions.

3. For all purposes of this article, explosives in the possession of an employee within the scope of his duties, shall be considered to be in the possession of the employer.

§ 451. Definitions. Whenever used in this article: 1. "Explosives" means gunpowder, powders used for blasting, high explosives, blasting materials, detonating fuses, detonators, pyrotechnics and other detonating agents, fireworks and dangerous fireworks as defined in section 270.00 of the penal law, smokeless powder and any chemical compound or any mechanical mixture containing any oxidizing and combustible units, or other ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion or detonation of any part thereof may cause and is intended to cause an explosion, but shall not include gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol or quantities of black powder not exceeding five pounds for use in firing of antique firearms or artifacts or replicas thereof. Fixed ammunition and primers for small arms, pyrotechnic devices which are designed for and being used for legitimate wildlife management or controls, safety fuses and matches shall not be deemed to be explosives when, as provided by regulation, the individual units contain any of the above-mentioned articles or substances in such limited quantity, of such nature and so packed that it is impossible to produce an explosion of such units to the injury of life, limb or property. The term "explosives" shall also include two or more components that are advertised and sold together with instructions on how to combine the components to create any device designed or specially adapted to facilitate a detonation or combustion.

2. "Highway" means any public street, public highway, public alley or navigable waterway, which is open for traffic. Navigable waterways shall be considered as only those susceptible of being used, in their ordinary condition, as highways of commerce.

3. "Railroad" or "railway" means any railroad that carries passengers or freight for hire, but shall not include auxiliary tracks, spurs and sidings installed and primarily used in serving any mine, quarry or plant.

4. "Building" means any building regularly occupied in whole or in part as a habitation for human beings, and any church, school house, railway station or other building or place where people are accustomed

to live, work or assemble, but does not mean or include any of the buildings of a manufacturing plant where the business of manufacturing explosives is carried on.

5. "Explosives factory" means any building or other structure in which the manufacture of explosives or any part of the manufacture thereof is carried on.

6. "Magazine" means any building or other structure, other than an explosives factory, used to store explosives.

7. "Efficient barricade" means natural features of the ground, a dense woods, an artificial mound or a properly revetted wall of earth not less than three feet thick at the top, spaced at least three feet at the bottom from any explosives factory or magazine, the height of which is such that any straight line drawn from the top of any side wall of the explosives factory or magazine to the top of a building or to a point twelve feet above the center of a railroad or highway to be protected will pass through such intervening barricade.

8. "Person" includes any natural person, partnership, association or corporation.

9. "Manufacturer" means any person who is engaged in the manufacture or production of explosives.

10. "Dealer" means any person engaged in the business of buying and selling explosives.

11. "Pyrotechnics" means any combustible or explosive compositions of manufactured articles designed and prepared for the purpose of producing audible or visible effects that are commonly referred to as fireworks.

§ 452. Packing and labeling. No person shall own, possess, store, deal in, sell, give or purchase explosives unless the packing, or encasement, and the marking and labeling of such explosives shall comply with the

regulations promulgated pursuant to this article.

§ 453. Storage. No person shall store explosives except in a magazine constructed, located and certified in accordance with the provisions of this article and the regulations promulgated pursuant to this article. The magazine certificate shall be attached to the magazine on the inside of each such magazine. No person shall store more than three hundred thousand pounds of explosives in any one magazine at any time. Explosives not stored in compliance with this section shall be deemed to present a danger to the public, including but not limited to, emergency responders and other persons lawfully frequenting the area and as such, are subject to seizure and destruction pursuant to subdivision five of section four hundred sixty of this article.

This section shall not apply to explosives while being legally blasted or while legally in the custody of a common carrier awaiting shipment or delivery to a consignee during the time permitted by federal law; nor to the storage of such limited amount of sporting or smokeless powders as may be permitted by the regulations promulgated pursuant to this article.

§ 454. Construction of magazines. Unless otherwise prescribed by the regulations promulgated pursuant to this article, magazines in which explosives shall be lawfully kept or stored shall be constructed of brick, concrete, metal or wood covered with metal, and shall have no openings except for ventilation and entrance. All explosive magazines, except those in mines and tunnels, shall be located above ground. All explosive magazines shall be kept clean and dry at all times.

§ 455. Magazine precautions. 1. No individual shall unlock, open the doors of, or access the contents of, explosive magazines, except for the lawful storage or removal of explosives and in accordance with regulations of the commissioner. No employer shall allow any individual access to the explosive magazines or explosives of the employer unless a

license has been issued to the individual by the commissioner as provided in this article, or the individual is under the direct supervision of the license holder.

No person shall have matches or fire of any kind in any magazine. No person shall store or keep blasting caps, detonating or fulminating caps, or detonators in a magazine in which any other type of explosive is stored or kept. No person shall open any package of explosives within fifty feet of any magazine, nor shall any explosives be kept in a magazine except in the original containers, or as otherwise provided by regulations promulgated under this article. No person shall discharge firearms within five hundred feet of a magazine or explosives factory, or at or against any such building or magazine. Any theft or loss of explosives from a storage magazine or otherwise, shall immediately be reported to the commissioner and the state or local police or county sheriff.

§ 456. Location of magazines. The quantity of explosives that may be stored in any explosives factory or magazine shall depend upon its distances from the nearest building, railroad or highway or other magazine. The distances that a quantity of explosives may be stored from the nearest magazine, building, railroad or highway, shall be as determined by the regulations promulgated pursuant to this article. All such distances may be reduced one-half when the magazine, building, railroad or highway to be protected is adequately screened from the explosives factory or magazine by an efficient barricade as defined in subdivision seven of section four hundred fifty-one of this article.

§ 457. Relocation of magazines. 1. When any magazine is moved from the location for which it was certified according to section four hundred fifty-six of this article, and the magazine is or is intended to be used for the storage of explosives and will be in the new location for more than twenty-four hours, the commissioner shall be notified as to the new location of the magazine. Such notification shall be made no later than one business day prior to the move. The notification shall contain all

of the information required by the commissioner.

2. The provisions of subdivision one of this section shall not apply where the relocation has been ordered by police, fire or other authorized emergency personnel, or where the continued storage in the current location would constitute a threat to life or property. In such cases the commissioner shall be notified as soon as practicable after the relocation but in no case more than two business days following such relocation.

3. When a magazine is abandoned, sold or removed from service, the certificate holder shall notify the commissioner no later than three business days from the date of such action and shall surrender the certificate to the commissioner.

§ 458. Licenses and certificates. 1. No person shall purchase, own, possess, transport or use explosives unless a license therefor shall have been issued as provided in this article.

Application for such a license shall be made to the commissioner on forms provided and shall contain such information as the commissioner may require. Where the commissioner finds that the applicant has complied with the requirements of this article and the rules promulgated hereunder, the commissioner shall issue such license or renewal thereof which shall be valid for not less than one year from the date of issuance. Such application and each renewal thereof shall be accompanied by a non-refundable fee of not less than fifty dollars to be payable to the commissioner.

2. No person shall manufacture, deal in, sell, give, test, or dispose of explosives unless a license therefor shall have been issued to such person for that purpose by the commissioner as provided in this article, nor shall any person sell, give, test, or dispose of explosives to, or manufacture explosives for any person who does not hold a license as provided by subdivision one of this section.

Application for such a license shall be made to the commissioner on forms provided and shall contain such information as the commissioner may require. The commissioner, after investigation of the application, shall issue a license or renewal thereof, which shall be valid for not less than one year from the date of issuance, where the commissioner finds that the applicant has complied with the requirements of this article and the rules promulgated hereunder. Each application for such a license, or for its renewal, shall be accompanied by a fee of not less than one hundred dollars non-refundable to be payable to the commissioner.

3. No person shall keep or store explosives unless a certificate therefor shall have been issued by the commissioner as provided in this section.

Application for such a certificate shall be made to the commissioner on forms provided and shall contain such information as the commissioner may require. The commissioner, where it is found that the applicant has complied with the requirements of this article,, the rules promulgated hereunder and all other applicable sections of this chapter and regulations promulgated by the commissioner, shall issue a certificate or a renewal thereof, which shall be valid for not less than one year from the date of issuance. In addition to any other causes for revocation of a certificate hereinafter provided, the commissioner may revoke or modify such certificate because of any change in the conditions under which it was granted, or for failure to pay the required fee. The owner or user of a magazine shall pay to the commissioner a fee of not less than fifty dollars, which shall be proportioned according to the quantity and type of explosives authorized by the certificate to be stored in the magazine.

4. An application for a license or a certificate pursuant to this section shall contain information sufficient to identify the applicant, and the purpose for which and the place where the explosives are to be used, manufactured, dealt in, given, disposed of or stored, as the case may be, and to demonstrate the eligibility of such applicant for the license or certificate requested. The commissioner may require that the

application include, among other things, photographs, fingerprints and personal references. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check. An application for a license or certificate required to be filed with the department pursuant to this section shall be signed by the applicant and affirmed by him or her as true under penalty of perjury.

5. Before a license or certificate is issued, the commissioner shall investigate the eligibility of the applicant. The commissioner shall have the authority to request and receive from any department, division, board, bureau, commission or agency of the state or local government thereof such assistance and information as will enable the commissioner to properly and effectively carry out the powers and duties under this article.

6. (a) The investigation prescribed in subdivision five of this section may include, but is not limited to the following:

(1) a personal interview of the applicant by a designated agent of the commissioner if the commissioner is unable to make a determination on the basis of the factors contained in the application;

(2) an examination as to the applicant's knowledge and ability with respect to basic safety precautions in the possession, handling, storage, manufacture and transportation of explosives, and for such purpose the commissioner may prescribe tests which the applicant shall be required to pass as a prerequisite to the issuance of the license or certificate. The test may be administered by any person or agency designated by the commissioner.

(b) The investigation prescribed in subdivision five of this section shall include a report from the New York state identification and intelligence system, and such other identification services of the state or federal government as may be necessary or appropriate for this purpose.

7. The commissioner may waive any of the procedures set forth in

paragraph (b) of subdivision six of this section with respect to any applicant for whom criminal history or other information has been obtained from any federal bureau or agency.

8. Except for the provisions of subdivision eleven of this section, this section shall not apply to smokeless powder.

9. Within thirty days after the issuance of a license or certificate under this section, the commissioner shall notify the chief executive officer of the municipality where the licensee resides or where the certificate holder has his or her place of business of the issuance of such license or certificate, and provide such officer with such other information pertaining thereto as the commissioner may prescribe.

10. Agencies of the United States, the state and its political and civil subdivisions which are subject to the requirements of this article and which, in the exercise of their functions, are required to purchase, own, store, use or transport explosives shall not be liable for the payment of any fee required by this section.

11. No explosives shall be sold, given or delivered to any individual under eighteen years of age, whether such individual is acting for himself, herself or for another person, nor shall any such individual be eligible to obtain any license or certificate required under this section.

§ 459. Denial or revocation of license or certificate. 1. A license or certificate, or the renewal thereof may be denied where the commissioner has probable reason to believe, based on knowledge or reliable information, or finds, after investigation, that the applicant or any officer, servant, agent or employee of the applicant is not sufficiently reliable and experienced to be authorized to own, possess, store, transport, use, manufacture, deal in, sell, purchase or otherwise handle, as the case may be, explosives, lacks suitable facilities therefor, has been convicted of a felony, is disloyal or hostile to the United States, has been confined as a patient or incarcerated individual

in a public or private institution for the treatment of mental diseases or has been convicted under section four hundred eighty-four of the general business law. Whenever the commissioner denies an application for a license or certificate or the renewal thereof, within five days of such denial, notice thereof and the reasons therefor shall be provided in writing to the applicant. Such denial may be appealed to the commissioner who shall follow the procedure provided by subdivision four of this section.

2. The commissioner may revoke any certificate or license on any ground or grounds authorized in subdivision one of this section for the denial of a license or certificate, or for a violation of the terms of such license or certificate, or for a violation of any provision of this article or regulations promulgated hereunder, or for non-compliance with any order issued by the commissioner within the time specified in such order.

The commissioner may, where he or she has probable reason to believe, based on knowledge or reliable information, that a licensee or certificate holder is disloyal to the United States, summarily revoke the license or certificate or may give such licensee or certificate holder notice and opportunity to be heard as provided in subdivision four of this section. Revocation of a license or certificate for any other ground may be ordered only after giving written notice and an opportunity to be heard to the holder thereof. Such notice shall specify the ground or grounds on which it is proposed to revoke the license or certificate. When a license or certificate is revoked, the commissioner may direct the seizure and/or disposition of explosives held by such licensee or certificate holder. Upon revocation of a license or certificate by the commissioner, the holder thereof shall surrender the license or certificate to the commissioner at once.

3. The commissioner may summarily suspend the license or certificate pending proceedings for revocation or other action, where he or she has reason to believe, based on knowledge or reliable information, that the continued possession of a license or certificate poses a danger to public health, safety or welfare, and incorporates a finding to that

effect in his or her order. These proceedings shall be promptly instituted and determined. Such suspension shall be effective on the date specified in the order or upon service of a certified copy of such order on the license or certificate holder, whichever shall be later.

4. Unless, within fifteen days from the date of notice, the applicant for a license or certificate or the recipient of a notice stating that the commissioner proposes to revoke a license or certificate held by him or her, shall file a written answer with the commissioner denying the ground or grounds on which a license or certificate has been denied or not renewed or ground or grounds on which revocation of a license or certificate is sought, and shall request a hearing, the commissioner may make a final determination respecting the application for a license or certificate, or may revoke a license or certificate forthwith. If, within such fifteen days, the applicant, licensee or certificate holder files such answer and request for hearing, the commissioner shall schedule a hearing. The notice of hearing shall state the time, place, and subject of the hearing, and shall be mailed to the applicant, certificate holder or licensee at his or her last known address at least five days before the date of hearing. Hearings shall be held by the commissioner or his or her representative, and the applicant, certificate holder or licensee may appear in person or may be represented by an agent. After such hearing, the commissioner shall render a decision in writing.

§ 460. Seizure, impounding, destruction or disposition of explosives.

1. The commissioner is hereby authorized and empowered, without application to any court, to seize and impound any explosives found within this state, except in cities having a population of more than one million inhabitants, which are in apparent violation of any of the provisions of this article, regulations promulgated hereunder or laws or regulations of the federal government, or which have been abandoned or lost, or where the commissioner has reason to believe that public safety is endangered by such explosives. Such explosives may be removed and transported by the commissioner and stored in magazines provided or obtained for that purpose by the state or by the commissioner.

2. The owner of such explosives may, within five days of such seizure, make written demand upon the commissioner for a hearing. Upon such demand, the commissioner shall give the owner written notice of the time and place of such hearing to be held not less than ten days thereafter.

3. Where no hearing is demanded within the time herein prescribed or where, after hearing, the commissioner finds that there has been a violation of the provisions of this article, regulations promulgated hereunder or laws or regulations of the federal government, or that public safety is endangered, the commissioner may destroy or order the destruction of such explosives without liability, or direct such other disposition of the explosives. If the commissioner finds there has been no such violation and that public safety has not been endangered, such explosives shall be returned to the owner thereof.

4. Where such explosives have been abandoned or lost, and no claimant has appeared within thirty days, demanded the return of the explosives and proved, to the satisfaction of the commissioner, the claimant's title to and right of possession of such explosives, the commissioner may destroy or direct the destruction thereof, or direct such other disposition thereof as is deemed proper.

5. Any provision herein to the contrary notwithstanding, where, in the opinion of the commissioner, the manufacture, condition, storage, packing or location of explosives is such that its continued existence or transportation is a danger to public safety, the commissioner may, without hearing and without liability therefor to the owner thereof, seize and destroy or direct the seizure and destruction of such explosives.

§ 461. Record and notice of sales, deliveries or gifts. 1. Every person selling, delivering, giving away or otherwise transferring or disposing of explosives shall keep at his or her principal office or place of business within the state, a record of the transaction, including the name or type and quantity of the explosive, such

identification of the explosive as may be required by the regulations promulgated pursuant to this article, the date of each sale, delivery, gift, transfer or disposition, the name and business address of the purchaser, donee, recipient or person to whom delivered, the number of the license, if such license is required by section four hundred fifty-eight of this article, and the name and address of the person taking the explosives away. A report of all such transactions, when requested, shall be submitted to the commissioner. Such record shall be open to inspection by the commissioner or by federal, state and local enforcement officers at all times. No person shall have in his or her possession any explosives unless he or she has a bill of sale or other evidence of title thereto.

2. Any provision in this article to the contrary notwithstanding, no person in a city having more than one million inhabitants shall ship or transport or cause to be shipped or transported explosives from such city to any other place within the state, unless such person shall, at least twenty-four hours prior to such shipment, transmit to the commissioner a statement in writing giving the weight, name or brand and type of explosives, the name and address of the person to whom such explosives are to be sold, shipped, transported or delivered and the date thereof. Upon receipt of such statement, the commissioner shall provide immediate written notice of such shipment or transportation of explosives to the mayor of a city having more than one million inhabitants, or to the designee of the mayor. No person shall make any such shipment except to a holder of a license issued hereunder.

3. No person within the state shall purchase, receive or accept delivery of explosives from any place outside the state, and no person shall bring explosives into the state from any place outside the state, unless, he or she is in possession of a valid license issued by the commissioner. The licensee receiving the explosives shall maintain a record including the weight, name or brand and type of the explosives, the name and address of the shipper and the date of shipment, for a period of three years from the date of receipt or two years from the date of final disposition of the explosives whichever occurs last.

§ 462. Rules and regulations. The commissioner may make rules supplemental to this article as deemed necessary or desirable to assure the public safety as well as to provide reasonable and adequate protection of the lives, health and safety of persons employed in the manufacture, storage, handling, use, purchase, sale, disposition and ownership of explosives. The commissioner may prescribe such regulations as are deemed necessary and proper for the administration of this article. The commissioner shall by rule adopt the codes, standards and recommended practices promulgated by the most recent edition of National Fire Protection Association, 1123 and 1126 Standards on Fireworks Displays and Use of Pyrotechnics Before a Proximate Audience, in accordance with the provisions of this article and article twenty-eight-D of the general business law.

§ 463. Review. All questions of fact arising under this article shall be decided by the commissioner and there shall be no appeal from such decision on any such question of fact. Upon the entry of an order issued under sections four hundred fifty-nine and four hundred sixty of this article, any party aggrieved thereby may commence a proceeding for review thereof pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of the said order in the office of the commissioner. Said proceeding shall be commenced directly in the appellate division of the supreme court. Nothing in this section shall in any way limit, qualify or prevent the commissioner from destroying explosives as provided under section four hundred sixty of this article.

§ 464. Costs and penalties. 1. If the commissioner directs the storage, destruction or other disposition of explosives pursuant to the provisions of section four hundred fifty-nine or four hundred sixty of this article, the commissioner may issue an order which shall set forth the costs of such storage, transportation, handling, destruction or other disposition and assess such costs against the owner of such explosives, which shall be in addition to any other penalties imposed.

2. (a) If the commissioner determines that any person has violated any provision of this article, section four hundred eighty-two of the general business law relating to blasters and pyrotechnicians, or any rule or regulation promulgated thereunder, the commissioner may issue an order which shall describe the nature of the violation and assess such person a civil penalty of up to ten thousand dollars per violation per day until the violation is corrected. The penalty authorized pursuant to this paragraph shall be paid to the commissioner for deposit in the treasury of the state. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the person's business, the good faith effort of the person, the gravity of the violation, and the history of previous violations.

(b) Whenever the commissioner issues an order under this section against a person, the commissioner shall serve notice of the order by registered mail upon the person at his or her last known address. Within five days of service of the order, the person may make written demand upon the commissioner for a hearing whereupon the commissioner shall give such person written notice of the time and place of the hearing to be held not less than ten days thereafter.

(c) Upon the entry of an order issued following a hearing under this section, any party aggrieved by an order issued under this subdivision or subdivision one of this section may commence a proceeding for review thereof pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of the said order in the office of the commissioner. Said proceeding shall be commenced directly in the Appellate Division of the Supreme Court.

(d) Provided that no proceeding for judicial review as provided for in this section shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the person resides or has a place of business, the order of the commissioner, containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk, the order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

(e) A civil penalty provided for in this subdivision shall be in addition to and may be imposed concurrently with any other penalty or remedy provided for in this article.

3. Any person violating any provision of this article, or any rule or regulation made hereunder, shall be guilty of a class E felony; provided, however, that any person who possesses an explosive without being duly licensed or otherwise authorized to do so under the provisions of this article shall be guilty of a class D felony. Whenever, as a result of a plea bargaining agreement the charge is reduced to a lesser offense, such offense may, in addition to any term of imprisonment prescribed by such offense, be punishable by a fine not to exceed twenty-five hundred dollars.

§ 464-a. Local laws. Except with regard to cities having a population of over one million, the provisions of this article and the rules adopted pursuant thereto shall be the minimum standard required and shall supersede any special law or local ordinance inconsistent therewith, and no local ordinance inconsistent therewith shall be adopted, but nothing herein contained shall prevent the enactment by local law or ordinance of additional requirements and restrictions.

§ 466. Separability. If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 17

PUBLIC SAFETY

- Section 470. General provision as to construction, equipment and maintenance of places of public assembly.
471. Rules.
472. Enforcement.
473. Certificate of compliance with requirements of law.

- 473-a. Posting of means of egress in places of public assembly.
- 474. Revocation of certificate of compliance.
- 474-a. Application to New York city and other cities.
- 475. Crowd control plans in certain places of public assembly.

§ 470. General provision as to construction, equipment and maintenance of places of public assembly. All places of public assembly as hereinbefore defined shall be so constructed, equipped and maintained as to provide reasonable and adequate protection to the lives, health and safety of all persons employed or assembled therein.

§ 471. Rules. The board of standards and appeals shall make rules to carry out the provisions of this article. Such rules shall be the minimum standard required and shall supersede any special law or local ordinance inconsistent therewith, and no local ordinance inconsistent therewith shall be adopted, but nothing herein contained shall prevent the enactment by local ordinance of additional requirements and restrictions. Such rules of the board of standards and appeals for the construction, equipment and maintenance of places of public assembly, shall be subject to the procedure set forth in sections twenty-nine and thirty of this chapter, may be limited in their application to certain classes of buildings or to the conditions under which they are operated, and some or all of them may apply only to those buildings or places to be constructed, maintained or conducted in the future. Such rules shall have the force and effect of law and be enforced in the same manner as the provisions of this chapter.

§ 472. Enforcement. The commissioner of labor shall enforce the provisions of this article and rules adopted thereunder; provided, however, that this section shall not apply to:

(a) any city exempted from this article by section four hundred seventy-four-a hereof; or

(b) any city, town, or village having a department, board or officer charged with the enforcement of building laws or ordinances, which files

with the commissioner of labor a duly certified copy of a resolution adopted by its local legislative body assuming full responsibility for enforcing the provisions of this article and the rules adopted thereunder. Upon receipt of a certification of receipt of such resolution by the commissioner, which shall be issued no later than sixty days from the date of filing of such resolution, such city, town, or village shall have all the powers of the commissioner of labor in enforcing the provisions of this article and the rules adopted thereunder. The provisions of this section, however, shall apply to any such city, town, or village sixty days after the filing with the commissioner of labor of a duly certified copy of a resolution adopted by its local legislative body terminating its enforcement responsibilities.

§ 473. Certificate of compliance with requirements of law. 1. The enforcing authority shall ascertain by inspection whether places of public assembly conform to the requirements of this article and the rules adopted thereunder. If such places are found to so conform, he or it shall issue a certificate of compliance to that effect. Such certificate shall be conspicuously posted on the premises. Before any certificate of compliance shall be issued to a place of public assembly erected after the first day of October, nineteen hundred and twenty-two, plans for such building shall be filed with the industrial commissioner or with the local enforcing authority for approval, and such plans shall not be approved unless they conform to the provisions of this article and the rules adopted thereunder. The industrial commissioner shall not require the filing of plans before the issuance of a certificate of compliance for a place of public assembly erected before July first, nineteen hundred sixty-three over which enforcement jurisdiction was delegated to the industrial commissioner on such date, nor for a place of public assembly which may be transferred to his jurisdiction pursuant to paragraph (b) of section four hundred seventy-two of this article.

2. A fee not to exceed one hundred dollars shall be charged to and collected from the owner, lessee or person conducting the place of assembly for each inspection, but not more than two hundred dollars in

any one year shall be so charged or collected, in respect of the same premises, except that no fee shall be charged for inspection of buildings operated as a public place of assembly by any political subdivision or by an agricultural society or association receiving state aid; provided, however, that no fee shall be charged to or collected from a volunteer fire company or an organization of veterans for the inspection of any place of public assembly operated by such a volunteer fire company or organization of veterans.

§ 473-a. Posting of means of egress in places of public assembly.

There shall be posted in a conspicuous place and manner at all exits in every place of public assembly, a printed scale floor plan of that particular floor or story, which shall show all means of egress, clearly labeling those exits to be used in case of fire. Said printed scale floor plan shall be no smaller than eight inches by ten inches and shall be posted in such a manner that it cannot be readily removed.

§ 474. Revocation of certificate of compliance. No place of public assembly shall be conducted for pecuniary gain unless a certificate of compliance shall have been issued and conspicuously posted therein. The enforcing authority granting the certificate of compliance may revoke the same if premises are not maintained according to the provisions of law and the rules adopted thereunder.

§ 474-a. Application to New York city and other cities. This article, except for section four hundred seventy-five, shall not apply to the city of New York, or to other cities having a bureau of buildings which is charged with the duty of enforcing a building code enacted by the legislative body of such city.

§ 475. Crowd control plans in certain places of public assembly. 1.

(a) For the purposes of this section places of public assembly shall be those with an occupancy capacity of at least five thousand persons and

shall include: (i) all stadiums, ballparks, gymnasiums, fieldhouses, arenas, civic centers and similar facilities used for the conduct of sporting events; and (ii) concert halls, recital halls, theatres, indoor and outdoor amphitheatres or other auditoriums used for the presentation of musical renditions or concerts by living persons who appear in the immediate presence of their audience and which rely primarily for effect on the use of electronic amplification of accompaniment and principal voice or instrument together with visual and other special effects and whose musical renditions or concerts are represented by the performers to be, or advertised by the management of such halls, theatres, amphitheatres or auditoriums as, rock and/or rapp renditions or concerts. Such places of public assembly shall include the means of ingress thereto and egress therefrom. Places of public assembly shall not include halls owned by churches, religious organizations, granges, public associations, free libraries as defined by section two hundred fifty-three of the education law, and facilities for the performance of sporting events or rock and/or rapp musical renditions owned and used by public and nonpublic primary and secondary schools and boards of cooperative educational services.

(b) For the purposes of this section, operator shall include the primary tenant of a place of public assembly or the person or persons responsible for the operation and management of said place of public assembly. If no operator of said place of public assembly can be ascertained, then the owner shall be deemed the operator. In any event, the designation of such operator of said place of public assembly shall be included in all plans of compliance filed in accordance with this section.

2. The operators of places of public assembly as defined in this section shall establish a plan to be used for the purposes of crowd control in the event of a riot. Said plan shall include and set forth any programs mandated by section one hundred six-b of the alcoholic beverage control law or any other requirement of such law, and additional procedures designed to control the over-consumption of alcoholic beverages at such places of public assembly, which operators deem to be necessary or desirable for inclusion in the plan. Said plan shall be filed with the New York state emergency management office as

follows: (i) with respect to places of public assembly in existence on the effective date of this section which have been used for sporting events or presentations described in subparagraph (ii) of paragraph (a) of subdivision one of this section, said plan shall be filed on or before March first, in the year next succeeding the year in which this section shall have become a law; and (ii) with respect to places of public assembly constructed after the effective date of this section or with respect to existing facilities used for the first time for presentation of sporting events or musical renditions or concerts described in subparagraph (ii) of paragraph (a) of subdivision one of this section, said plan shall be filed thirty days before the sporting event or the presentation of such musical renditions or concerts so described. Additionally, the plan shall be filed with the police and fire departments of the locality in which such place of public assembly is located, as well as with the state or county law enforcement agency having the primary responsibility to respond with the local police department in the event of an emergency. With respect to the operation of places of public assembly by a governmental entity which provides its own police and fire protection, plans shall be established in consultation with the officers charged with responsibility for providing such protection and enforcement.

3. The New York state emergency management office shall issue a report with recommendations to the governor and the legislature relative to the sufficiency of crowd control planning on or before March fifteenth, nineteen hundred ninety.

4. No owner, operator, governmental entity or any employee, officer, or agent thereof shall be liable for any claim filed by a person based upon negligence in the preparation or filing of such plans required under this section.

ARTICLE 18

UNEMPLOYMENT INSURANCE LAW

- Title 1. Short title; public policy of state. (Secs. 500-502.)
2. Definitions. (Secs. 510-529.)

3. Administration. (Secs. 530-540.)
4. Unemployment funds. (Secs. 550-553.)
5. Coverage. (Secs. 560-566.)
6. Contributions to fund. (Secs. 570--581-d.)
7. Benefits and claims. (Secs. 590-601.)
- 7-A. Shared work programs. (Secs. 602-612.)
8. Hearings and appeals. (Secs. 620-626.)
9. Misdemeanors and penalties. (Secs. 630-636.)
10. General and miscellaneous provisions. (Secs. 640-643.)

TITLE I

SHORT TITLE; PUBLIC POLICY OF STATE

Section 500. Short title.

501. Public policy of state.

502. Wage reporting - findings and policy.

§ 500. Short title. This article shall be known and may be cited as the "unemployment insurance law. "

§ 501. Public policy of state. As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, welfare, and morale of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden, which now so often falls with crushing force upon the unemployed worker and his family. After searching examination of the effects of widespread unemployment within the state, the joint legislative committee on unemployment appointed pursuant to a joint resolution adopted April ninth, nineteen hundred thirty-one, reported to the legislature that "the problem of unemployment can better be met by the so-called compulsory unemployment insurance plan than it is now handled by the barren actualities of poor relief assistance backed by compulsory contribution through taxation.

Once the facts are apprehended this conclusion is precipitated with the certainty of a chemical reaction. " Taking into account the report of its own committee, together with facts tending to support it which are matters of common knowledge, the legislature therefore declares that in its considered judgment the public good and the well-being of the wage earners of this state require the enactment of this measure for the compulsory setting aside of financial reserves for the benefit of persons unemployed through no fault of their own.

§ 502. Wage reporting - findings and policy. The legislature hereby finds and declares that New York state is committed to developing the most efficient and effective system possible for administering the unemployment insurance system which, for more than a half century, has provided financial support to workers who have lost their jobs through no fault of their own.

Unlike all other states and territories, which administer their unemployment insurance systems pursuant to a wage reporting system whereby employers report employee wages on a regular basis, New York maintains a wage request system. In order to acquire the enormous amount of wage data necessary to calculate unemployment insurance benefits using such a system, the department is required to send out hundreds of thousands of wage requests to employers every year. These requests are for information which, in large part, is submitted by employers on a quarterly basis to the statewide wage reporting system administered by the department of taxation and finance.

Given the size and complexity of the unemployment insurance system, an increase in efficiency will necessarily result in significant improvements in the services provided to benefit claimants and employers. The improvements for benefit claimants that would result from the implementation of a wage reporting system include more timely and accurate entitlement and benefit rate determinations, a reduction in the need to rely upon a claimant's own tax and wage statements and a decrease in claimant overpayments which must be recovered at a later date. As for employers, they would, for the large majority of benefit

claims filed, no longer be required to provide employee wage data upon request, which would remove a significant employer burden as well as the potential for a fifty dollar penalty each time a wage request is not answered in a timely manner. Wage reporting would also reduce the number of employers incorrectly charged for benefits.

Furthermore, the department is accountable under federal and state law to measure the success of training, employment and reemployment initiatives operated pursuant to such laws. The assessment of individual performance is the best way to measure program quality and to develop program improvements. Job placement, employment duration and earnings are basic outcomes used to measure such performance. Information surveys, traditionally used to collect such data, have proved to be both expensive and unreliable because of low response rates and faulty recall by those who respond. Using the statewide wage reporting system to track such performance outcomes will avoid these problems and produce a reliable system of accountability while placing no additional burdens on employers.

Accordingly, for the above reasons, section one hundred seventy-one-a of the tax law is amended to provide the department with complete access to the wage reporting files maintained by the department of taxation and finance as the first stage in a transition to an unemployment insurance system based upon such wage reporting files, with the express requirement that the department shall design and operate such system so that an individual eligible for benefits under the current law would be eligible for the same amount of benefits under a new system based upon the wage reporting files. In addition, complete access to the wage reporting files is granted for administration of the department's employment security programs as well as for evaluation of the effect on earnings of participation in training programs with respect to which the department has reporting, monitoring or evaluating responsibilities.

TITLE 2

DEFINITIONS

Section 510. Application of definitions.

511. Employment.
512. Employer.
513. Fund.
514. Benefit.
515. Claimant.
516. Paid.
517. Remuneration.
518. Wages.
519. Week.
520. Base period.
521. Benefit year.
522. Total unemployment and partial unemployment.
523. Effective week.
524. Week of employment.
525. Partial benefit credit.
527. Valid original claim.
528. Transitional provisions.
529. Average annual wage; average weekly wage.

§ 510. Application of definitions. Whenever used in this article, the terms defined in this title have the respective meanings set forth herein except where the context shows otherwise.

§ 511. Employment. 1. General definition. "Employment" means (a) any service under any contract of employment for hire, express or implied, written, or oral and

(b) any service by a person for an employer

(1) as an agent-driver or commission-driver engaged in distributing meat, vegetable, fruit, or bakery products; beverages other than milk; or laundry or dry-cleaning services; or

(1-a) as a professional musician or a person otherwise engaged in the performing arts, and performing services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment unless, by written contract, such musician or person is stipulated to be an employee of

another employer covered by this chapter. "Engaged in the performing arts" shall mean performing services in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise; or

(1-b) as an employee in the construction industry unless the presumption of employment can be overcome, as provided under section eight hundred sixty-one-c of this chapter; or

(1-c) as an employee in the commercial goods transportation industry unless the presumption of employment can be overcome, as provided under section eight hundred sixty-two-b of this chapter; or

(2) as a traveling or city salesman engaged on a full-time basis in soliciting orders for merchandise for resale or supplies for use in the purchaser's business operations if the contract of service contemplates that substantially all of such services are to be performed personally by such person; such person does not have a substantial investment in facilities used in connection with the performance of such services, excepting facilities for transportation; and the services are not in the nature of a single transaction which is not part of a continuing relationship with the employer.

(3) as a professional model, where:

(i) the professional model performs modeling services for; or

(ii) consents in writing to the transfer of his or her exclusive legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to

a retail store, a manufacturer, an advertising agency, a photographer, a publishing company or any other such person or entity, which dictates such professional model's assignments, hours of work or performance locations and which compensates such professional model in return for a waiver of his or her privacy rights enumerated above, unless such services are performed pursuant to a written contract wherein it is stated that the professional model is the employee of another employer covered by this chapter. For purposes of this subparagraph, the term "professional model" means a person who, in the course of his or her trade, occupation or profession, performs modeling services. For purposes of this subparagraph, the term "modeling services" means the appearance by a professional model in photographic sessions or the

engagement of such model in live, filmed or taped modeling performances for remuneration.

2. Work localized in state. The term "employment" includes a person's entire service performed within or both within and without this state if the service is localized in this state. Service is deemed localized within the state if it is performed entirely within the state or is performed both within and without the state but that performed without the state is incidental to the person's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

3. Work within and without the state. The term "employment" includes a person's entire service performed both within and without this state provided it is not localized in any state but some of the service is performed in this state, and

(a) the person's base of operations is in this state; or

(b) if there is no base of operations in any state in which some part of the service is performed, the place from which such service is directed or controlled is in this state; or

(c) if the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, the person's residence is in this state.

The term "employment" shall not include services performed without this state in any calendar year during which no service was performed within this state if contributions with respect to such services are required under the unemployment compensation law of any other state or of the federal government.

4. Other included work.

The term "employment" shall include

(a) Service, wherever performed within the United States, the Virgin Islands, or Canada, if

(1) contributions are not required with respect to such service under an unemployment compensation law of any other state, the Virgin Islands,

or Canada, and

(2) the place from which such service is directed or controlled is in this state;

(b) Service performed within this state not otherwise within the purview of the foregoing provisions of this section if contributions are not required with respect to such service under corresponding provisions of an unemployment compensation law of any other state.

5. Work without the state or in a foreign country. (a) Service performed entirely without the state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, is employment if an election with respect to the person's service has been made and approved pursuant to the provisions of section five hundred sixty-one of this article.

(b) The term "employment" includes service by a citizen of the United States performed for an American employer outside the United States, except Canada or the Virgin Islands, provided contributions are not required with respect to such service under an unemployment insurance law of any other state pursuant to criteria which correspond to those of subdivisions two and three of this section, if

(1) the employer's principal place of business in the United States is in this state, or

(2) the employer has no place of business in the United States but is

(i) an individual person who is a resident of this state, or

(ii) a corporation which is organized under the laws of this state, or

(iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state, or

(3) none of the criteria of subparagraphs (1) and (2) are met but the employer has elected coverage of the service in this state or, the employer having failed to elect such coverage in any state, the individual performing the service has filed a claim for benefits under this article on the basis of such service.

(c) For purposes of this subdivision, "American employer" means

(1) an individual who is a resident of the United States; or

(2) a partnership if two-thirds or more of the partners are residents of the United States; or

(3) a trust if all of the trustees are residents of the United States;
or

(4) a corporation organized under the laws of the United States or any state.

6. Agricultural labor. (a) The term "employment" includes agricultural labor. The term "agricultural labor" includes all service performed:

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals, and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed in the employ of an operator of a farm (i) as an incident to farming operations or, (ii) in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not apply to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(b) As used in this subdivision, the term "farm" includes stock, dairy, poultry, fur-bearing animal, fruit, and truck farms, plantations, nurseries, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities, and orchards.

7. Spouse or child. The term "employment" does not include service for an employer by his spouse or child under the age of twenty-one.

8. Golf caddy. The term "employment" does not include service as a

golf caddy.

9. Day student. The term "employment" does not include service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the day time as a student in an elementary or secondary school.

10. Employment under the federal railroad unemployment insurance act. The term "employment" does not include employment subject to the federal railroad unemployment insurance act.

11. Maritime services under reciprocal agreements. The term "employment" includes a person's entire service, if such service is deemed performed in this state by virtue of reciprocal agreements pursuant to the provisions of paragraph (c) of subdivision two of section five hundred thirty-six of this article and does not include any service which by virtue of such agreements is deemed performed in another state.

12. Baby sitter. The term "employment" does not include service as a baby sitter at the home of the employer by a minor.

13. Persons under the age of twenty-one engaged in casual labor. The term "employment" does not include services of a person under the age of twenty-one engaged in casual labor consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery.

14. The term "employment" does not include service by a child under the age of fourteen years.

15. Students and students' spouses at educational institutions. The term "employment" does not include services rendered for an educational institution by a person who is enrolled and is in regular attendance as a student in such an institution, or the spouse of such student employed by that institution if such spouse is advised at the beginning of such

services that the employment is provided under a program of financial assistance to such student and will not be covered under this article. For the purposes of this article, the term "employment" shall include services rendered for a health care facility, including academic medical centers, by fellow, resident and intern physicians.

16. Non-applicability of exclusions. The exclusions described in subdivisions eight, nine, twelve, thirteen and fourteen of this section shall not apply to services performed for a nonprofit organization as defined in section five hundred sixty-three or for a governmental entity as defined in section five hundred sixty-five or for an Indian tribe as defined in section five hundred sixty-six of this article. The exclusions described in subdivision twenty-three of this section shall not apply to commercial goods transportation services performed for a commercial goods transportation contractor within the meaning of article twenty-five-C of this chapter.

17. Certain college students. The term "employment" does not include service performed by an individual, regardless of age, who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

18. Freelance shorthand reporter. The term "employment" does not include the services of a freelance shorthand reporter rendered pursuant to any agreement, contract, or mutual understanding, either written or oral, with another freelance shorthand reporter or a freelance shorthand reporting service. For the purposes of this subdivision, a freelance shorthand reporter is a person who records verbatim any oral statement or series of oral statements made over a definite period of time by a

written system of shorthand and whose sole compensation for making such a record is an agreed upon fee per page of record produced. Additional payment of a set dollar charge as a minimum fee or attendance fee shall not affect the above definition of a freelance shorthand reporter. For the purposes of this subdivision, a freelance shorthand reporting service means any business which provides freelance shorthand reporters through subcontracts or by any other means.

19. Qualified real estate agent. The term "employment" shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in paragraph (b) herein was not executed under duress and contains the following provisions:

(i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twelve-A of the real property law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation;

(ii) that the broker or sales associate (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the broker or sales associate shall be permitted to work any hours he or she chooses;

(iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;

(v) that the broker or sales associate shall be free to engage in outside employment;

(vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;

(viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.

20. The term "employment" shall not include services performed by a full-time student in the employ of an organized camp:

(a) if such camp:

(1) did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or

(2) had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third percent of its average gross receipts for the other six months in the preceding calendar year; and

(b) if such full-time student performs services in the employ of such camp for less than thirteen calendar weeks in any such year.

20-a. Full-time student. (a) For purposes of subdivision twenty of this section, an individual shall be treated as a full-time student for any period:

(1) during which the individual is enrolled as a full-time student at an educational institution; or

(2) which is between academic years or terms if:

(i) the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(ii) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in clause (i) of this subparagraph.

(b) For purposes of this subdivision, the term educational institution shall mean any educational institution of secondary, higher educational, professional or vocational educational training, as those terms are defined in the education law.

20-b. Camp. For purposes of subdivision twenty of this section, the term camp shall mean "children's overnight camp" as that term is defined in subdivision one of section thirteen hundred ninety-two of the public health law, and any "summer day camp" as that term is defined in subdivision two of section thirteen hundred ninety-two of the public health law, and any "traveling summer day camp" as that term is defined in subdivision three of section thirteen hundred ninety-two of the public health law.

21. Qualified insurance agent or broker. The term "employment" shall not include the services of a licensed insurance agent or broker if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such agent or broker is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) such agent is not a life insurance agent receiving a training allowance subsidy described in paragraph three of subsection (e) of section four thousand two hundred twenty-eight of the insurance law; (c) the services performed by the agent or broker are performed pursuant to a written contract executed between such agent or broker and the person for whom the services are performed; and (d) the written contract provided for in paragraph (c) of this subdivision was not executed under duress and contains the following provisions:

(i) that the agent or broker is engaged as an independent contractor associated with the person for whom services are performed pursuant to

article twenty-one of the insurance law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), unemployment insurance and workers' compensation;

(ii) that the agent or broker (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code);

(iii) that the agent or broker shall be permitted to work any hours he or she chooses;

(iv) that the agent or broker shall be permitted to work out of his or her own office or home or the office of the person for whom services are performed;

(v) that the person for whom the services are performed may provide office facilities, clerical support, and supplies for the use of the agent or broker, but the agent or broker shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vi) that the person for whom the services are performed and the agent or broker shall comply with the requirements of article twenty-one of the insurance law and the regulations pertaining thereto, but such compliance shall not affect the agent's or broker's status as an independent contractor nor should it be construed as an indication that the agent or broker is an employee of the person for whom the services are performed for any purpose whatsoever;

(vii) that the contract and the association created thereby may be terminated by either party thereto at any time with notice given to the other.

22. Recreational bowling. The term "employment" shall not include recreational bowling, such as bowling in a league where an individual may occasionally win prize money.

23. Newspaper delivery persons. The term "employment" shall not include service performed by any person if:

(a) such person is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business);

(b) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in paragraph (a) of this subdivision is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed, and such contract provides that person will not be treated as an employee with respect to such services for federal tax purposes.

§ 512. Employer. 1. "Employer" includes the state of New York and other governmental entities and any Indian tribe as defined in section five hundred sixty-six of this article and any person, partnership, firm, association, public or private, domestic or foreign corporation, the legal representatives of a deceased person, or the receiver, trustee, or successor of a person, partnership, firm, association, public or private, domestic or foreign corporation.

2. For purposes of this article, the term "employer" includes the non-profit organization or governmental entity designated as liable for contributions under this article for all services performed by individuals who are enrolled participants in a summer youth employment program conducted and funded pursuant to title II, part B of the Federal Job Training Partnership Act. The designation shall be made in writing by the administrative entity for the service delivery area established pursuant to said federal act in which the summer youth employment

program is operated, and shall become effective upon filing with the commissioner.

3. For the purpose of complying with the requirements of the federal personal responsibility and work opportunity reconciliation act, public law 104-193, the term "labor organizations" shall have the meaning given such term in section two (5) of the national labor relations act, and includes any entity (also known as a "hiring hall") which is used by the organization and any employer to carry out requirements of an agreement between the organization and the employer described in section eight (f)(3) of such act. Such "labor organizations" shall be considered employers for the purpose of submitting information to the "statewide wage reporting system" as provided in section one hundred seventy-one-a of the tax law.

4. Whenever the commissioner determines that services performed by an individual constitute employment but the supervision, direction and control are exercised by one or more entities, and one entity places the individual with, or provides the individual to, another entity to perform the services, the entity that pays the individual for the services shall be the employer under this article unless by contract the individual is specified to be the employee of another entity, in which case the other entity shall be the employer. Whenever such employer is replaced by another entity such replacement shall be considered a transfer pursuant to section five hundred eighty-one of this article. This subdivision shall not apply to a payroll agency that the commissioner determines provides payroll services on behalf of another employer.

§ 513. Fund. "Fund" means the unemployment insurance fund.

§ 514. Benefit. "Benefit" means an amount payable to a claimant for unemployment.

§ 515. Claimant. "Claimant" means any person seeking benefits for unemployment.

§ 516. Paid. The term "wages paid" or "remuneration paid" shall, for the purposes of this article, be deemed paid on the date such payments are made.

§ 517. Remuneration. 1. Inclusions. "Remuneration" means every form of compensation for employment paid by an employer to his employee; whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, or similar advantage received. Where gratuities are received by the employee in the course of his employment from a person other than his employer, the value of such gratuities shall be determined by the commissioner and be deemed and included as part of his remuneration paid by his employer.

2. Exclusions. Remuneration does not include:

(a) The amount of any payment made to, or on behalf of, any employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally, or for such employees and their dependents, or for a class or classes of his employees, or for a class or classes of such employees and their dependents, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement, or sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, or death.

(b) Payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the federal insurance contributions act.

(c) Any payment made to an employee, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement.

(d) Any payment on account of sickness or accident disability, or

medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

(e) Any payment made to, or on behalf of, an employee or his beneficiary from or to a trust described in section four hundred one (a) of the federal internal revenue code which is exempt from tax under section five hundred one (a) of such code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or under or to an annuity plan which, at the time of such payment, meets the requirements of section four hundred one (a) (3), (4), (5), and (6) of such code.

(f) Compensation paid in any medium other than cash to an employee for service not in the course of the employer's trade or business.

(g) Any payment, other than vacation or sick pay, made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made.

(h) Dismissal payments.

(i) Any payment made by an employer who is not liable for contributions under this article or for payments in lieu of contributions.

§ 518. Wages. 1. Limitation. * (a) "Wages" means all remuneration paid, except that such term does not include remuneration paid to an employee by an employer after eight thousand five hundred dollars have been paid to such employee by such employer with respect to employment during any calendar year, except that such term does not include remuneration paid to an employee by an employer with respect to employment during any calendar year beginning with the first day of that exceeds

January 2014	\$10,300
January 2015	\$10,500
January 2016	\$10,700
January 2017	\$10,900
January 2018	\$11,100

January 2019	\$11,400
January 2020	\$11,600
January 2021	\$11,800
January 2022	\$12,000
January 2023	\$12,300
January 2024	\$12,500
January 2025	\$12,800
January 2026	\$13,000

and each year thereafter on the first day of January that exceeds sixteen percent of the state's average annual wage as determined by the commissioner on an annual basis pursuant to section five hundred twenty-nine of this article; provided, however, that in calculating such maximum amount of remuneration, the amount arrived at by multiplying the state's average annual wage times sixteen percent shall be rounded up to the nearest hundred dollars. In no event shall the state's annual average wage be reduced from the amount determined in the previous year. The term "employment" includes for the purposes of this subdivision services constituting employment under any unemployment compensation law of another state or the United States.

* NB Effective until certain provisions are met (see Ch. 56 of 2025, Part KK, § 4)

* (a) "Wages" means all remuneration paid, except that such term does not include remuneration paid to an employee by an employer after eight thousand five hundred dollars have been paid to such employee by such employer with respect to employment during any calendar year, except that such term does not include remuneration paid to an employee by an employer with respect to employment during any calendar year beginning with the first day of

that exceeds

January 2014	\$10,300
January 2015	\$10,500
January 2016	\$10,700
January 2017	\$10,900
January 2018	\$11,100
January 2019	\$11,400
January 2020	\$11,600
January 2021	\$11,800

January 2022	\$12,000
January 2023	\$12,300
January 2024	\$12,500
January 2025	\$12,800

and each year thereafter on the first day of January that exceeds eighteen percent of the state's average annual wage as determined by the commissioner on an annual basis pursuant to section five hundred twenty-nine of this title; provided, however, that in calculating such maximum amount of remuneration, the amount arrived at by multiplying the state's average annual wage times eighteen percent shall be rounded up to the nearest hundred dollars. In no event shall the state's annual average wage be reduced from the amount determined in the previous year. The term "employment" includes for the purposes of this subdivision services constituting employment under any unemployment compensation law of another state or the United States.

* NB Effective upon certain provisions (see Ch. 56 of 2025, Part KK, § 4)

(b) Subject to the same limitation the term "wages" includes also all compensation paid by an employer to persons in his employ with respect to which he is not liable for contributions under any other unemployment insurance law, even though such compensation is not remuneration as defined by section five hundred seventeen of this article, or the services of such persons are not in employment as defined by section five hundred eleven of this article, if the employer is liable for a tax on such compensation under the federal unemployment tax act.

2. Joint consideration. If an employer has acquired all or substantially all, or a segregable portion of the assets of another employer liable for contributions under this article, or has acquired all or a segregable portion of the organization, trade or business of another employer liable for contributions pursuant to subdivision seven of section five hundred eighty-one of this article, remuneration paid by both employers shall be deemed paid by a single employer for the purposes of this section.

§ 519. Week. A "week" means seven consecutive days beginning with

Monday.

§ 520. Base period. A claimant's "base period" is one of the following:

1. For the purpose of subdivision one of section five hundred twenty-seven of this article, the term base period shall mean the first four of the last five completed calendar quarters ending with the week immediately preceding the filing of a valid original claim.

2. For the purpose of paragraph (a) of subdivision two of section five hundred twenty-seven of this article, the term base period shall mean the last four completed calendar quarters ending with the week immediately preceding the filing of a valid original claim.

§ 521. Benefit year. A claimant's "benefit year" means the period of fifty-two consecutive weeks beginning with the first Monday after he files a valid original claim.

§ 522. Total unemployment and partial unemployment. "Total unemployment" means the total lack of any employment during any week. "Partial employment" means any employment during any week that is less than full-time employment so long as the compensation paid is less than the claimant's weekly benefit rate plus the claimant's partial benefit credit. The term "employment" as used in this section means any employment including that not defined in this title.

§ 523. Effective week. "Effective week" means (a) a week during which a claimant performs no services for which the claimant is paid compensation, or (b) a week during which a claimant performs services on a part-time basis for which the claimant is paid compensation that is less than the claimant's weekly benefit rate plus his or her partial benefit credit.

§ 524. Week of employment. For purposes of this article, "week of employment" shall mean a Monday through Sunday period during which a claimant was paid remuneration for employment for an employer or employers liable for contributions or for payments in lieu of contributions under this article. A claimant who is employed on a shift continuing through midnight is deemed to have been employed on the day beginning before midnight with respect to such shift, except where night shift employees are regularly scheduled to start their work week at seven post meridiem or thereafter on Sunday night, their regularly scheduled starting time on Sunday shall be considered as starting on Monday.

§ 525. Partial benefit credit. "Partial benefit credit" means that part of the compensation, if any, paid to a claimant with respect to a week for which benefits are claimed under the provisions of this law which is not in excess of fifty per centum of the individual's weekly benefit rate, or one hundred dollars, whichever is the greater. Such partial benefit credit, if not a multiple of one dollar, shall be computed to the next higher multiple of one dollar.

§ 527. Valid original claim. 1. Basic condition. "Valid original claim" is a claim filed by a claimant who meets the following qualifications: (a) is able to work, and available for work; (b) is not subject to any disqualification or suspension under this article; (c) his or her previously established benefit year, if any, has expired; (d) has been paid remuneration by employers liable for contributions or for payments in lieu of contributions under this article, other than employers from whom the claimant lost employment and for which the commissioner makes a determination disqualifying the claimant for misconduct pursuant to subdivisions three and six of section five hundred ninety-three of this article, for employment during at least two calendar quarters of the base period, with remuneration of one and one-half times the high calendar quarter remuneration within the base

period and with at least two hundred twenty-one times the minimum wage established under subdivision one of section six hundred fifty-two of this chapter rounded down to the nearest one hundred dollars of such remuneration being paid during the high calendar quarter of such base period. For purposes of this section, the remuneration in the high calendar quarter of the base period used in determining a valid original claim shall not exceed an amount equal to twenty-two times the maximum benefit rate as set forth in subdivision five of section five hundred ninety of this article for all individuals.

2. Alternate condition. (a) An individual who is unable to file a valid original claim in accordance with subdivision one of this section, files a valid original claim by meeting the qualifications enumerated in paragraphs (a), (b) and (c) of subdivision one of this section and by having been paid remuneration by employers liable for contributions or for payments in lieu of contributions under this article, other than employers from whom the claimant lost employment and for which the commissioner makes a determination disqualifying the claimant for misconduct pursuant to subdivisions three and six of section five hundred ninety-three of this article, for employment during at least two calendar quarters of the base period, with remuneration of one and one-half times the high calendar quarter remuneration within the base period and with at least two hundred twenty-one times the minimum wage established under subdivision one of section six hundred fifty-two of this chapter rounded down to the nearest one hundred dollars of such remuneration being paid during the high calendar quarter of such base period. For purposes of this section, the remuneration in the high calendar quarter of the base period used in determining a valid original claim shall not exceed an amount equal to twenty-two times the maximum benefit rate as set forth in subdivision five of section five hundred ninety of this article for all individuals.

(b) An individual who is able to file a valid original claim in accordance with subdivision one of this section, may make an application to the commissioner to determine his or her entitlement to benefits and benefit rate pursuant to paragraph (a) of this subdivision under the following conditions:

(i) The claimant must file such application within ten days of the

date the monetary determination was mailed by the department.

(ii) In those circumstances where a wage data report in relation to the alternate condition is not due or has not been received, the claimant must provide proof of remuneration paid for such quarter to the commissioner's satisfaction in order for the claimant's application to be considered.

(iii) Under those circumstances where such application results in the claimant being able to file a valid original claim under the basic condition and the alternate condition, the claimant may select the condition to be utilized.

3. Disability. In the case of a claimant who did not file a valid original claim solely because the claimant was not paid sufficient remuneration and who received workers' compensation payments or any benefits paid pursuant to the volunteer firefighters' benefit law during the base period specified in subdivision one of section five hundred twenty of this article, said period shall be extended. The term of the extension shall be equivalent to the number of calendar quarters during which the claimant received such payments, but shall not exceed two calendar quarters.

4. General condition. A valid original claim may be filed only in a week that qualifies as an effective week of unemployment for the claimant.

5. Utilization of wage credits. Remuneration used to establish a valid original claim pursuant to subdivision one, two or three of this section, may not be considered for the purpose of establishing a subsequent valid original claim except as provided by section five hundred twenty-eight of this article.

6. Work requirement. An individual who has filed a previous valid original claim pursuant to this section must have worked in employment and been paid remuneration for such work since the beginning of such previous claim in an amount equal to at least ten times the claimant's weekly benefit rate in order to be able to file a subsequent valid original claim.

§ 528. Transitional provisions. Remuneration used to establish a valid original claim prior to the first day of April, nineteen hundred ninety-nine may be used to establish a subsequent valid original claim. Under such circumstances, the general account rather than the affected employer's account shall be charged for the portion of experience rating charges attributable to such remuneration.

§ 529. Average annual wage; average weekly wage. * 1. The "average annual wage" shall be the average annual wage of the state of New York for the previous calendar year as determined by the commissioner no later than the thirty-first day of May of each year.

* NB Effective until certain provisions are met (see Ch. 56 of 2025, Part KK, § 4)

* 1. The "average annual wage" shall be the average annual wage of the state of New York for the previous calendar year as determined by the commissioner no later than the thirty-first day of May of each year. For purposes of calculating "wages" pursuant to paragraph (a) of subdivision one of section five hundred eighteen of this title only, the "average annual wage" shall be calculated using the four most recent quarters of published New York state quarterly census of employment and wages data.

* NB Effective upon certain provisions (see Ch. 56 of 2025, Part KK, § 4)

2. The "average weekly wage" shall be the average weekly wage of the state of New York for the previous calendar year as determined by the commissioner no later than the thirty-first day of May of each year.

TITLE 3

ADMINISTRATION

Section 530. Industrial commissioner's powers.

531. Regularization of employment.

532. Employment districts and offices.

534. Appeal board.

535. Referees.

536. Collaboration with other states, the United States, and foreign governments.

537. Disclosures prohibited.

538. Representation and witness fees and other expenses.

539. Acquisition of land and buildings.

540. Information about assistance programs.

§ 530. Industrial commissioner's powers. 1. General powers. The commissioner shall administer this article and for such purpose he shall have power to make all rules and regulations and, subject to the regulations of the civil service, to appoint such officers and employees as may be necessary in the administration of this article.

2. Powers and duties in respect to the national employment service. The state of New York accepts the provisions of an act of the congress of the United States effective June sixth, nineteen hundred thirty-three, entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes." Such act is in this article otherwise referred to as "Wagner-Peyser Act".

The commissioner is hereby designated as the agent of the state as required by such act of congress and as such agent is hereby authorized, empowered and directed to cooperate with the United States employment service under and pursuant to the terms, conditions, provisions and requirements of such act and he shall have and exercise all powers necessary therefor. The commissioner is hereby further authorized, empowered and directed to take such steps and to formulate such plans and to execute such projects as may be necessary or appropriate to obtain for and on behalf of the state the full benefits, advantages and privileges derivable under and pursuant to such act of congress.

3. Acceptance of moneys. The commissioner is authorized to accept moneys to be used in carrying out any of the purposes of this article.

4. Claims for damages to personal property. The commissioner is authorized to approve, for payment out of the unemployment administration fund, notwithstanding any inconsistent provision of the court of claims act, any claim for damage to personal property made by an employee of the department whose salary is paid out of that fund resulting from the deliberate act of any claimant for benefits, applicant for placement, employer, or other person acting on behalf of a claimant, applicant, or employer arising out of official business of the department. Payment of such claim shall be limited to the sum of one hundred fifty dollars and shall be subject to the prior approval of the comptroller and the attorney general.

§ 531. Regularization of employment. One of the purposes of this article is to promote the regularization of employment in enterprises, industries, localities, and the state. The commissioner shall take such steps as are within his means for the reduction and prevention of unemployment and to promote the reemployment of all unemployed workers. To this end the commissioner may employ experts and may carry on and publish the results of any investigations and research which he deems relevant, whether or not directly related to the other purposes and specific provisions of this article. Also to this end, the commissioner shall undertake investigations of technological developments in industry in order to obtain information necessary for evaluating the effects of such developments on the geographical, industrial, and occupational employment patterns of the state. The commissioner shall also undertake investigations of occupational training needs of workers unemployed because of technological developments, the availability of facilities for this purpose, and ways and means for establishing required facilities where this step is needed, and shall co-operate to this end with appropriate education authorities. The commissioner shall bring the findings of such investigations to the attention of education authorities, labor organizations, employers and other appropriate bodies, public and private, in order that educational and training efforts shall be appropriate to the changing occupational needs of industry and shall be channeled in the direction of expanding occupational opportunities for the labor force. The commissioner shall

also utilize such findings in connection with his responsibilities for the development and encouragement of, and recruitment for, apprenticeship training activities. The commissioner shall by these and other appropriate means assist labor and management in the development of higher occupational skills commensurate with the changing requirements of industry in the state.

§ 532. Employment districts and offices. 1. Establishment and maintenance. The commissioner may divide the state into such number of employment districts as he finds necessary to carry out the provisions of this article and maintain a district office in each of said districts. The commissioner shall establish such number of local employment offices as he finds necessary, which offices, in addition to the other duties prescribed herein and by the commissioner, shall act as free public employment exchanges.

Such exchanges shall provide and maintain special services for unskilled workers and public assistance recipients, which services shall include but not be limited to: maintenance of current registers of all opportunities for employment in which such workers and recipients would be able to engage which are brought to the attention of such exchanges; special activities to seek out and develop employment opportunities for such workers and recipients; employment preparation services; and continued counseling before and after referral of such workers and recipients to employment opportunities.

2. Cooperation with other agencies. The commissioner is authorized to cooperate with or to enter into agreements with the federal railroad retirement board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private non-profit organization, with respect to the establishment, maintenance, and use of free employment service facilities and free public employment offices, and as a part of any such agreement the commissioner may accept moneys, services, or quarters as a contribution to the special "employment service account" in the unemployment administration fund.

§ 534. Appeal board. The appeal board is hereby continued. Such board shall consist of five salaried members, not more than three of whom shall be adherents of the same political party. One of the members of the board shall be designated as chairman by the governor. The governor shall appoint or reappoint members for terms of six years. Vacancies shall be filled by appointment by the governor for the unexpired term. A member of the board may be removed by the governor for cause, after a hearing.

Any hearing, inquiry, or investigation required or authorized to be conducted or made by the board may be conducted or made by any individual member thereof, and the order, decision, or determination of such member shall be deemed the order, decision, or determination of the board from the date of filing thereof in the department, unless the board on its own motion or on application duly made to it modify or rescind such order, decision, or determination.

The board shall establish and maintain a current index, by topic, of the principles of law established by the decisions rendered by the board and the courts concerning matters arising under this article. Such index shall cite all appropriate authority which supports such principles and, where appropriate, all conflicting authority. Such index shall also contain a glossary of technical and statutory terms commonly used by the board in its decisions. Copies of such index shall be open for public inspection and examination, and shall be made available at all locations where unemployment insurance hearings, authorized or mandated by section six hundred twenty of this chapter, are conducted.

§ 535. Referees. The commissioner shall appoint, subject to the regulations of the civil service, as many persons as may be necessary to be referees to perform the duties prescribed by this article. It shall be the duty of a referee, under the supervision, direction, and administrative control of the appeal board, to hear and decide disputes in accordance with the provisions of this article and to conduct such

other and further hearings in connection with the foregoing as may be required by the board.

§ 536. Collaboration with other states, the United States, and foreign governments. 1. Cooperation. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment compensation law.

2. Agreements. (a) The commissioner is authorized to enter into agreements with the appropriate agencies of other states or the United States whereby rights to benefits accumulated under the unemployment compensation laws of the several states or of the United States, or both, may constitute the basis for the payment of benefits under terms which the commissioner finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(b) (1) The commissioner is authorized to enter into arrangements with the appropriate agencies of other states or of the United States (i) whereby remuneration or services, upon the basis of which an individual may become entitled to unemployment benefits under the unemployment compensation law of another state or of the United States shall be deemed to be remuneration and weeks of employment for the purposes of this article, provided such other agency has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this article upon the basis of such remuneration or services as the commissioner finds will be fair and reasonable as to all affected interests, and (ii) whereby the commissioner will reimburse such agencies with such reasonable portion of unemployment benefits, paid under the laws of any such other states or of the United States upon the basis of employment or remuneration paid by employers for employment, as the commissioner finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed benefits for the purpose of this article. The commissioner is hereby authorized to make reimbursements from the fund to such agencies and to receive from them reimbursements to the fund, in accordance with arrangements pursuant to this section.

(2) The commissioner shall participate in any arrangements for the payment of benefits on the basis of combining a claimant's remuneration and services covered under this article with those covered under the laws of other states which are approved by the secretary of labor of the United States as provided in the federal unemployment tax act. The terms of any such arrangements shall be deemed to comply with the foregoing provisions of this paragraph.

(c) The commissioner is authorized to enter into reciprocal agreements with the appropriate agencies of other states in regard to services on vessels engaged in interstate or foreign commerce whereby such services for a single employer, wherever performed, shall be deemed performed within this state or within any such other state.

(d) The commissioner is authorized to enter into reciprocal agreements with appropriate agencies of other states or of the United States, under terms which he finds will be fair and reasonable as to all affected interests, (1) whereby employer contributions erroneously paid to this state, or such other states or the United States because of the bona fide belief that all or some of the employees were covered under the unemployment insurance laws of this state, or of such other states or of the United States, may be repaid or transferred to the unemployment insurance fund of that state or of the United States under whose law such contributions were actually due, (2) whereby such contributions upon repayment or transfer to the unemployment insurance fund shall be deemed to have been paid as of the dates payments thereof were made to the transferring agency, (3) permitting such repayments or transfers by this state without regard to the time limitations governing refund of contributions contained in section five hundred seventy, subdivision five. Such agreements may also provide for the reimbursement to the unemployment insurance fund of the transferring agency of all benefits which were paid on the basis of employment for which the contributions transferred were paid in error. Any such reimbursement of benefits by this state in accordance herewith shall be deemed benefits paid for the purposes of and pursuant to the provisions of this article as of the dates of payment of such benefits by the transferring agency.

* (e) The commissioner is authorized to enter into an agreement with the appropriate agency of the United States, whereby, in accordance with a law of the United States (i) the commissioner shall, as agent of the

United States, provide for the payment of additional benefits to claimants whose rights as provided under title seven of this article have been exhausted, or (ii) the state shall be reimbursed for additional benefits paid pursuant to title eleven of this article. The commissioner is hereby authorized to receive and disburse funds from the United States, or any appropriate agency thereof, in accordance with any such agreement.

* NB Expired September 1, 1963

3. Investigations and information. The commissioner is empowered to make investigations and secure information as requested by the agency of any state, of the federal government, or of any foreign government charged with the administration of any unemployment compensation law or any public employment service law as he deems necessary or appropriate to facilitate the administration of such law by such agency and may, notwithstanding the provisions of section five hundred thirty-seven of this article, transmit the results of such investigations and such information to such agency. For this purpose, the commissioner is empowered to make available services and facilities and to exercise the other powers provided in this article with respect to the administration thereof. The commissioner is further empowered to request any such agency, or the officers or employees of any such agency, to undertake on his behalf any investigation and to secure information needed in the administration of this article and to accept and utilize information, services, and facilities made available to this state by any such agency.

4. Manpower training. The commissioner is hereby authorized to participate in the federal manpower development and training act of nineteen hundred sixty-two as amended and may approve for expenditure from available funds such sums as may be required to enable the state to carry out the purposes of such act.

§ 537. Disclosures prohibited. 1. a. Unemployment insurance information. (i) Unemployment insurance information is information contained in the records of the department pertaining to the

administration of this article, including information obtained by the department from employers and employees pursuant to this article. The term includes wage reporting information obtained by the department from the state department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a and paragraph four of subsection (a) of section six hundred seventy-four of the tax law. It further includes information in the state directory of new hires that has been disclosed to the department for use in the unemployment insurance program. Such information does not include the personnel or general fiscal information of the department or information in the public domain.

(ii) For purposes of this paragraph, the term public domain means: (A) information about the department and the unemployment insurance appeal board; (B) information about applicable state and federal law, rules and regulations pertaining to unemployment insurance, including interpretations thereof and statements of general policy and interpretations of general applicability but excluding investigative manuals and procedures pertaining to unemployment insurance; and (C) any agreements relating to the administration of this article.

Notwithstanding the foregoing, nothing in this subdivision shall be construed to limit, restrict, or abrogate the department's right to deny access to any records pursuant to the provisions of the public officers law.

b. Use of unemployment insurance information. Unemployment insurance information shall be for the exclusive use and information of the commissioner in the discharge of his or her duties under this chapter and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the commissioner is a party to such action or proceeding, or such action or proceeding involves information provided pursuant to paragraph g of subdivision three of this section, notwithstanding any other provisions of law. Such information insofar as it is material to the making and determination of a claim for benefits or to adjudicating a claim for benefits shall be available to the parties affected and, in the commissioner's discretion, may be made available to the parties affected in connection with effecting placement.

c. Disclosure of unemployment insurance information to an individual or employer. (i) The department may disclose unemployment insurance information about an individual to such individual or unemployment insurance information about an employer to such employer. As a condition to making such disclosure, the department shall require a written authorization to disclose such information from the individual or employer in a form acceptable to the department together with such proof of identity or authorization to act on behalf of the individual or employer as the commissioner shall deem appropriate. Notwithstanding the foregoing, except as may otherwise be authorized under paragraph b of this subdivision, this paragraph shall not be construed to authorize the department to disclose information acquired from an employer under this article to an individual or information acquired from an employee under this article to an employer.

(ii) Nothing in this subdivision shall be construed to prohibit the disclosure of the wage reporting information obtained by the department from the department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a and paragraph four of subsection (a) of section six hundred seventy-four of the tax law pertaining to an individual to such individual or pertaining to an employer to such employer.

d. Disclosure upon informed consent. (i) The department may disclose unemployment insurance information about an individual or an employer to an agent of such individual or employer, or to a third party, on the basis of informed consent received from such individual or employer. An informed consent from an individual shall not be construed to authorize the department to disclose information acquired from an employer under this article to an agent or third party identified in an individual's informed consent nor to authorize the department to disclose information acquired from an individual under this article to the agent or third party identified in the employer's informed consent. Nothing in this subdivision shall be construed to prohibit the disclosure of the wage reporting information obtained by the department from the department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a and paragraph four of subsection (a) of section six

hundred seventy-four of the tax law pertaining to an individual to the agent or third party identified in the individual's informed consent or pertaining to an employer to the agent or third party identified in the employer's consent.

(ii) Informed consent shall consist of a written release from the individual or employer to whom the information pertains. Where a written release is impossible or impracticable to obtain, the department may accept an informed consent from a representative acceptable to the department, including but not limited to a conservator, guardian, or executor or administrator of a decedent's estate, together with such documentation as the department deems necessary, including but not limited to orders of appointment or letters of administration, to establish the right of the representative to act on the individual's behalf. An informed consent must include a statement:

(A) specifically identifying the information that is to be disclosed;

(B) acknowledging that department files will be accessed to obtain the information;

(C) identifying the specific purpose or purposes for which the information is sought, subject to the limitations on such purpose or purposes set forth in subparagraph (iii) of this paragraph, and indicating that information obtained under the release will only be used for that purpose or purposes; and

(D) identifying all the parties who may receive the information disclosed pursuant to the consent.

(iii) The purpose specified in the release must be limited to providing a service or benefit to the individual signing the release that such individual expects to receive as a result of signing the release or for the purpose of carrying out administration or evaluation of a public program to which the release pertains.

e. Funding for disclosure of requested unemployment insurance information. Except as permitted under applicable federal law or regulation, or as otherwise authorized by agreement between the department and the United States Department of Labor, federal unemployment insurance grant funds shall not be used to pay for any of the costs incurred by the department in processing and handling a request for disclosure of unemployment information made under this

article.

2. Violations of the confidentiality provisions of this section. Any person, who, without authority of the commissioner or as otherwise required by law, shall disclose information in violation of the confidentiality provisions of this section, upon conviction, shall be guilty of a misdemeanor.

3. Exceptions. The commissioner may, however, disclose the information described in subdivisions one and four of this section under the following circumstances:

a. Federal law. The commissioner shall report fully and completely to the appropriate agency of the United States on the effect and administration of this article in the manner prescribed by such agency, and further he or she shall make information available, upon request, to any federal, state or local agency entitled to such information under the social security act or any other federal law in the manner prescribed by such federal law or its implementing regulations.

b. Chief administrator of the courts; commissioners of jurors; county clerks; chief judges of United States district courts; clerks of the court or jury administrators of the United States district courts.

(i) The commissioner shall provide lists of the names of persons receiving unemployment insurance benefits to the chief administrator of the courts, appointed pursuant to section two hundred ten of the judiciary law. The lists shall be provided for the sole purpose of integration into lists of prospective jurors as provided by section five hundred six of the judiciary law. The chief administrator of the courts shall upon request provide information from the lists to the commissioner of jurors in each county or, in a county within a city having a population of one million or more, the county clerk of said county, solely for the purpose of compiling lists of prospective jurors for the appropriate county. The lists of persons receiving unemployment insurance benefits shall be provided only pursuant to a cooperative agreement between the chief administrator of the courts and the commissioner that is consistent with all federal regulations or

requirements governing such disclosures and guarantees that all necessary steps shall be taken by the chief administrator of the courts, the commissioners of jurors and the county clerks to insure that the lists are kept confidential and that there is no unauthorized use or disclosure of such lists. Furthermore, the lists will be provided only if the chief administrator of the courts determines that the lists are needed for integration into lists of prospective jurors in one or more counties.

(ii) The commissioner shall provide lists of the names of persons receiving unemployment insurance benefits to the chief judge of any United States district court in New York State, appointed pursuant to title twenty-eight of the United States Code, section one hundred thirty-six. The lists shall be provided for the sole purpose of integration into lists of prospective jurors in such United States district court. The chief judge of such district court shall upon request provide information from the lists to the clerk of the court or jury administrator of such United States district court, solely for the purpose of compiling lists of prospective jurors for such district court. The lists of persons receiving unemployment insurance benefits shall be provided only pursuant to a cooperative agreement between the chief judge of such district court and the commissioner that is consistent with all federal regulations or requirements governing such disclosures and guarantees that all necessary steps shall be taken by the chief judge of the district court, the clerk of the court or jury administrator of such district court to insure that the lists are kept confidential and that there is no unauthorized use or disclosure of such lists. Furthermore, the lists will be provided only if the chief judge of such district court determines that the lists are needed for integration into lists of prospective jurors in such district.

c. Nothing herein shall be construed to prohibit the delivery of unemployment benefit information contained in the department's records to the secretary of health and human services of the United States or the state agency responsible for collecting such information, in accordance with regulations promulgated by such secretary, as necessary for the purposes of the national directory of new hires as established under section four hundred fifty-three A of the social security act, as

added by section three hundred thirteen of the personal responsibility and work opportunity reconciliation act of 1996, P.L. 104-193.

d. (i) Nothing herein shall be construed to prohibit the disclosure quarterly, to the secretary of health and human services of the United States or the state agency responsible for collecting such information, claim information contained in the department's records, as required by section four hundred fifty-three A of the social security act (establishing the national directory) as amended by section three hundred thirteen of the personal responsibility and work opportunity reconciliation act of 1996, P.L. 104-193. Such claim information is to be used only for the purposes of section four hundred fifty-three A of the social security act in carrying out child support enforcement programs. Costs of furnishing such claim information shall be reimbursed consistent with federal law and regulations.

(ii) For the purpose of this paragraph the term "claim information" means information regarding whether an individual is receiving, has received, or has made application for, unemployment insurance benefits, the amount of such benefits being received or to be received and the individual's most recent address contained in the department's records.

e. Nothing herein shall be construed to prohibit the disclosure of claim information as defined in subparagraph (ii) of paragraph d of this subdivision to the "state directory of new hires," as established under section one hundred seventy-one-h of the tax law as amended, and to the state office of temporary and disability assistance for disseminating to support collection units designated by social services districts or their duly authorized agents for all purposes designated by the personal responsibility and worker opportunity reconciliation act of 1996, public law 104-193. The cost of providing such claim information shall be reimbursed consistent with federal law and regulations.

f. United States census bureau. Upon request to the commissioner, such information may be disclosed to the United States census bureau for statistical analyses related to population and employment measurements and trends. The confidentiality of such information shall be protected by subdivisions one and two of this section and title thirteen of the

United States Code and subject to the terms of a written agreement between the United States census bureau and the commissioner.

g. Federal, state and local agencies. (i) Upon request to the commissioner, such information may be disclosed to certain federal, state and local agencies. The commissioner may require written agreements with requesting agencies in a form determined by the commissioner and consistent with 20 CFR 603 and other federal regulations. The information that may be disclosed pursuant to this paragraph shall be disclosed only after the requesting agency has demonstrated, to the commissioner's satisfaction, that the information shall be kept confidential, except for those purposes for which it was provided to the requesting agency, and that the requesting agency has security safeguards in place to prevent the unauthorized disclosure of such information.

(ii) The information disclosed pursuant to this paragraph may be disclosed to the following agencies to be used exclusively for the following legitimate governmental purposes:

(1) any federal, state or local agency in the investigation of fraud relating to public programs, or misuse of public funds;

(2) any state or United States territorial workforce agency, local workforce investment board and its agents, and one-stop operating partner receiving funds under the workforce investment act of 1998 for program performance purposes and other legitimate programmatic purposes authorized by the commissioner;

(3) the United States department of labor or its agents, as required by law, or in connection with the requirements imposed as a result of receiving federal administrative funding;

(4) state and local economic development agencies, or their agents, where such information is necessary to carry out the statutory functions of such agencies, shall receive a quarterly census of employment and wage information compiled by the department, provided that such disclosure shall not violate federal law. Any redisclosure of information obtained by such agencies under this clause shall be limited to tabulation and publication of such information in an aggregated statistical form. No individual identifying information obtained pursuant to this clause shall be redisclosed in the course of the

tabulation or publication. As used in this clause, the term "aggregated statistical form" shall mean, in the case of information regarding individuals, a data set that includes information about not fewer than ten individuals, and, in the case of employer information, a data set that includes information about no fewer than three employers, of which no one employer comprises more than eighty percent of the aggregated data set; and

(5) the workers' compensation board, the state insurance fund and the state department of financial services, for purposes of determining compliance with the coverage of workers' compensation and disability insurance and to the workers' compensation board for purposes of determining eligibility for workers' compensation benefits.

(6) any federal, state, or local law enforcement agency in accordance with a proper judicial order or grand jury subpoena served upon the department.

(7) the office of temporary and disability assistance, or local social services districts, for purposes of establishing or verifying the income and eligibility of applicants for, or recipients of, benefits under state public assistance programs for such benefits. Information obtained by the office of temporary and disability assistance under this clause shall not be disclosed, except to local social services districts for purposes of establishing or verifying the income and eligibility of applicants for, or recipients of, benefits under state public assistance programs.

(8) the office of vocational and educational services for individuals with disabilities of the education department for the evaluation of the effect on earnings of participants, or former participants, in employment and training programs for which the office of vocational and educational services for individuals with disabilities of the education department has reporting, monitoring or evaluating responsibilities.

(9) the commission for the blind for the evaluation of the effect on earnings of participants, or former participants, in employment and training programs for which the commission for the blind has reporting, monitoring or evaluating responsibilities.

(10) any other federal, state, or local governmental agency, including the state university of New York, the city university of New York, and any of their constituent units, or the agents or contractors of a

governmental agency, where such information is to be used for (A) evaluation of program performance, including, but not limited to, longitudinal outcome analysis of programs (including programs funded by public or private moneys or a combination thereof) to the extent permitted by federal law; (B) financial or other analysis required by federal, state, or local law or regulation; (C) preparation of reports required by federal, state, or local law or regulation; (D) operation of public programs by such agencies, their agents, contractors and subcontractors, whenever the commissioner determines that such information sharing is for the purpose of improving the quality or delivery of program services or to create operational efficiencies; or (E) establishment of common case management systems between federal, state, or local agencies delivering or supporting workforce services for a shared customer base, wherever such common case management system is for the purpose of fostering workforce partnerships, program coordination, inter-agency collaboration, improving program services, or creating operational efficiencies. Any redisclosure of information obtained by such agencies, their agents, or their contractors under this clause shall be limited to tabulation and publication of such information in an aggregated statistical form, except when an agency, its agent, its contractor or other agency must exchange such information for an authorized purpose as provided for in the written agreement required by 20 CFR Part 603. No individual identifying information obtained pursuant to paragraph d of subdivision one of this section shall be redisclosed in the course of the tabulation or publication. As used in this clause, the term "aggregated statistical form" shall mean, in the case of information regarding individuals, a data set that includes information about no fewer than ten individuals, and, in the case of employer information, a data set that includes information about no fewer than three employers, of which no one employer comprises more than eighty percent of the aggregated data set. When the commissioner approves a requested disclosure of information for the purposes of a longitudinal study, the commissioner shall allow such information to be used for a specified period of time as provided for in the written agreement required by 20 CFR Part 603. Such agreement may only provide for information to be used for a period of up to ten years but may be renewed for additional periods of time.

(11) (A) Pursuant to clause ten of this subparagraph, the commissioner shall electronically post in a place accessible by the general public (i) the minimum conditions for granting a request from governmental agencies for disclosure of information, (ii) a standard application for submitting requests for disclosure of unemployment insurance information in individually identifiable form in accordance with paragraph d of subdivision one of this section, in de-identified unit level form, or aggregated statistical form, (iii) the timeframe for information request determinations by the commissioner, such that within twenty business days of receiving a request, the commissioner shall either approve or deny the request or ask for additional information; within twenty business days of receiving a request for additional information, the requesting agency shall respond to the commissioner, and; within thirty calendar days of receiving the additional information, the commissioner shall provide a final approval or denial of the request, and (iv) contact information for assistance with requests for disclosure of information.

(B) Any approval or denial pursuant to clause ten of this subparagraph shall be in writing. Denials shall identify the reason or category of reason for the denial.

(C) The commissioner shall issue guidelines regarding the development of agreements with respect to disclosures approved pursuant to clause ten of this subparagraph, and such guidelines shall include, but not be limited to, the process and timeframe for developing such agreements and the terms therein consistent with 20 CFR Part 603 and other federal regulations.

h. Department contractors, subcontractors, or agents. The department may disclose unemployment insurance information to its contractors, subcontractors, or agents as the commissioner deems necessary to carry out the statutory functions of the department. Such disclosure shall be consistent with the authorized purposes described in subdivision four of this section and all applicable federal regulations, guidelines and policies.

i. Payment to the department for disclosure of requested unemployment insurance information. (1) Except as permitted under applicable federal

law or regulation, or as otherwise authorized by agreement between the department and the United States department of labor, federal unemployment insurance grant funds shall not be used to pay for any of the costs incurred by the department in processing and handling a request for disclosure of unemployment information made under this article. Such costs shall be calculated, collected, and administered by the department consistent with applicable federal rules and guidelines and shall be paid in advance of disclosure to the department by the entity requesting the information or by another party acting on behalf of such entity. Where the recipient is a public official, the department may accept payment of costs by way of reimbursement.

(2) Costs paid under this paragraph shall be income of the state unemployment insurance program and shall only be used as permitted under the provisions of applicable federal regulations or guidelines governing the assessment and expenditure of such costs.

4. Wage reporting information obtained by the department from the state department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a of the tax law, as added by chapter five hundred forty-five of the laws of nineteen hundred seventy-eight, and information obtained or derived from quarterly combined withholding, wage reporting and unemployment insurance returns required to be filed by employers pursuant to paragraph four of subsection (a) of section six hundred seventy-four of the tax law shall be considered confidential and shall be used for the administration of the unemployment insurance program, employment services program, federal and state employment and training programs, employment statistics and labor market information programs, employer services program, worker protection programs, federal programs for which the department has administrative responsibility or for other purposes deemed appropriate by the commissioner under this chapter. Such information shall not be disclosed to persons or agencies other than those considered entitled to such information under the social security act or other federal law, or as provided in subdivision three of this section or when such disclosure is necessary for the proper administration of the department's unemployment insurance program, employment services program, employment and training programs, worker protection programs, federal programs for which the department

has administrative responsibility or for other purposes deemed appropriate by the commissioner under this chapter. Any reports concerning employment and training programs submitted to a state or federal agency shall also be submitted to the governor, the temporary president of the senate, the speaker of the assembly and the chairs of the labor committees in the senate and the assembly.

5. Withholding tax information obtained by the department from the state department of taxation and finance pursuant to subsection (1) of section six hundred ninety-seven of the tax law shall be confidential and shall not be disclosed or redisclosed by any person or agency except in accordance with the provisions of subsections (e) and (l) of section six hundred ninety-seven of such law. When used for the purpose of evaluating monitoring or reporting on the department's employment security and training programs, access to such information shall be limited to that which concerns individuals who applied to or participated in such programs.

7. The department shall notify all applicants to, and participants in, employment security and training programs for which the department has reporting, monitoring or evaluating responsibilities that information obtained from the department of taxation and finance may be used to evaluate program effectiveness of up to ten years after such application or participation, whichever is later.

§ 538. Representation and witness fees and other expenses. 1. Fees and compensation of representatives. (a) No fee shall be charged in any proceeding under this article by the commissioner, by the appeal board or by any court.

(b) In any proceeding under this article a party may be represented by an agent, but no fees for services rendered by such agent shall be allowable unless such agent is registered with the appeal board or is an attorney.

(c) Claims of representatives for services rendered to a claimant in connection with any claim arising under this article shall not be enforceable unless approved by the appeal board and shall in no event

exceed the benefit allowed, except as provided in paragraph (d) of this subdivision. In approving any fee requested by a representative pursuant to this section, the appeal board shall consider the following factors: (i) the total benefit allowed; (ii) the time spent in providing representation; (iii) the legal and factual complexities involved; and (iv) such other factors as the appeal board may deem relevant.

(d) In addition to any fee which may be allowed by the appeal board for services rendered to the claimant, an attorney representing a claimant shall be entitled to a fee not to exceed the sum of five hundred dollars and necessary printing and other disbursements in each of the following cases: (1) On an appeal from a decision of the appeal board in favor of the claimant. (2) On a motion for leave to appeal to the court of appeals from a decision of the appellate division of the supreme court which relates to a decision of the appeal board in favor of the claimant. (3) On an appeal to the court of appeals from a decision of the appellate division of the supreme court which relates to a decision of the appeal board in favor of the claimant. When a claimant takes such appeal, the court shall allow a fee and disbursements only if it finds the appeal to have been meritorious.

(e) The court shall appoint an attorney to represent the claimant if he is unrepresented in each of the cases described in paragraph (d) hereof, except when the claimant takes an appeal to the court of appeals. Fees and disbursements provided in such paragraph (d) shall be fixed by the court in which the appeal is taken or the motion for leave to appeal is made. Such fees and disbursements shall be paid by the commissioner as part of the expenses incurred in the administration of this article.

(f) Any person, firm, or corporation who shall exact or receive any remuneration or gratuity for any services rendered to or on behalf of a claimant except as allowed by this section and in an amount approved by the board or a court shall be guilty of a misdemeanor. The appeal board shall order the restitution of any fee paid by a claimant to a representative to the extent that it exceeds the amount authorized by this section.

2. Fees of witnesses and other expenses. Fees of witnesses and other expenses, except representation services, involved in proceedings under

this article shall be paid at a rate to be established by regulation of the commissioner except that such fees and other expenses involved in proceedings before referees and the appeal board shall be paid at a rate to be established by regulation of this board. Such fees or other expenses shall be treated as expenses under this article.

3. Representatives; lists. * (a) The appeal board shall establish the qualifications and procedures for the registration of agents authorized to represent claimants in connection with any claims arising under this article. An agent shall be registered as authorized to represent claimants by providing the appeal board with his name, business address and telephone number and by posting a bond with the appeal board in the amount of five hundred dollars for the benefit of claimants charged fees by said representative in excess of those approved pursuant to this section and with respect to which restitution has been ordered pursuant to paragraph (f) of subdivision one of this section. An agent shall be registered as authorized to represent an employer by providing the appeal board with a letter of authorization from the employer. No agent may be registered who knowingly violates paragraph (c) of subdivision one of this section.

* NB Expires December 31, 2026

(b) An attorney who is available to represent claimants may notify the appeal board by providing his name, business address and telephone number.

* (c) The appeal board shall maintain lists of authorized agents and attorneys who are available to represent claimants and shall make such lists available to claimants on request.

* NB Expires December 31, 2026

§ 539. Acquisition of land and buildings. The commissioner of general services, on the recommendation of the industrial commissioner and with the approval of the director of the budget and on behalf of the state, is hereby authorized

- (1) to purchase land with or without buildings;
- (2) to erect buildings thereon;
- (3) to enter into contracts with any person, firm or corporation which

shall agree to erect on land owned by such person, firm or corporation, suitable buildings at locations acceptable to the commissioner of general services and the industrial commissioner, and to agree on behalf of the state to lease such land and buildings for a period of not more than fifteen years from the time of the completion of said buildings at such rentals and subject to such terms and conditions as may be agreed upon; such contract shall contain the plans and specifications for the proposed buildings, which must be approved by the industrial commissioner and the commissioner of general services; each such contract and lease shall provide that upon the termination of said lease, or upon the earlier payment in full of the total amount specified therein the lessor shall convey to the state title in fee simple to the land and buildings covered under said lease;

(4) to enter into lease-purchase contracts as specified under (3) above with respect to buildings already in existence:

(5) to purchase and to provide for fixtures, equipment and facilities in connection with the said buildings or premises and to make necessary alterations and improvements thereof.

The provisions of section one hundred sixty-one-a of the state finance law limiting the period for which the commissioner of general services is authorized to lease premises to a term not exceeding five years shall not be applicable to leases executed in accordance with this section.

Space in each of such buildings shall be primarily utilized by the commissioner for the administration of this article, but space in any such building in excess of such requirements, as determined by the industrial commissioner, may be rented or sub-leased under an agreement entered into by the commissioner of general services only to the state of New York, or any agency or authority of the state of New York. Rents received under such agreement shall be paid into the unemployment administration fund. However, if, in connection with such building, moneys were advanced by the special fund to carry out the purposes of this section, the rents received under such agreement shall be paid into the said fund until such time as it shall be fully reimbursed for such advances. In addition, under such circumstances, an agreement shall be entered into between the commissioner and the commissioner of general

services pursuant to which the fair rental value of all space in such building utilized by the commissioner shall be determined and a transfer of amounts equal to such rental value out of the unemployment administration fund to the special fund is hereby authorized until the special fund shall be fully reimbursed for such advances. The fair rental value of space utilized by the commissioner shall not exceed the prevailing rental rate for suitable space in privately owned buildings in the same locality.

§ 540. Information about assistance programs. The commissioner shall establish procedures whereby each person who files a claim for unemployment insurance pursuant to section five hundred ninety-six of this article, shall receive information about the supplemental nutrition assistance program provided by the office of temporary and disability assistance pursuant to subdivision six of section ninety-five-a of the social services law, the special supplemental nutrition program for women, infants and children provided by the department of health under section twenty-five hundred seven of the public health law, and the utility assistance and rental and mortgage assistance programs available through the division of housing and community renewal and the office of temporary and disability assistance. The commissioner shall also provide information about such programs on the department's website. Such information shall be prominently displayed and easily accessible by individuals filing a claim or certifying for unemployment benefits.

TITLE 4

UNEMPLOYMENT FUNDS

- Section 550. Unemployment insurance fund.
551. Unemployment administration fund.
552. Special fund.
552-a. Re-employment service fund.
552-b. Unemployment insurance control fund.
553. Disposition of moneys collected.

§ 550. Unemployment insurance fund. 1. Composition and investment. (a) The unemployment insurance fund shall be continued. It shall consist of all contributions, interest, penalties and monies from the re-employment service fund pursuant to section five hundred eighty-one-b of this article received and paid into the fund, and of moneys credited to this state pursuant to section nine hundred three of the federal social security act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned thereon. All money in the fund, immediately upon receipt, shall be deposited or invested in the obligations of the "Unemployment Trust Fund" of the United States government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commissioner shall requisition from the unemployment trust fund necessary amounts from time to time.

(b) Notwithstanding any other provision of this article, any moneys credited to the state pursuant to section nine hundred three of the federal social security act for federal fiscal years two thousand, two thousand one and two thousand two, shall be transferred into the unemployment administration fund established pursuant to section five hundred fifty-one of this title. These moneys are to be used only to pay expenses incurred by the state for the administration of the unemployment insurance law and are not to be used for the payment of unemployment compensation or for the administration of state public employment offices.

2. Custodian of funds. The state commissioner of taxation and finance and the state comptroller shall be the custodians of the funds received upon requisition by the industrial commissioner from the unemployment trust fund and, subject to audit by the state comptroller, the industrial commissioner shall direct the disbursement thereof. The state commissioner of taxation and finance, notwithstanding any other provision of law, may for the purpose of such disbursement authorize any depository of the fund to make payments out of any moneys therein upon drafts on the fund issued by the industrial commissioner and countersigned by the state comptroller. The state commissioner of taxation and finance may deposit any portion of such funds which he deems not needed for immediate use in the manner and subject to all the

provisions of law respecting the deposit of other state funds by him. Interest earned by such portion of such funds deposited by the state commissioner of taxation and finance shall be collected by him and placed to the credit of the fund.

3. Fund sole source of benefits. The fund shall be administered in trust and shall be used solely to pay benefits, except that subject to the limitations therein contained moneys credited to this fund pursuant to section nine hundred three of the federal social security act may upon an appropriation duly made by the legislature be used for the administration of the unemployment insurance law and shall for such purpose and to the extent required be transferred to the administration fund established under this article. All payments shall be made upon vouchers drawn on the fund by the commissioner in accordance with procedures established by him. The fund shall be the sole and exclusive source for the payment of benefits which shall be due and payable only to the extent that contributions and other payments to the fund with increments thereon, actually collected and credited to the fund and not otherwise appropriated or allocated, are available therefor.

4. Non-liability of state. The state of New York undertakes the administration of the fund without any liability on the part of the state beyond the amount of moneys received through allotment from any agency of the United States.

§ 551. Unemployment administration fund. 1. Purpose. The unemployment administration fund shall be continued. It shall consist of all moneys received by the state or the commissioner for the administration of this article. Such fund shall be handled by the commissioner of taxation and finance and state comptroller as other state moneys are handled; but it shall be expended solely for the administration of this article; and its balance shall not lapse at any time but shall remain continuously available to the commissioner for expenditures consistent herewith. All federal moneys allotted or apportioned to the state by any agency of the United States for the administration of this article shall be paid into the unemployment administration fund, except that moneys received from

the federal railroad retirement board as compensation for services or facilities supplied to such agency shall be paid into the unemployment administration fund or the special "employment service account" thereof, in the same proportion in which expenditures are made for such services or facilities from such fund and account. A special "employment service account" of funds received by the state in accordance with the provisions of the Wagner-Peyser act shall be maintained as a part of such fund. All moneys allotted or apportioned to the state by any agency of the United States, for the administration of this article, paid into the unemployment administration fund, shall be expended solely for the purpose and in the amounts found necessary by such agency for the proper and efficient administration of this article.

2. Replacements from the special fund or general state funds. If any moneys received after June thirtieth, nineteen hundred forty-one, from the United States pursuant to the provisions of the federal social security act, or any unencumbered balances in the unemployment administration fund as of that date, or any moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, are found by the appropriate agency of the United States because of any action or contingency, to have been lost or expended for the purposes other than, or in amounts in excess of, those found necessary by such agency for the proper administration of this article, it is the policy of this state that such moneys shall be replaced by moneys to be transferred from the special fund or appropriated for such purpose from the general funds of this state to the unemployment administration fund for expenditure as provided hereunder, but, for the purposes of this subdivision, such moneys shall not include any amount determined by such agency to have been expended in accordance with rules, standards, instructions, limitations, regulations, or other action by such agency, applicable to such amount and prescribed by it prior to the expenditure thereof. Upon receipt of notice of such finding by such agency, the commissioner shall, with the approval of the director of the budget, direct the transfer of the necessary moneys from the special fund into the unemployment

administration fund. If the moneys available in the special fund are not sufficient for this purpose, the commissioner shall promptly report the additional amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount.

The provisions of this subdivision shall not be construed to require the replacement of any amount disbursed for the payment of expenses in relation to the operation of public employment offices by the federal government provided the liability resulting in such expenditures has been incurred in accordance with the request or with the approval of a duly authorized agency or official of the federal government.

3. Payment of administrative expenses. The total amount of expenses incurred by the commissioner in connection with the administration of this article and such proportion of the total expenses of maintaining the public employment offices as established under this chapter and for the purposes of this article, as shall be determined to be necessary and required by the provisions of this article and so certified by the commissioner, shall, upon audit by the comptroller, be disbursed from the unemployment administration fund. Annually, as soon as practicable after April first, the commissioner and the comptroller shall ascertain the total amount of such expenses incurred during the preceding fiscal year. An itemized statement of the total expenses so ascertained shall be open to public inspection in the office of the commissioner after notice in an official publication of the department. All disbursements from such fund shall be made by the commissioner of taxation and finance on the warrant of the comptroller.

§ 552. Special fund. 1. Source. There is hereby established the special fund. It shall consist of all moneys credited thereto pursuant to the provisions of sections five hundred thirty-nine and five hundred fifty-three of this article, of property and securities acquired by and through the use of moneys belonging to such fund, and of interest earned upon moneys belonging to such fund and deposited or invested. The commissioner of taxation and finance shall be the custodian of such fund

and the moneys therein shall be deposited by him in the same manner as other state moneys. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of the state finance law, and shall be used for the purposes specified herein. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

2. Use of fund. The moneys in this fund may be used to

(a) Finance operations deemed necessary by the commissioner in the administration of this article and approved by the director of the budget, including expenditures pursuant to section five hundred thirty-nine of this article;

(1) for which no appropriations or inadequate appropriations from federal funds are made; or

(2) for which a grant is made from appropriated federal funds but not yet received, provided the special fund is reimbursed upon receipt of such federal grant;

(b) Replace moneys in the unemployment administration fund pursuant to the provisions of subdivision two of section five hundred fifty-one of this article;

(c) Make refunds of interest and penalties erroneously collected;

(d) Defray the cost of vocational and related training courses and make payments to persons enrolled in such courses, as provided in article twenty-three-A of this chapter, and such expenditures shall not be subject to the conditions are set forth in paragraph (b) of subdivision three of this section.

(e) Pay interest on contributions, interest and penalties erroneously collected.

3. Notwithstanding any provision of subdivision two of this section

(a) The special fund shall not be used in whole or in part for any purpose or in any manner which (1) would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (2) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made; and

(b) No expenditure from such fund shall be made unless the commissioner and the director of the budget find that no other funds are available or can properly be used to finance such expenditure.

4. The commissioner of taxation and finance shall, upon the direction of the industrial commissioner and with the approval of the director of the budget, transfer from the special fund to the unemployment insurance fund such moneys available in the special fund which are in excess of reasonable needs for the purposes set forth in subdivision two of this section. Such moneys shall thereupon be credited to the general account.

§ 552-a. Re-employment service fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a fund to be known as the "re-employment service fund".

2. The re-employment service fund shall consist of all moneys collected and received by the commissioner from employers pursuant to section five hundred eighty-one-b of this article as well as interest and penalties associated with such collection. All moneys collected as contributions and interest relating to re-employment services under this article shall be deposited in a bank, trust company or industrial bank designated by the state comptroller. Moneys so deposited shall be credited immediately to the account of the re-employment service fund and shall be used for the purposes set forth in section five hundred ninety-eight of this article. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of the state finance law, and shall be used for the purposes specified herein. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes, provided, however, that it shall be subject to the crediting provisions of subdivision five of this section.

3. Moneys in the re-employment service fund shall be kept separate from and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance and the state comptroller. All

deposits of such moneys shall, if required by the state comptroller, be secured by obligations of the United States or of this state of market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such securities for such deposits.

4. Moneys of the fund shall be used exclusively for the purpose of providing additional automated systems and staff to provide enhanced re-employment services and claimant management activities for unemployment compensation claimants and for the payment of associated administrative costs relating to unemployment compensation claimants. The moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by such commissioner or his or her duly designated officer.

5. The re-employment service fund shall not be used in whole or in part for any purpose or in any manner which (a) would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (b) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

6. On or before January thirty-first, two thousand one, the commissioner shall submit a report to the chairman of the assembly ways and means committee, the ranking minority member of the assembly ways and means committee, the chairman of the senate finance committee, the ranking minority member of the senate finance committee, and the director of the division of the budget regarding the re-employment services fund established pursuant to this section. The report shall contain the following information:

(a) the amount of money deposited in the re-employment services fund for each year of its existence;

(b) the number of department employees funded through the re-employment services fund;

(c) the results of the activities engaged in by department employees funded through the re-employment services fund.

§ 552-b. Unemployment insurance control fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a fund to be known as the "unemployment insurance control fund".

2. The unemployment insurance control fund shall consist of all penalties imposed and collected pursuant to paragraph (b) of subdivision two of section five hundred eighty-one of this article, the department's share of all penalties imposed and collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law, and all other moneys credited or transferred thereto from any other fund or sources pursuant to law.

3. Moneys in the unemployment insurance control fund shall be kept separate from and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance and the state comptroller. All deposits of such moneys shall, if required by the state comptroller, be secured by obligations of the United States or of this state of market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such securities for such deposits.

4. Moneys of the unemployment insurance control fund shall be used for the location and prevention of fraud and abuse, collection and enforcement activities, benefit payment control activities and other quality control activities related to the unemployment insurance program. The moneys shall be paid out of the unemployment insurance control fund on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner or his or her duly designated officer. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

5. The unemployment insurance control fund shall not be used in whole or in part for any purpose or in any manner which (a) would permit its substitution for, or a corresponding reduction in, federal funds that

would be available in its absence to finance expenditures for the administration of this article; or (b) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

§ 553. Disposition of moneys collected. 1. Depository. All moneys collected as contributions, interest and penalties under this article shall be deposited in a bank, trust company or industrial bank designated by the state comptroller. All moneys so deposited shall be credited immediately to the account of the unemployment insurance fund, except as provided in subdivision two of this section.

2. Interest and penalties. The commissioner shall certify periodically to the depository the amount of interest and penalties which were imposed and collected under title six of this article and the department's share of the penalties imposed and collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law and deposited pursuant to subdivision one of this section. A sum equal to the total amount of interest and penalties certified by the commissioner, less the penalties collected pursuant to paragraph (b) of subdivision two of section five hundred eighty-one of this article and the department's share of the penalties collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law shall thereupon be credited to the special fund established pursuant to section five hundred fifty-two of this article. The penalties collected pursuant to paragraph (b) of subdivision two of section five hundred eighty-one of this article and the department's share of the penalties collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law shall thereupon be credited to the unemployment insurance control fund established pursuant to section five hundred fifty-two-b of this article.

TITLE 5 COVERAGE

Section 560. Terms of coverage.

- 561. Voluntary election.
- 562. Termination of coverage.
- 563. Non-profit organizations.
- 564. Agricultural labor.
- 565. Governmental entities.
- 566. Indian tribes.

§ 560. Terms of coverage. 1. Liability. Any employer shall become liable for contributions under this article if he has paid remuneration of three hundred dollars or more in any calendar quarter, except that liability with respect to persons employed in personal or domestic service in private homes shall be considered separately and an employer shall become liable for contributions with respect to such persons only if he has paid to them remuneration in cash of five hundred dollars or more in any calendar quarter. Such liability for contributions shall commence on the first day of such calendar quarter.

An employer who, by operation of law, purchase or otherwise becomes successor to an employer liable for contributions shall become liable for contributions on the day of his succession. This provision shall not affect such successor's liability as otherwise prescribed by law for unpaid contributions due from his predecessor.

2. Hirings by helpers and assistants. Whenever any helper, assistant, or employee of an employer engages any other person in the work which said helper, assistant, or employee is doing for the employer, such employer shall for all purposes hereof be deemed the employer of such other person, whether such person is paid by the said helper, assistant, or employee, or by the employer, provided the employment has been with the knowledge, actual, constructive, or implied, of the employer.

3. Tax exemption in other laws. No exemption from taxation granted under any other law of the state shall be so construed as to apply to the payment of contributions under this article.

4. Federal instrumentalities. (a) In conformity with subsection (b) of

section thirty-three hundred five of the federal unemployment tax act, any instrumentality of the United States, except such as are wholly or partially owned by the United States, or exempt from tax imposed by section thirty-three hundred one of said act by virtue of any provision of law, which specifically refers to such section, or the corresponding section of prior law, in granting such exemption, shall be subject to all the provisions of this article, except as provided in section fifty-two hundred forty of the revised statutes of the United States, as amended and modified by subsection (c) of section thirty-three hundred five of said act. If in any year this state shall not be certified under section thirty-three hundred four of said act, any contributions required under this article from any such instrumentality of the United States with respect to such year, including penalty and interest collected with respect thereto, if any, shall be refunded without interest.

(b) In conformity with subsection (c) of section thirty-three hundred five of the federal unemployment tax act, the commissioner is authorized to transmit a copy of any return or report of a national banking association relative to the association's employees, their remuneration and services, to the comptroller of the currency and to request the said comptroller of the currency to cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and thereupon to transmit to the commissioner a complete statement of his findings respecting the accuracy of such returns or reports.

(c) This subdivision applies to national banking associations and any other federal instrumentalities which would be immune from contributions required under this article without authorization by subsection (b) of section thirty-three hundred five of the federal unemployment tax act.

5. Primary liability for contributions. Whenever one employer contracts with a second employer for any work which is part of the first employer's usual trade, occupation, profession or enterprise, the first employer shall be liable for any contributions otherwise payable by the second employer, based upon wages paid in respect to such work, unless the second employer is free to do business with anyone who may wish to contract with him. Contributions so paid by the first employer on behalf

of the second employer shall be deemed paid by the second employer. If the first employer fails to pay, on the date prescribed by the commissioner, contributions due on wages paid by the second employer, the commissioner may collect such deficiency from the second employer.

§ 561. Voluntary election. 1. Employer. Any employer not otherwise liable for contributions under this article as an employer may become liable therefor

(a) as of the first day of any calendar quarter, provided

(1) he files an application with the commissioner to elect coverage for at least the unexpired portion of the calendar year in which such coverage is to commence and the following calendar year;

(2) such application is filed on or before the last day of the calendar quarter in which coverage is to commence; and

(3) the commissioner approve such application in writing;

(b) as of the date on which he acquired the organization, trade or business, in whole or in part, of another employer who is liable for contributions, provided

(1) he files an application with the commissioner to elect coverage for at least the unexpired portion of the calendar year in which such acquisition occurs and the following calendar year;

(2) such application is filed within thirty days following the end of the calendar quarter in which such acquisition occurred; and

(3) the commissioner approve such application in writing.

2. Employees. (a) Services without the state. The services of a person who resides within this state but performs such services entirely without the state shall be deemed employment within the meaning of this article whenever

(1) contributions are not required with respect to such services under an unemployment compensation law of any other state or of the United States; and

(2) his employer makes application to this effect; and

(3) the commissioner approves such application in writing.

(b) Agricultural labor. All services performed in agricultural labor for an employer who is not liable for contributions pursuant to section

five hundred sixty-four of this article shall be deemed employment within the meaning of this article as of the first day of any calendar quarter provided:

(i) the employer makes an election to this effect for at least the unexpired portion of the calendar year in which such election is to commence and the following calendar year,

(ii) such election is filed on or before the last day of the calendar quarter in which it is to become effective, and

(iii) the commissioner approves such election in writing.

(c) Services performed at a place of religious worship. The services of a person performed at a place of religious worship as a caretaker or for the performance of duties of a religious nature, or both, shall be deemed employment within the meaning of this article, if his employer makes application to this effect and the commissioner approves such application in writing.

3. Coverage. Liability for contributions or for payments in lieu of contributions, as the case may be, shall commence as of the first day of coverage. No remuneration paid prior to the first day of coverage shall be used for the purpose of determining entitlement to benefits.

§ 562. Termination of coverage. 1. Required coverage. (a) Any employer who has once become liable for contributions under this article with respect to persons other than persons employed in personal or domestic service in private homes shall cease to be liable as of the first day of the calendar quarter next following the filing of his written application provided the commissioner finds that the employer has not with respect to such persons paid remuneration of three hundred dollars or more in any of the four calendar quarters preceding such day.

(b) Any employer who has once become liable for contributions under this article with respect to persons employed in personal or domestic service in a private home shall cease to be liable as of the first day of the calendar quarter next following the filing of his written application, provided the commissioner finds that the employer has not with respect to such persons paid remuneration in cash of five hundred dollars or more in any of the four calendar quarters preceding such day.

2. Voluntary coverage. Any employer who has elected to become liable for contributions under this article may terminate such liability hereunder after the expiration of the second calendar year of his liability, as of the first day of any calendar quarter, provided he files with the commissioner a written notice of his intent to terminate liability hereunder before the first day of the calendar quarter beginning with which this liability is to terminate.

3. Non-payment of wages. Any employer who has paid no wages for employment in this state during a period of four consecutive payroll years shall cease to be an employer liable for contributions as of the end of the last of such payroll years.

§ 563. Non-profit organizations. 1. Definition. A "non-profit organization" shall mean any corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

2. Exclusions. In addition to services not included pursuant to the provisions of section five hundred eleven, the term "employment" does not include services rendered for a non-profit organization by

(a) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order,

(b) a lay member elected or appointed to an office within the discipline of a bona fide church and engaged in religious functions;

(c) a person employed at a place of religious worship as a caretaker or for the performance of duties of a religious nature, or both, unless voluntary election has been made pursuant to the provisions of section five hundred sixty-one of this article;

(d) a person who

(1) receives rehabilitative services in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals

whose earning capacity is impaired by age or physical or mental deficiency or injury or

(2) is given remunerative work in a facility conducted for the purpose of providing such work for persons who cannot be readily absorbed in the competitive labor market because of their impaired physical or mental capacity;

(e) an incarcerated individual of a custodial or penal institution;

(f) a person who participates in a youth service program designed to foster a commitment to community service and occupational and educational development and who, while participating in that program, performs services in the community or attends school and receives a stipend designed to cover expenses incurred in performing services or attending school, and is eligible for an award or scholarship upon leaving the program.

3. Coverage. Notwithstanding the provisions of sections five hundred sixty and five hundred sixty-two, a non-profit organization

(a) shall become liable for contributions under this article

(1) if it has paid cash remuneration of one thousand dollars or more in any calendar quarter and such liability shall commence on the first day of such quarter or

(2) if it has employed four or more persons on each of twenty days during a calendar year or the preceding calendar year, each day being in a different calendar week, and the liability shall in this event commence on the first day of the calendar year, and

(b) shall cease to be liable for contributions as of the first day of a calendar quarter next following the filing of a written application to this effect provided the commissioner finds that

(1) it has not paid cash remuneration of one thousand dollars or more in any of the four calendar quarters preceding such day and

(2) has not employed four or more persons on each of twenty days during the current or the preceding calendar year, each day being in a different week.

4. Election of payments in lieu of contributions. A non-profit organization, or a group of such organizations, liable for contributions under this article, but not subject to taxation under the federal

unemployment tax act pursuant to the provisions of paragraph (8) of subsection (c) of section thirty-three hundred six of that act, may elect to become liable for payments in lieu of contributions as of the first day of any calendar year by filing with the commissioner a written notice to this effect before the beginning of such year or, if the organization was not liable in the preceding calendar year, by filing the notice not later than thirty days after the end of that calendar quarter in which the event rendering it liable occurred. The commissioner may for good cause shown extend the time for the filing of such notice.

5. Obligations upon election. (a) A non-profit organization which is liable for payments in lieu of contributions shall pay into the fund an amount equal to the amount of benefits paid to claimants and charged to its employer's account in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one on the basis of remuneration paid on or after the date on which such liability became effective. The amount of payments so required shall be determined by the commissioner as soon as practicable after the end of each calendar quarter or any other period. Such amount shall be payable at such times and in such manner as the commissioner may prescribe and, when paid, the employer's account of the non-profit organization shall be discharged accordingly.

(b) If non-profit organizations elect payments in lieu of contributions as a group, the members of the group shall be severally and jointly liable for payments of amounts equal to the amounts of benefits paid to claimants and charged to the employer's accounts of all members of the group.

The commissioner may prescribe conditions and methods for such group elections and for the discharge of the obligations and responsibilities of the group and its members.

(c) If a non-profit organization was liable for contributions under this article before nineteen hundred sixty-nine and elected payments in lieu of contributions when such election first became available under this section, the payments it is required to make shall include benefits charged on the basis of weeks of employment which began before the date

on which such election took effect but shall not be greater than the sum by which a balance in its employer's account as of such date is exceeded by the amount of benefits charged on and after that date. The balance in the employer's account as of such date shall for the purposes of the foregoing provisions be deemed to include contributions paid on or before January thirty-first, nineteen hundred seventy-one on the basis of wages paid in the last calendar quarter of nineteen hundred seventy.

6. Termination of election. (a) A non-profit organization may terminate its election to become liable for payments in lieu of contributions as of the first day of any calendar year by filing a written notice to this effect with the commissioner before the beginning of such year.

(b) The commissioner may cancel at any time such election of a non-profit organization which has failed to make any of the payments required hereunder within thirty days after the commissioner has notified it of the liability for and the amount of such payment. Such cancellation shall remain in force and effect until the non-profit organization files a new notice of election in accordance with the provisions of subdivision four after having satisfied conditions and requirements prescribed by the commissioner for this purpose.

(c) If such election is terminated by a non-profit organization or cancelled by the commissioner, the non-profit organization shall remain liable for payments in lieu of contributions with respect to all benefits charged to its account on the basis of remuneration paid before the date on which such termination or cancellation took effect.

7. Assessment and collection of payments in lieu of contributions. The amount of payments in lieu of contributions due hereunder but not paid upon notice shall be assessed and collected by the commissioner, together with interest and penalties, if any, in the same manner and subject to the same conditions in which contributions due from other employers may be assessed and collected under the provisions of this article.

§ 564. Agricultural labor crew leaders. Whenever a person renders

services as a member of a crew which is paid and furnished by the crew leader to perform services in agricultural labor for another employer, such other employer shall, for the purpose of this article, be deemed to be the employer of such person, unless:

1. the crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of nineteen hundred sixty-three or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting machinery or any other mechanized equipment which is provided by the crew leader, and

2. Exclusion from coverage. For purposes of this section the term "employment" shall not include services rendered by an individual who is admitted to the United States to perform agricultural labor pursuant to 8 USC 1188 if, at the time such services are rendered, they are excluded from the definition of employment in section 3306(c) of the Federal Unemployment Tax Act.

3. the crew leader is not an employee of such other employer and has not entered into a written agreement with such employer under which he is designated as an employee.

§ 565. Governmental entities. 1. Definition. A governmental entity shall mean the state of New York, municipal corporations and other governmental subdivision and any instrumentality of one or more of the foregoing.

2. Exclusions. In addition to services not included pursuant to the provisions of section five hundred eleven of this article, the term "employment" does not include services rendered for a governmental entity by:

- (a) an elected official;
- (b) a member of a legislative body or of the judiciary;
- (c) a member of the state national guard or air national guard, except a person who renders such services as a regular state employee;
- (d) a person serving on a temporary basis in case of fire, storm,

snow, earthquake, flood or similar emergency;

(e) a person in a major nontenured policymaking or advisory position;

(f) a person in a policymaking or advisory position, the duties of which ordinarily do not require more than eight hours per week to perform; and

(g) an incarcerated individual of a custodial or penal institution.

3. Coverage. A governmental entity shall be liable for contributions under this article unless it becomes liable for payments in lieu of contributions.

4. Election of payments in lieu of contributions. A governmental entity or a group of such entities liable for contribution under this article may elect to become liable for payments in lieu of contributions as of the first day of any calendar year by filing with the commissioner a written notice to this effect before the beginning of such year or, if the governmental entity was not liable in the preceding calendar year, by filing the notice not later than thirty days after the end of the calendar quarter in which it first became liable. The commissioner may for good cause shown extend the time for the filing of such notice.

5. Obligation upon election. (a) A governmental entity which has elected to become liable for payments in lieu of contributions shall pay into the fund an amount equal to the amount of benefits paid to claimants and charged to its employer's account in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article on the basis of remuneration paid on or after the date on which such liability became effective. The amount of payments so required shall be determined by the commissioner as soon as practicable after the end of each calendar quarter or any other period. Such amount shall be payable quarterly or at such times and in such manner as the commissioner shall prescribe and, when paid, the employer's account of the governmental entity shall be discharged accordingly.

(b) If governmental entities elect payments in lieu of contributions as a group, the members of the group shall be severally and jointly liable for payments of amounts equal to the amounts of benefits paid to

claimants and charged to the employer's accounts of all members of the group. The commissioner may prescribe conditions and methods for such group elections and for the discharge of the obligations and responsibilities of the group and its members.

6. Termination of election. (a) A governmental entity may terminate its election to become liable for payments in lieu of contributions as of the first day of any calendar year by filing a written notice to this effect with the commissioner before the beginning of such year.

(b) The commissioner may cancel at any time the election of a governmental entity which has failed to make any of the payments required hereunder within thirty days after the commissioner has notified it of the liability for and the amount of such payment. Such cancellation shall remain in force and effect until the governmental entity files a new notice of election in accordance with the provisions of subdivision four of this section after having satisfied conditions and requirements prescribed by the commissioner for this purpose.

(c) If such election is terminated by a governmental entity or cancelled by the commissioner, the governmental entity shall remain liable for payments in lieu of contributions with respect to all benefits charged to its account on the basis of remuneration paid before the date on which such termination or cancellation took effect.

7. Joint accounts. Any two or more governmental entities may form a joint account by complying with rules and regulations prescribed by the commissioner for the establishment, maintenance and dissolution of such accounts.

8. Assessment and collection of payments in lieu of contributions. The amount of payments in lieu of contributions due hereunder from governmental entities but not paid upon notice shall be assessed and collected by the commissioner, together with interest and penalties, if any, in the same manner and subject to the same conditions under which contributions due from other employers may be assessed and collected under provisions of this article.

9. Special provisions applicable to the state. (a) In lieu of

contributions, the state of New York shall pay into the fund an amount equivalent to the amount of benefits paid to claimants and charged to the account of the state of New York in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article.

(b) The amount of payments into the fund required shall be ascertained by the commissioner as soon as practicable after the end of each calendar year or any other shorter period and shall be payable from the general funds of the state, except if a claimant to whom benefits were paid remuneration by the state of New York during his base period from a special or administrative fund provided for by law, other than an income fund of the state university or the mental hygiene services fund, the payment into the fund shall be made from such special or administrative fund with the approval of the director of the budget. Such payments by the state shall be made at such times and in such manner as the commissioner, with the approval of the director of the budget, may determine and prescribe.

§ 566. Indian tribes. 1. Definitions. (a) Indian tribe shall mean any Indian tribe, subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, as defined in section 3306(u) of the federal unemployment tax act (FUTA).

(b) The term "employer" as defined under section five hundred twelve of this article shall include any Indian tribe for which service in employment as defined under this article is performed.

(c) The term "employment" as defined under section five hundred eleven of this article shall include service performed in the employ of an Indian tribe provided such service is excluded from "employment" as defined in FUTA solely by reason of section 3306(c)(7), FUTA, and is not otherwise excluded from "employment" under this article. For purposes of this section, the exclusions from employment in subdivision two of section five hundred sixty-five of this article shall be applicable to services performed in the employ of an Indian tribe.

2. Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms and subject to

the same conditions as benefits payable on the basis of other service subject to this article.

3. Coverage. An Indian tribe shall be liable for contributions under this article unless it becomes liable for payments in lieu of contributions.

4. Election of payments in lieu of contributions. (a) Indian tribes liable for contributions under this article may elect to become liable for payments in lieu of contributions in the same manner and under the same conditions as provided in section five hundred sixty-five of this article except as otherwise provided in this section. Indian tribes may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe.

(b) An Indian tribe which has elected to become liable for payments in lieu of contributions shall pay into the fund an amount equal to the amount of benefits paid to claimants and charged to its employer's account in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article on the basis of remuneration paid on or after the date on which such liability became effective. The amount of payments so required shall be determined by the commissioner as soon as practicable after the end of each calendar quarter or any other period. Such amount shall be payable quarterly or at such times and in such manner as the commissioner shall prescribe and, when paid, the employer's account of the Indian tribes shall be discharged accordingly.

(c) If an Indian tribe elects payments in lieu of contributions as a group, the members of the group shall be severally and jointly liable for payments of amounts equal to the amounts of benefits paid to claimants and charged to the employer's accounts of all members of the group. The commissioner may prescribe conditions and methods for such group elections and for the discharge of the obligations and responsibilities of the group and its members. Such request shall be made in accordance with the provisions of paragraph (a) of this subdivision.

(d) Any Indian tribe that elects to become liable for payments in lieu of contributions shall, within ninety days of the approval date of its

election, execute and file with the commissioner a surety bond approved by the commissioner as to amount and form. Such surety bond shall continue in effect during periods covering such election, but may be revised annually as to amount and form at the discretion of the commissioner.

5. Termination of election. (a) An Indian tribe may terminate its election to become liable for payments in lieu of contributions as of the first day of any calendar year by filing a written notice to this effect with the commissioner before the beginning of such year.

(b) If such election is terminated by an Indian tribe or cancelled by the commissioner, the Indian tribe shall remain liable for payments in lieu of contributions with respect to all benefits charged to its account on the basis of remuneration paid before the date on which such termination or cancellation took effect.

(c) Failure of an Indian tribe to make required payments, including assessments of interest and penalty, within ninety days of receipt of the notice of delinquency, will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subdivision four of this section, for the following calendar year unless payment in full is received before the computation date preceding the following calendar year.

(d) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in paragraph (c) of this subdivision, may request such option be reinstated prospectively by the commissioner, if all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties or interest are outstanding. Such request shall be made in accordance with the provisions of paragraph (a) of subdivision four of this section.

6. Termination of coverage. (a) If, within ninety days of receipt of a notice of delinquency, an Indian tribe fails to make required contributions, payments in lieu of contributions, payments of penalties or interest under this article or fails to post a payment bond, and after all collection activities deemed necessary by the commissioner have been exhausted, the commissioner may cause services performed for

such tribe to not be treated as "employment" for purposes of subdivision one of this section. Such termination of coverage shall be effective on the first day of the quarter following the quarter in which notice of termination was mailed.

(b) The commissioner may determine that an Indian tribe that loses coverage under paragraph (a) of this subdivision, may have services performed for such tribe again included as "employment" for purposes of subdivision one of this section if all contributions, payments in lieu of contributions, penalties and interest have been paid. Such coverage shall begin as of the quarter following the calendar quarter in which all contributions, payments in lieu of contributions and interest have been paid.

7. Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(a) will cause the Indian tribe to be liable for taxes under FUTA;

(b) will cause the Indian tribe to lose the option to make payments in lieu of contributions;

(c) could cause the Indian tribe to be exempted from the definition of "employer", as provided in subdivision one of this section, and services in the employ of the Indian tribe, as provided in subdivision two of this section, to be exempted from "employment".

8. Joint accounts. Any two or more Indian tribes may form a joint account by complying with rules and regulations prescribed by the commissioner for the establishment, maintenance and dissolution of such accounts.

9. Assessment and collection of payments in lieu of contributions. The amount of payments in lieu of contributions due hereunder from Indian tribes but not paid upon notice shall be assessed and collected by the commissioner, together with interest and penalties, if any, in the same manner and subject to the same conditions under which contributions due from other employers may be assessed and collected under provisions of this article.

10. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

11. If an Indian tribe fails to make payments required under this section (including assessments of interest and penalty) within ninety days of a final notice of delinquency, the commissioner will immediately notify the United States internal revenue service and the United States department of labor.

TITLE 6

CONTRIBUTIONS TO FUND

- Section 570. Payment of contributions.
571. Assessment of contributions due.
572. Notice of liability.
573. Collection of contributions in case of default.
574. Insolvency or bankruptcy.
575. Maintenance, audit, and report of remuneration and employment records.
- 575-a. Penalties relating to wage information.
576. Time limitations.
577. General account; subsidiary contribution.
578. Non-liability for penalty and interest.
581. Experience rating.
- 581-a. Rates of contributions to fund in emergency.
- 581-b. Contributions to the re-employment service fund.
- 581-c. Amnesty program.
- 581-d. Contributions to the interest assessment surcharge fund.

§ 570. Payment of contributions. 1. Rate. Each employer liable under this article shall pay contributions on all wages paid by him at the rate of five and four-tenths per centum or, if applicable to the employer, at the rate provided by the provisions of sections five hundred seventy-seven and five hundred eighty-one. However, if contributions so established exceed five and four-tenths per centum of

wages paid by him which are subject to the federal unemployment tax act, they shall be reduced by that part of such excess, if any, which is caused by the provisions of paragraph (b) of subdivision one of section five hundred eighteen.

2. Time and method of payment. Contributions shall become payable by any employer for wages paid on and after the date on which he becomes liable under this article. All contributions from employers shall be paid at such times and in such manner as the commissioner may prescribe.

3. Default. An employer who fails to pay contributions required to be made by him to the fund shall pay interest at the rate of one per centum of the amount of such contributions for each month he is in default. Such interest shall be assessed, collected and paid as part of the payment required to be made by the employer to the fund.

4. Fraud. If any part of any deficiency is due to fraud with intent to avoid payment of contributions to the fund, fifty per centum of the total amount of the deficiency, in addition to such deficiency, shall be assessed, collected, and paid in the same manner as if it were a deficiency.

5. Refunds and credits. If an employer shall make application for a refund of any contribution, interest, or penalty paid by him or for a credit thereof and the commissioner shall determine that such contribution, interest or penalty, or any portion thereof was erroneously collected, the commissioner shall refund said amount or allow a credit therefor. If said refund was created as a result of departmental error then the commissioner shall pay said refund with interest paid at the rate of three-fourths of one per centum of the amount of such contribution, interest and penalty for each month between the time of the erroneous collection and thirty days previous to the date of the refund check, as specified in this subdivision, unless the employer shall have already deducted said amount by way of credit against moneys payable by him into the fund. No refund or credit shall be allowed unless an application therefor shall be made on or before whichever of the following dates shall be the later: (a) one year from

the date on which such payment was made; or (b) three years from the last day of the first month following the end of that calendar quarter during which the remuneration was paid which formed the basis for contributions, interest, or penalty claimed to have been erroneously collected. For a like cause and within the same period a refund may be so made or a credit allowed on the initiative of the commissioner. Any credit or refund of interest and penalties erroneously collected, any interest on such credit or refund, and any interest on contributions, interest and penalties erroneously collected, allowed by the commissioner under the foregoing conditions, shall be a charge against the special fund. Any credit or refund of contributions erroneously collected, allowed by the commissioner under the foregoing conditions, shall be a charge against the unemployment insurance fund.

Nothing contained in this subdivision shall require or permit the refund or credit of any contributions due and payable under article eighteen of this chapter as in effect at the time such contributions were paid.

6. Agreement to contributions by employees void. No agreement by an employee to pay any portion of the payment made by his employer for the purpose of providing benefits required by this article shall be valid and no employer shall make a deduction for such purpose from the remuneration of any employee.

7. (a) In addition to amounts otherwise payable under this article, every employer liable for the payment of contributions shall pay contributions of three-tenths per centum on all wages paid by him during the calendar year nineteen hundred seventy-nine. Such contributions shall be credited to the employer's account pursuant to paragraph (d) of subdivision one of section five hundred eighty-one and shall be used only for the purpose set forth below in paragraphs (b) and (c) of this subdivision.

(b) If, on or before the tenth day of November, nineteen hundred seventy-nine, the commissioner determines that the outstanding balance of advances made to the state pursuant to title XII of the federal social security act can be repaid in full to the treasury of the United

States for credit to the federal unemployment account in the federal unemployment trust fund, and that after such repayment the state will not require further title XII advances during the remainder of nineteen hundred seventy-nine, he shall cause such repayment to be made.

(c) On or before the first day of July, nineteen hundred seventy-nine, pursuant to 20 CFR 601.5(f) the governor shall file with the secretary of labor an application for deferral of the tax credit reduction required by section 3302(c) (2) of the federal unemployment tax act. If such deferral can be obtained by making the repayment to the treasury of the United States required by 20 CFR 601.5(f)(2)(ii), the commissioner shall cause such repayment to be made. If such deferral cannot be so obtained, it shall be applied for pursuant to 20 CFR 601.5(f)(2)(i) and, in such event, the amount of such additional contributions due by the thirty-first day of January, nineteen hundred eighty, by reason of paragraph (a) of this subdivision, shall be paid as soon as received to the treasury of the United States to reduce the balance of outstanding title XII advances.

§ 571. Assessment of contributions due. If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return as required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law for the purpose of determining the amount of contributions due or for the purpose of determining contribution rates under this article, or if such return when filed is incorrect or insufficient and the employer fails to file a corrected or sufficient return within thirty days after the commissioner requires the same by written notice, the commissioner shall determine the amount of contribution due from such employer and the amount of wages paid by such employer on the basis of such information as may be available and shall give written notice of such determination to the employer. Such determination shall finally and irrevocably fix the amount of contribution and the amount of wages paid for the purpose of computing contribution rates, unless the commissioner shall modify the amounts thereof, as provided under this article, subject, however, to the right to a hearing as hereinafter provided.

§ 572. Notice of liability. Any employer who has become liable for contributions shall notify the commissioner of such fact immediately and shall give information concerning his operations and persons employed by him.

§ 573. Collection of contributions in case of default. 1. Civil actions. If an employer shall default in any payments required to be made by him to the fund, after due notice, the amount due from him shall be collected by civil action against him brought in the name of the commissioner, and the same, when collected, shall be paid into the fund. Such employer's compliance with the provisions of this article requiring payments to be made to the fund shall date from the time of the payment of said money so collected.

Civil actions brought in the name of the commissioner under this section to collect contributions, interest, or penalties from an employer shall be entitled to preference, conferred by law to actions brought by any state officer as such, upon the calendar of all courts.

2. Warrants. In addition and as an alternative to any other remedy provided by this article and provided that no appeal or other proceeding for review provided by title eight of this article shall then be pending and the time for the taking thereof shall have expired, the commissioner may issue a warrant under his official seal, directed to the sheriff of any county, commanding him to levy upon and sell the real and personal property which may be found within his county of an employer who has defaulted in the payment of any sum determined to be due from such employer for the payment of such sum together with interest, penalties, and the cost of executing the warrant, and to return such warrant to the commissioner and to pay into the fund the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the clerk of his county a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contribution, interest, and penalties for which

the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property and chattels real of the employer against whom the warrant is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and for his services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner.

In the discretion of the commissioner a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the department of labor who may file a copy of such warrant with the clerk of any county in the state, and thereupon each such clerk shall docket it and it shall become a lien in the same manner and with the same force and effect as hereinbefore provided with respect to a warrant issued and directed to and filed by a sheriff; and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but he shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty.

If a warrant is returned not satisfied in full, the commissioner shall have the same remedies to enforce the amount thereof as if the commissioner had recovered judgment for the same.

§ 574. Insolvency or bankruptcy. 1. Priority of contributions. In the event of the dissolution, insolvency, composition, or assignment for benefit of creditors of any employer, contributions then and thereafter due from such employer under this article, together with any interest and penalties thereon, shall (1) be on a parity with taxes (other than real property taxes), together with any interest and penalties thereon, due the state of New York or any city thereof and (2) have priority over all other claims, except taxes due the United States and wages due for employment performed within the three months preceding such event. In the event of an employer's adjudication in bankruptcy, judicially

confirmed extension proposal, composition, or reorganization under the federal bankruptcy act, contributions then and thereafter due under this article, together with any interest and penalties thereon, shall be entitled to such priority as is provided in such act.

2. Discharge in bankruptcy. If the commissioner was given due notice or had knowledge of the bankruptcy proceedings, the payment of contributions due, together with interest and penalties thereon, which accrued on or before the date of the petition for bankruptcy and which remain unpaid upon the discharge of the employer in bankruptcy by a court of competent jurisdiction, shall not be enforced unless civil action or warrant proceedings are begun not later than two years after the date of such discharge and their total amount is two thousand dollars or more.

§ 575. Maintenance, audit, and report of remuneration and employment records. 1. Requirements. Every employer shall keep a true and accurate record of each person employed by him, the name and social security account number, and the amount of remuneration paid to each, and such other records as are necessary under this article in the manner prescribed by regulations of the commissioner and shall furnish to the commissioner, upon demand, a sworn statement of the same. Such records, together with all other records reflecting or bearing upon them, shall be open to inspection at any time and as often as may be necessary to verify the number of employees, the periods of their employment, and the amount of their remuneration. Every employer shall report information from such records at such time and in such manner as the commissioner may by regulation prescribe. Any employer who shall violate any of the provisions of this section or who shall wilfully falsify any record which he is required to maintain or who shall wilfully file a false report shall be guilty of a misdemeanor.

4. Collection and disposition of penalties. Any penalty pursuant to the provisions of this section shall be assessed, collected, and paid into the fund in the same manner as if it were a deficiency, in accordance with the provisions of this title.

§ 575-a. Penalties relating to wage information. In the case of a failure by an employer to provide complete and correct wage reporting information on a quarterly combined withholding, wage reporting and unemployment insurance return required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law, such employer shall, unless it is shown to the commissioner's satisfaction that there was good cause for such failure to comply, be liable as provided for in subdivisions one and two of this section.

1. When the non-compliance is discovered through an examination of an employer's records, the employer shall be liable for a penalty in the following amount for each employee who is not included in the return or for whom the required information is not reported accurately:

(a) for the first failure for any calendar quarter in any eight consecutive calendar quarters, one dollar for each employee, not to exceed one thousand dollars;

(b) for the second failure for any calendar quarter in any eight consecutive calendar quarters, five dollars for each employee, not to exceed two thousand dollars;

(c) for any subsequent failure in any calendar quarter in any eight consecutive calendar quarters, twenty-five dollars for each employee, not to exceed five thousand dollars.

2. In those instances where a failure to comply is discovered in relation to a specific claimant's claim for benefits, the penalty shall be twenty-five dollars for each such occurrence.

3. If such employer provides complete and correct wage reporting information within thirty days after the department sends notice of such failure to the employer, then the penalty provided for by subdivision one of this section shall be abated.

4. The penalties imposed and collected pursuant to this section shall be credited to the special fund established pursuant to section five hundred fifty-two of this article.

§ 576. Time limitations. 1. Determinations of liability for contributions. No determination of liability for contributions pursuant to section five hundred sixty of this article shall be made more than three years after the last day of the calendar year in which the wages on which such liability is based were paid, except as provided in subdivision three of this section.

2. Determinations of amount of contributions. No determination pursuant to section five hundred seventy-one of this article of the amount of contributions due shall be made more than three years after the last day of the calendar year in which the wages on which such contributions are based were paid except as provided in subdivision three of this section.

3. Determinations of liability for and amount of contributions after contest. If an employer contests a determination of liability for contributions, a determination of liability for and the amount of contributions due for the contested period and subsequent periods may be made at any time prior to the latter of the following:

(a) three years after the last day of the calendar year in which the wages on which such contributions are based were paid; or

(b) two years after the last day of the calendar year in which such determination of liability for contributions became final and irrevocable.

4. Determinations of penalties. No determination of the amount of any penalty imposed for the failure of an employer to submit reports as required by section five hundred seventy-five of this article shall be made more than one year after the last day of the calendar year in which such reports were due.

5. Enforcement of payment of contributions. Payment of contributions due on the basis of wages reported by the employer, and payment of contributions due on the basis of a determination made pursuant to section five hundred seventy-one of this article within the time limit

provided in subdivisions two and three of this section may be enforced by civil action or through warrant proceedings only if such action is begun or such warrant is filed within two years after the last day of the calendar year in which such report was received by the commissioner or in which such determination became final and irrevocable.

6. Enforcement of payment of penalties. Payment of penalties may be enforced by civil action or through warrant proceedings only if such action is begun or such warrant is filed within two years after the last day of the calendar year in which the determination of the amount of the penalty became final and irrevocable.

7. Enforcement of payment after extension agreement. If a deferred payment agreement has been entered into by the employer the payment which is the subject of the agreement may be enforced by civil action or through warrant proceedings if such action is begun or such warrant is filed within two years after the last day of the calendar year in which the final payment was due pursuant to such agreement.

8. Fraud. The provisions of this section shall not apply if the employer, with intent to defraud, fails to file prescribed contribution reports or files false reports.

9. Date of determination. For the purpose of this section no determination shall be deemed to have been made until the date upon which notice of such determination is mailed or delivered personally to the employer affected thereby.

§ 577. General account; subsidiary contribution. 1. General account. The general account within the fund shall be continued.

(a) This account shall be credited with

(1) all net earnings on moneys in the fund,

(2) moneys credited to this state pursuant to section nine hundred three of the federal social security act,

(3) account balances of employers who have ceased to be liable for contributions under this article and whose accounts are not subject to

transfer in accordance with provisions of section five hundred eighty-one, subdivision four covering transfers of accounts,

(4) the proceeds of subsidiary contributions,

(5) all moneys improperly paid to claimants and recovered,

(6) contributions which are paid into the fund more than sixty days after the due date prescribed by regulation of the commissioner, excepting only contributions paid after such sixty days but prior to determination and demand by the commissioner, and

(7) benefits based on wages paid in another state and charged to an employer's account as provided in subdivision five of section five hundred eighty-one.

(8) monies pursuant to section five hundred eighty-one-b of this title.

(9) monies pursuant to section five hundred ninety-four of this title.

(b) This account shall be debited with

(1) moneys used by the commissioner upon an appropriation duly made by the legislature for the administration of the unemployment insurance law as provided in section five hundred fifty, subdivision three,

(2) refunds of subsidiary contributions,

(3) the amounts of negative balances of employers' accounts, as provided in section five hundred eighty-one, subdivision one, paragraph (e),

(4) all moneys paid to claimants which should not have been charged or are not chargeable to any employer's account;

(5) balances set up as provided in subdivision five of section five hundred eighty-one; and

(6) all moneys paid to claimants by reason of the application of paragraph (a) of subdivision twelve of section five hundred ninety of this article which are not reimbursed to the fund by the federal government.

2. Subsidiary contributions. (i) Employers shall pay a subsidiary contribution based on their rate as specified in the subsidiary contribution schedule as applied to wages paid in the four calendar quarters immediately subsequent to the computation date. The rate of each employer's subsidiary contribution shall be the percentage shown in the column headed by the general account balance as of the computation

date and on the same line designating the range of employer account percentages in which an individual employer's account is found. The subsidiary rate for employers who have not been liable for contributions during at least the five completed calendar quarters ending on the computation date shall be the highest percentage for those employers with a positive employer's account percentage. Such subsidiary contribution shall be paid in addition to any other amounts otherwise payable under this article, and shall be assessed and collected in the same manner as the contributions prescribed by section five hundred seventy of this title. The proceeds of the subsidiary contribution shall be deposited in the fund and credited to the general account.

(ii) The terms "employer account percentage", "computation date" and "wages" shall have the meaning prescribed pursuant to article eighteen of this chapter.

		\$0	\$75	\$150	\$225	\$300	\$375	\$450	\$525	\$600	
		or	or	or	or	or	or	or	or	or	
Employ-		more	more	more	more	more	more	more	more	more	
er's		but	but	but	but	but	but	but	but	but	
Account	Less	less	less	less	less	less	less	less	less	less	\$650
Percen-	than	than	than	than	than	than	than	than	than	than	or
tage	\$0	\$75	\$150	\$225	\$300	\$375	\$450	\$525	\$600	\$650	more
(Dollar amounts in Millions)											
Less											
than											
+0.0%	.925%	.825%	.725%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%
0.0% or											
more but											
less than											
5.5%	.625%	.625%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%
5.5% or											
more but											
less than											
7.5%	.625%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%
7.5% or											
more but											
less than											
9.0%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%	.000%

9.0% or

more .525% .425% .325% .225% .125% .025% .000% .000% .000% .000% .000%

§ 578. Non-liability for penalty and interest. 1. Conditions. The provisions of this section shall apply to employers who failed to discharge obligations under this title because of the bona fide belief that all or some of their employees are covered under the unemployment insurance laws of other states or of the United States, provided they paid pursuant to such laws the contributions required thereunder on all wages of all such employees.

2. Extent. Failure to pay contributions under this title with respect to such employees shall not render any such employer liable for interest provided such contributions are paid within ninety days following the date on which a determination or decision establishing the employer's liability therefor has become final. If such contributions are not paid within ninety days following such date, interest shall be assessed only from such date to the date of payment.

§ 581. Experience rating. 1. Meaning of terms. As used in this section:

(a) "Computation date" means December thirty-first of any year.

(b) "Payroll year" means the period beginning on October first of a year and ending on September thirtieth of the next following year.

(c) "Qualified employer" means any employer whose account reflects his or her experience with respect to unemployment throughout not less than the four consecutive completed calendar quarters ending on the computation date and who has paid some remuneration in the payroll year preceding the computation date and filed all contribution returns prescribed by the commissioner for the three payroll years preceding the computation date on or before such date, or has had an amount of contributions due and/or an amount of wages paid determined by the commissioner pursuant to section five hundred seventy-one of this article. If an employer has ceased to be liable for contributions and the employer's account balance is not subject to transfer under the

provisions of subdivision four of this section, such account balance shall be transferred to the general account on the computation date coinciding with or immediately following the date on which the employer's liability ceased and shall not thereafter be available to such employer in the event that the employer again becomes liable for contributions.

(d) "Employer's account" (1) means an account in the fund reflecting an employer's experience with respect to contribution payments and experience rating charges under this article. The commissioner shall maintain such an account for every employer liable for contributions under this article; but nothing in this article shall be construed to grant any employer or any of his employees prior claims or rights to the amount paid by him into the fund and credited to his employer's account, or to any other account, including the general account, either on his own behalf or on behalf of his employees. All moneys in such fund, from whatever source derived and to whatever account credited, shall be pooled and available to pay benefits to any individual entitled thereto under this article.

(2) Any contributions due but not paid within sixty days of the due date prescribed by regulation of the commissioner shall, when paid, not be credited to an employer's account, but shall be credited to the general account, unless such payment was made prior to determination and demand by the commissioner pursuant to section five hundred seventy-one of this article.

(3) Payments in lieu of contributions equal to benefits charged in the last three months of a calendar year shall be credited to the employer's account as of the computation date occurring in that year if paid within the time prescribed by the commissioner.

(4) Any employer may at any time make payments to his account in the fund in excess of the requirements of this article. Such payments made during the period from April first through March thirty-first of the following year shall be credited to the employer's account as of the computation date occurring within such period.

(5) For the purpose of determining the size of fund index, all payments in lieu of contributions and voluntary, excess contribution payments made by employers shall be included in the fund balance on the computation date next following the date of payments. Such excess

contributions shall be irrevocable and not subject to refund or credit after acceptance by the commissioner and deposit in the fund.

(e) "Experience rating charge" means a debit to an employer's account reflecting a payment of benefits.

(1) Whenever benefits are paid to a claimant, experience rating charges shall be debited to the appropriate account. The commissioner shall notify each employer not more frequently than monthly as to each experience rating charge which is being made to the employer's account. Such notice shall be a determination of the propriety of such charge and of the payment of benefits on which such charge was based.

(2) Benefits payable to any claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of the last employer prior to the filing of a valid original claim in an amount equal to seven times the claimant's benefit rate. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period except as provided below:

(i) In those instances where the claimant may not utilize wages paid to establish entitlement based upon subdivision ten of section five hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges in an amount equal to the benefit paid for seven weeks of total employment as otherwise provided by this section. Under such circumstances, benefits paid shall be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision ten of section five hundred ninety of this article.

(ii) In those instances where the claimant may not utilize wages paid

to establish entitlement based upon subdivision eleven of section five hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges in an amount equal to the benefit paid for seven weeks of total employment as otherwise provided by this section. Under such circumstances, benefits paid will be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision eleven of section five hundred ninety of this article. However, in those instances where a claimant was not afforded an opportunity to perform services for the educational institution for the next academic year or term after reasonable assurance was provided, such employer shall be liable for benefit charges as provided for in this paragraph for any retroactive payments made to the claimant.

(iii) In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and such employer is not a base-period employer, payments equaling an amount equal to the benefit paid for seven weeks of total employment as otherwise prescribed by this section shall be charged to the general account. In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and a base-period employer, such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges in an amount equal to the benefit paid for seven weeks of total employment other than those chargeable to the federal government as prescribed above shall be made to the general account.

(iv) In those instances where a combined wage claim is filed pursuant to interstate reciprocal agreements and the claimant's last employer

prior to the filing of the claim is an out-of-state employer and such employer is not a base-period employer, benefit payments in an amount equal to the benefit paid for seven weeks of total employment as otherwise prescribed by this section shall be charged to the general account. In those instances where the out-of-state employer is the last employer prior to the filing of the claim for benefits and a base-period employer such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges in an amount equal to the benefit paid for seven weeks of total employment other than those chargeable to the out-of-state employer as prescribed above shall be made to the general account.

(v) In those instances where the last employer prior to the filing of a valid original claim has paid total remuneration to the claimant during the period from the start of the base period used to establish the benefit claim until the date of the claimant's filing of the valid original claim in an amount less than or equal to six times the claimant's benefit rate and the last employer has substantiated such amount to the satisfaction of the commissioner within ten days of the commissioner's original notice of potential charges to such last employer's account, benefits shall be charged as follows: benefits payable to the claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of such last employer prior to the filing of a valid original claim in an amount equal to the lowest whole number (one, two, three, four, five, or six) times the claimant's benefit rate where the product of such lowest whole number times the claimant's benefit rate is equal to or greater than such total remuneration paid by such last employer to the claimant. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period. Notice of such recalculation of potential charges shall be given to the last employer and each employer of the claimant in the base period used to establish the valid original claim.

(3) An employer's account shall not be charged, and the charges shall instead be made to the general account, for benefits paid to a claimant after the expiration of a period of disqualification from benefits following a final determination that the claimant lost employment with the employer through misconduct or voluntary separation of employment without good cause within the meaning of section five hundred ninety-three of this article and the charges are attributable to remuneration paid during the claimant's base period of employment with such employer prior to the claimant's loss of employment with such employer through misconduct or voluntary separation of employment without good cause, provided, however, that an employer shall not be relieved of charges pursuant to this subparagraph if an employer or its agent fails to submit information resulting in an overpayment pursuant to section five hundred ninety-seven of this article.

(4) An employer's account shall not be charged, and the charges shall instead be made to the general account, for benefits paid to a claimant based on base period employment while the claimant was an incarcerated individual of a correctional institution and enrolled in a work release program, provided that the employment was terminated solely because the incarcerated individual was required to relocate to another area as a condition of parole or the incarcerated individual voluntarily relocated to another area immediately upon being released or paroled from such correctional institution.

(5) If an employer who employed the claimant in the four weeks immediately preceding the filing of a valid original claim demonstrates that the employer has continuously employed the claimant without significant interruption and substantially to the same extent and in the same manner as during the weeks immediately preceding the filing of a valid original claim in which the claimant was employed by such employer, the account of such employer shall not be charged with benefits paid to such claimant for any weeks of such continuing employment, and such experience rating charges shall be made to the general account. The provisions set forth in the foregoing sentence shall apply with respect to an employer liable for payments in lieu of contributions, but if the secretary of labor of the United States finds that their application to such employer does not meet the requirements of the federal unemployment tax act, such provisions shall not

thereafter apply to such employer, unless and until such finding has been set aside pursuant to a final decision issued in accordance with such judicial review proceedings as may be instituted and completed under the provisions of section thirty-three hundred ten of the federal unemployment tax act.

(6) An employer's account shall not be debited to the extent that the federal government reimburses the fund for benefits paid.

If on any computation date an employer's account registers a negative balance, an amount equivalent to the excess of the negative balance over twenty-one per centum of the employer's payroll in the payroll year preceding such date shall be transferred as a charge to the general account, except that this provision shall not apply to any negative balance, or that portion thereof, which results from benefits charged with respect to which the employer is liable for payments in lieu of contributions.

(f) "Employer's account percentage" means the status of an employer's account on any computation date. It is the balance remaining in the account, after contributions have been credited and experience rating charges have been debited to it, stated as percentage of his average payroll for the last five payroll years preceding the computation date or for all quarters if the employer has been liable for contributions for fewer than twenty-one quarters. Such percentage shall be computed to two decimal places and the remaining fraction if any, disregarded. If, however, the number of consecutive completed calendar quarters ending on the computation date during which the employer has been liable for contributions hereunder is twenty-one or less the employer's account percentage, if it is positive, shall be multiplied by that figure assigned to the employer designated as "employer's benefit equalization factor" which is listed below on the same horizontal line on which the number of quarters of employer liability appears, and the product resulting therefrom shall constitute the employer's account percentage.

Number of quarters of employer liability	Employer's benefit equalization factor
5	3.00
6	2.50
7	2.05

8	1.75
9	1.55
10	1.40
11	1.25
12	1.12
13	1.04
14 through 21.....	1.00

(g) "Size of fund index" means the lesser of the following two percentages:

(1) the percentage obtained by dividing the moneys in the fund as of a computation date by the total of all payrolls for the payroll year preceding such date; or (2) the percentage obtained by dividing such moneys by the average of the totals of all payrolls for the five consecutive payroll years preceding such date. Such percentage shall be computed to one decimal place and the remaining fraction, if any, disregarded.

(h) "Payroll" means all wages paid by an employer to his employees.

2. Rates of contribution.

(a) Each qualified employer's rate of contribution shall be the percentage shown in the column headed by the size of the fund index as of the computation date and on the same line with his or her negative or positive employer's account percentage, except that if within the three payroll years preceding the computation date any part of a negative balance has been transferred from any employer's account as a charge to the general account pursuant to the provisions of paragraph (e) of subdivision one of this section such employer's rate of contribution shall be the maximum contribution rate as shown in the column headed by the size of fund index;

		Size of Fund Index											
Employer's Account													
Percentage		Less	0%	0.5%	1.0%	1.5%	2.0%	2.5%	3.0%	3.5%	4.0%	4.5%	5.0%
	Than	but	but	but	but	but	but	but	but	but	but	but	or
	0%	less	less	less	less	less	less	less	less	less	less	less	more
		than	than	than	than	than	than	than	than	than	than	than	
		0.5%	1.0%	1.5%	2.0%	2.5%	3.0%	3.5%	4.0%	4.5%	5.0%		

Negative

21.0%

or more 8.90 8.70 8.50 8.30 8.10 7.30 6.90 6.50 6.20 6.10 6.00 5.90

20.5%

or more

but less

than 21.0% 8.80 8.60 8.40 8.20 8.00 7.20 6.80 6.40 6.10 6.00 5.90 5.80

20.0%

or more

but less

than 20.5% 8.70 8.50 8.30 8.10 7.90 7.10 6.70 6.30 6.00 5.90 5.80 5.70

19.5%

or more

but less

than 20.0% 8.60 8.40 8.20 8.00 7.80 7.00 6.60 6.20 5.90 5.80 5.70 5.60

19.0%

or more

but less

than 19.5% 8.50 8.30 8.10 7.90 7.70 6.90 6.50 6.10 5.80 5.70 5.60 5.50

18.5%

or more

but less

than 19.0% 8.40 8.20 8.00 7.80 7.60 6.80 6.40 6.00 5.70 5.60 5.50 5.40

18.0%

or more

but less

than 18.5% 8.30 8.10 7.90 7.70 7.50 6.70 6.30 5.90 5.60 5.50 5.40 5.30

17.5%

or more

but less

than 18.0% 8.20 8.00 7.80 7.60 7.40 6.60 6.20 5.80 5.50 5.40 5.30 5.20

17.0%

or more

but less

than 17.5% 8.10 7.90 7.70 7.50 7.30 6.50 6.10 5.70 5.40 5.30 5.20 5.10

16.5%

or more

but less

than 17.0% 8.00 7.80 7.60 7.40 7.20 6.40 6.00 5.60 5.30 5.20 5.10 5.00
16.0%

or more

but less

than 16.5% 7.90 7.70 7.50 7.30 7.10 6.30 5.90 5.50 5.20 5.10 5.00 4.90
15.5%

or more

but less

than 16.0% 7.80 7.60 7.40 7.20 7.00 6.20 5.80 5.40 5.10 5.00 4.90 4.80
15.0%

or more

but less

than 15.5% 7.70 7.50 7.30 7.10 6.90 6.10 5.70 5.30 5.00 4.90 4.80 4.70
14.5%

or more

but less

than 15.0% 7.60 7.40 7.20 7.00 6.80 6.00 5.60 5.20 4.90 4.80 4.70 4.60
14.0%

or more

but less

than 14.5% 7.50 7.30 7.10 6.90 6.70 5.90 5.50 5.10 4.80 4.70 4.60 4.50
13.5%

or more

but less

than 14.0% 7.40 7.20 7.00 6.80 6.60 5.80 5.40 5.00 4.70 4.60 4.50 4.40
13.0%

or more

but less

than 13.5% 7.30 7.10 6.90 6.70 6.50 5.70 5.30 4.90 4.60 4.50 4.40 4.30
12.5%

or more

but less

than 13.0% 7.20 7.00 6.80 6.60 6.40 5.60 5.20 4.80 4.50 4.40 4.30 4.20
12.0%

or more

but less

than 12.5% 7.10 6.90 6.70 6.50 6.30 5.50 5.10 4.70 4.40 4.30 4.20 4.10
11.5%
or more
but less
than 12.0% 7.00 6.80 6.60 6.40 6.20 5.40 5.00 4.60 4.30 4.20 4.10 4.00
11.0%
or more
but less
than 11.5% 6.90 6.70 6.50 6.30 6.10 5.30 4.90 4.50 4.20 4.10 4.00 3.90
10.5%
or more
but less
than 11.0% 6.80 6.60 6.40 6.20 6.00 5.20 4.80 4.40 4.10 4.00 3.90 3.80
10.0%
or more
but less
than 10.5% 6.70 6.50 6.30 6.10 5.90 5.10 4.70 4.30 4.00 3.90 3.80 3.70
9.5%
or more
but less
than 10.0% 6.60 6.40 6.20 6.00 5.80 5.00 4.60 4.20 3.90 3.80 3.70 3.60
9.0%
or more
but less
than 9.5% 6.50 6.30 6.10 5.90 5.70 4.90 4.50 4.10 3.80 3.70 3.60 3.50
8.5%
or more
but less
than 9.0% 6.40 6.20 6.00 5.80 5.60 4.80 4.40 4.00 3.70 3.60 3.50 3.40
8.0%
or more
but less
than 8.5% 6.30 6.10 5.90 5.70 5.50 4.70 4.30 3.90 3.60 3.50 3.40 3.30
7.0%
or more
but less
than 8.0% 6.20 6.00 5.80 5.60 5.40 4.60 4.20 3.80 3.50 3.40 3.30 3.20

6.0% or more but less than 7.0%	6.10	5.90	5.70	5.50	5.30	4.50	4.10	3.70	3.40	3.30	3.20	3.10
5.0% or more but less than 6.0%	6.00	5.80	5.60	5.40	5.20	4.40	4.00	3.60	3.30	3.20	3.10	3.00
4.0% or more but less than 5.0%	5.90	5.70	5.50	5.30	5.10	4.30	3.90	3.50	3.20	3.10	3.00	2.90
3.0% or more but less than 4.0%	5.60	5.40	5.20	5.00	4.80	4.20	3.80	3.40	3.10	3.00	2.90	2.80
2.0% or more but less than 3.0%	5.50	5.30	5.10	4.90	4.70	4.10	3.70	3.30	3.00	2.90	2.80	2.70
1.0% or more but less than 2.0%	5.40	5.20	5.00	4.80	4.60	4.00	3.60	3.20	2.90	2.80	2.70	2.60
Less than 1.0%	5.20	5.00	4.80	4.60	4.40	3.80	3.40	3.00	2.70	2.60	2.50	2.40
Positive Less than 1.0%	4.10	3.90	3.70	3.50	3.30	2.90	2.50	2.10	1.90	1.80	1.70	1.60
1.0% or more but less than 2.0%	4.00	3.80	3.60	3.40	3.20	2.80	2.40	2.00	1.80	1.70	1.60	1.50
2.0% or more but less than 3.0%	3.90	3.70	3.50	3.30	3.10	2.70	2.30	1.90	1.70	1.60	1.50	1.40

3.0% or more but less than 4.0%	3.80	3.60	3.40	3.20	3.00	2.60	2.20	1.80	1.60	1.50	1.40	1.30
4.0% or more but less than 5.0%	3.70	3.50	3.30	3.10	2.90	2.50	2.10	1.70	1.50	1.40	1.30	1.20
5.0% or more but less than 5.5%	3.60	3.40	3.20	3.00	2.80	2.40	2.00	1.60	1.40	1.30	1.20	1.10
5.5% or more but less than 5.75%	3.50	3.30	3.10	2.90	2.70	2.30	1.90	1.50	1.30	1.20	1.10	1.00
5.75% or more but less than 6.0%	3.40	3.20	3.00	2.80	2.60	2.20	1.80	1.40	1.20	1.10	1.00	0.90
6.0% or more but less than 6.25%	3.30	3.10	2.90	2.70	2.50	2.10	1.70	1.30	1.10	1.00	0.90	0.80
6.25% or more but less than 6.5%	3.20	3.00	2.80	2.60	2.40	2.00	1.60	1.20	1.00	0.90	0.80	0.70
6.5% or more but less than 6.75%	3.10	2.90	2.70	2.50	2.30	1.90	1.50	1.10	0.90	0.80	0.70	0.60
6.75% or more but less than 7.0%	3.00	2.80	2.60	2.40	2.20	1.80	1.40	1.00	0.80	0.70	0.60	0.50

or more but
less than

7.25% 2.90 2.70 2.50 2.30 2.10 1.70 1.30 0.90 0.70 0.60 0.50 0.40

7.25%

or more
but less

than 7.5% 2.80 2.60 2.40 2.20 2.00 1.60 1.20 0.80 0.60 0.50 0.40 0.30

7.5%

or more but
less than

7.75% 2.70 2.50 2.30 2.10 1.90 1.50 1.10 0.70 0.50 0.40 0.30 0.20

7.75%

or more
but less

than 8.0% 2.60 2.40 2.20 2.00 1.80 1.40 1.00 0.60 0.40 0.30 0.20 0.10

8.0%

or more but
less than

8.25% 2.50 2.30 2.10 1.90 1.70 1.30 0.90 0.50 0.30 0.20 0.10 0.00

8.25%

or more
but less

than 8.5% 2.40 2.20 2.00 1.80 1.60 1.20 0.80 0.40 0.20 0.10 0.00 0.00

8.5%

or more but
less than

8.75% 2.30 2.10 1.90 1.70 1.50 1.10 0.70 0.30 0.10 0.00 0.00 0.00

8.75%

or more
but less

than 9.0% 2.20 2.00 1.80 1.60 1.40 1.00 0.60 0.20 0.00 0.00 0.00 0.00

9.0%

or more but
less than

9.25% 2.10 1.90 1.70 1.50 1.30 0.90 0.50 0.10 0.00 0.00 0.00 0.00

9.25%

or more

but less

than 9.5% 2.00 1.80 1.60 1.40 1.20 0.80 0.40 0.00 0.00 0.00 0.00 0.00
9.5%

or more but

less than

9.75% 1.90 1.70 1.50 1.30 1.10 0.70 0.30 0.00 0.00 0.00 0.00 0.00
9.75%

or more but

less than

10.0% 1.80 1.60 1.40 1.20 1.00 0.60 0.20 0.00 0.00 0.00 0.00 0.00
10.0%

or more but

less than

10.25% 1.70 1.50 1.30 1.10 0.90 0.50 0.10 0.00 0.00 0.00 0.00 0.00
10.25%

or more but

less than

10.5% 1.60 1.40 1.20 1.00 0.80 0.40 0.00 0.00 0.00 0.00 0.00 0.00
10.5%

or more 1.50 1.30 1.10 0.90 0.70 0.30 0.00 0.00 0.00 0.00 0.00 0.00

(aa) (i) If a qualified employer, with a minimum of seventeen quarters of liability, has an account percentage which is negative on any computation date and the total wages paid by such employer in the preceding payroll year, is greater than or equal to eighty percent of the previous three payroll year's average total wages paid by the employer, then such employer's account percentage for the subsequent year shall be improved by four percentage points for purposes of determining the employer's rate of contribution. However, in no event shall the resulting rate of contribution after such adjustment be less than 6.1 percent. Such adjustment to the employer's account percentage shall be applicable only to the employer's current rate of contribution and the application of such adjustment shall be redetermined annually.

(ii) The terms "qualified employer", "employer's account percentage", "computation date", "wages", "payroll year" and "rate of contribution" shall have the meaning prescribed pursuant to article eighteen of this chapter.

(b) Penalty for failure to file required returns. (1) In the case of a

failure by an employer to file a quarterly combined withholding wage reporting and unemployment insurance return required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law, there shall be imposed a penalty of five percent of the amount of contributions required to be shown on such return (including the amount of any assessment or modification made pursuant to this section) if the failure is for not more than one month with an additional five percent penalty for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(2) The penalty provided for failure to file a return under this paragraph shall not be less than one hundred dollars for each occurrence.

(3) For purposes of this paragraph, the amount of contributions required to be shown on such return shall be reduced by the amount of any part of the contributions due which is paid on or before the date the return is required to be filed and by the amount of any credit to the contributions due which may be claimed upon such return.

(4) For other penalties relating to failure to file the quarterly combined withholding, wage reporting and unemployment insurance return, see paragraph one of subsection (v) of section six hundred eighty-five of the tax law.

(5) The penalties imposed and collected pursuant to this paragraph shall be credited to the unemployment insurance control fund established pursuant to section five hundred fifty-two-b of this article.

(c) The rate for any employer who has not qualified under the provisions of paragraph (c) of subdivision one of this section solely because he has not been liable for contributions during at least the five completed calendar quarters ending on the computation date, or because he has not paid any remuneration in the payroll year preceding the computation date, shall be equal to the rate which applies pursuant to paragraph (a) of this subdivision to an employer who has a positive account percentage of less than one per centum, except that the rate for such employer shall in no event exceed three and four-tenths per centum.

(d) The rates established in accordance with the provisions of this subdivision shall apply with respect to wages paid in the four consecutive calendar quarters immediately following the computation date.

3. Joint accounts. Any two or more qualified employers engaged in the same or a related trade, occupation, profession or enterprise, or having a common financial interest may apply to the commissioner to establish a joint account or to merge their several individual accounts in a joint account. The commissioner shall prescribe rules and regulations for the establishment, maintenance and dissolution of joint accounts. A joint account shall be maintained as if it constituted a single employer's account. Rules established by the commissioner pursuant to the provisions of this subdivision shall be promulgated only after notice and public hearing.

4. Transfers of accounts. (a) Where an employer subsequent to July first, nineteen hundred fifty-one, transfers his or its organization, trade or business in whole or in part, the transferee shall take over and continue the employer's account, including its balance and all other aspects of its experience under this article, in proportion to the payroll or employees assignable to the transferred organization, trade or business determined for the purpose of this article by the commissioner. The account taken over by the transferee shall remain chargeable with respect to benefits based on employment in the transferred organization, trade or business, and all such employment shall be deemed employment performed for the transferee.

(b) The rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in the preceding calendar year, and such rates shall apply from the date of the transfer to the end of the calendar year in which the transfer occurred. The rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year following the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in the same calendar year. The commissioner shall allocate to the transferee's account for each period in question the proportion of the transferring employer's payroll, which the commissioner determines to be properly assignable to the organization, trade or business transferred.

(c) No transfer shall be deemed to have occurred if the commissioner on his own motion or on application of any interested party finds that all of the following conditions exist:

(1) the transferee has not assumed any of the transferring employer's obligations, and

(2) the transferee has not acquired any of the transferring employer's good will, and

(3) the transferee has not continued or resumed the business of the transferring employer either in the same establishment or elsewhere, and

(4) the transferee has not employed substantially the same employees as those the transferring employer had employed in connection with the organization, trade, business, or part thereof transferred.

(d) No transfer shall be deemed to have occurred unless either the transferring employer or the transferee has given notice of the transfer to the commissioner prior to the termination of the calendar year following the calendar year in which the transfer occurred.

5. Interstate transfer of experience. An employer who transfers all or a segregable part of his operations from another state to this state shall be deemed to be a qualified employer within the meaning of this section as of the computation date next following the transfer, provided:

(a) that he has paid wages subject to the federal unemployment tax act for eighteen consecutive completed calendar quarters immediately preceding the computation date;

(b) that he notifies the commissioner of the transfer of operations prior to the computation date;

(c) that he certifies to the commissioner all information with respect to the transferred operations which the commissioner determines to be necessary; and

(d) that he certifies to the commissioner at such times as the commissioner prescribes all information which the commissioner determines to be necessary with respect to benefits paid subsequent to the transfer and prior to each computation date on the basis of wages paid in such other state.

Wages, remuneration, contributions and benefits resulting in

experience rating charges in connection with the transferred operations shall be deemed to have been paid in this state for the purposes of this section.

In computing such employer's balance applicable to the transferred operations, the commissioner shall consider only the fourteen most recently elapsed calendar quarters prior to the computation date. Any balance set up under this subdivision shall be debited to the general account; and benefits subsequently paid based on wages paid in such other state shall be charged to the employer's account and credited to the general account.

6. Corrections and modifications. Corrections or modifications of an employer's payroll, experience rating charges, or any other pertinent factor shall not be taken into account for the purpose of a determination or redetermination of the employer's contribution rate, unless such corrections or modifications were established on or before the computation date; except that they shall be taken into account whenever established if the employer filed false returns with intent to defraud or, with respect to payroll, failed to file returns prior to the computation date such that an amount of contributions due from such employer and/or an amount of wages paid by such employer was required to be determined by the commissioner pursuant to section five hundred seventy-one of this article and such corrections or modifications result in a rate higher than the contribution rate determined by the commissioner or, with respect to experience rating charges, if they result from a referee, appeal board, or court decision.

7. Certain transfers. Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a)(1) If an employer transfers its organization, trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is at least ten percent common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred organization, trade or business shall be transferred to the employer to whom such organization, trade or business

is so transferred. In addition to the provisions of this subdivision, the transfer provisions of paragraphs (a), (b) and (d) of subdivision four of this section shall apply to such transfers. For purposes of this subdivision "organization, trade or business" shall include the employer's workforce.

(2) If, following a transfer of experience under subparagraph one of this paragraph, the commissioner determines that a substantial purpose of the transfer of the organization, trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.

(b) Whenever a person is not an employer liable for contributions under this article at the time it acquires the organization, trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the commissioner finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned a rate in accordance with paragraph (c) of subdivision two of this section. In determining whether the organization, trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the commissioner shall evaluate factors that include, but are not limited to the following:

- (1) the cost of acquiring the organization, trade or business;
- (2) whether the person continued the business enterprise of the acquired business;
- (3) how long such business enterprise was continued; or
- (4) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(1) If a person knowingly violates or attempts to violate paragraphs (a) or (b) of this subdivision, then such person shall be liable for the greater penalty of ten percent of such person's total taxable wages in the last completed payroll year or ten thousand dollars. Any such penalty shall be deposited in the control fund established under section five hundred fifty-two-b of this article.

(2) If a person knowingly advises another person to violate or attempt to violate paragraph (a) or (b) of this subdivision, then such advisor

shall be subject to a civil penalty of ten thousand dollars. Any such penalty shall be deposited in the control fund established under section five hundred fifty-two-b of this article.

(3) For purposes of this subdivision, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(4) For purposes of this subdivision, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or wilful nondisclosure.

(5) In addition to the penalties imposed by subparagraphs one and two of this paragraph, any violation of this subdivision shall be a class E felony and is punishable by a term of imprisonment as prescribed in section 70.00 of the penal law.

(d) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this subdivision.

(e) For purposes of this subdivision the term "person" has the meaning given such term by section 7701 (a)(1) of the Internal Revenue Code of 1986, and shall also include an employer as defined in this article.

§ 581-a. Rates of contributions to fund in emergency. 1.

Notwithstanding the provisions of section five hundred eighty-one of this chapter to the contrary, all employers whose employees received payments due to a layoff caused by flood conditions shall not have included in their experience rating charges the amounts so paid to the employees from the fund for the period of from June twenty-third, nineteen hundred seventy-two through June twenty-third, nineteen hundred seventy-three. Application for permission to exclude such payments shall be made to the commissioner on or before the first day of October, nineteen hundred seventy-three, and the provisions of subdivision six of section five hundred eighty-one of this chapter shall not apply hereto.

2. Notwithstanding the provisions of section five hundred eighty-one of this chapter to the contrary, all employers whose employees received payments due to the waiver of the waiting period pursuant to the provisions of subdivision nine of section five hundred ninety of this chapter shall not have included in their experience rating charges the

amounts so paid to the employees from the fund for such waived waiting period during the snow and energy emergency of January and February, nineteen hundred seventy-seven. Application for permission to exclude such payments shall be made to the commissioner on or before the first day of October, nineteen hundred seventy-seven, and the provisions of subdivision six of section five hundred eighty-one of this chapter shall not apply hereto.

3. Notwithstanding the provisions of section five hundred eighty-one of this title to the contrary, and for the purpose of responding to the COVID-19 pandemic, any employer whose employees receive payments under this article for unemployment claims made on or after March ninth, two thousand twenty and through the duration of the state disaster emergency declared by executive order number two hundred two of two thousand twenty and any further amendments or modifications thereto, or December thirty-first two thousand twenty-one, whichever is later, shall not have included in their experience rating charges the amounts so paid to the employees from the fund. Such charges, if not reimbursed, in whole or in part by the federal government, shall be made to the general account for the fund created by section five hundred fifty of this article.

4. The provisions of this section shall apply to an employer liable for contributions or payments in lieu of contributions, but if the secretary of labor of the United States finds that their application to such employer does not meet the requirements of the Federal Unemployment Tax Act, such provisions shall be inoperative with respect to such employer, unless and until such finding has been set aside pursuant to a final decision issued in accordance with such judicial review proceedings as may be instituted and completed under the provisions of section thirty-three hundred ten of the Federal Unemployment Tax Act.

§ 581-b. Contributions to the re-employment service fund. Each eligible employer that is liable for contributions under this article shall each calendar quarter make an additional contribution to the re-employment service fund in an amount equal to seventy-five one-thousandths of a percent (0.075%) of its quarterly taxable payroll.

In any particular calendar year when contributions paid into the re-employment service fund by all eligible employers equals thirty-five million dollars, any further contributions for the remainder of such year shall be credited to the general account pursuant to section five hundred seventy-seven of this title.

§ 581-c. Amnesty program. 1. Notwithstanding the provisions of any other law to the contrary, there is hereby established a three month amnesty program as described in this section, to be administered by the commissioner, to be effective for the period commencing October first, nineteen hundred ninety-eight and ending December thirty-first, nineteen hundred ninety-eight, for all eligible employers as described in this section, owing any contribution imposed by section five hundred seventy-seven or five hundred eighty-one of this title.

2. Such amnesty shall apply to contribution liabilities for the contributions set forth in subdivision one of this section ("designated contributions") for contribution periods ending or transactions or uses occurring on or before December thirty-first, nineteen hundred ninety-five.

3. For purposes of this section an "eligible employer" shall mean any individual, partnership, corporation, limited liability company, joint stock company or any other company, society, association or business or any other person as described in this chapter, who or which has contribution liability with regard to one or more of the designated contributions for the period of time described in subdivision two of this section.

4. The amnesty program established in this section shall provide that upon application by an eligible employer, and upon payment, which shall either accompany such application or be made within the time stated on a bill issued by the commissioner to such employer, of the amount of a contribution liability under one or more of the designated contributions with respect to which amnesty is sought, plus related interest, and the commissioner shall waive any applicable penalties. In addition, no

civil, administrative or criminal action or proceeding shall be brought against such an eligible employer relating to the contribution liability covered by such waiver. Failure to pay, all such contributions, plus related interest, shall invalidate an amnesty granted pursuant to this section.

5. An otherwise eligible employer, who or which certifies on an application for amnesty, that making payment of the full amount of the liability for which amnesty is sought at the time such application is made would create a severe financial hardship for such employer, shall retain eligibility for amnesty if, (a) fifty percent or more of the amount due as computed by such employer is paid with such application or within the time stated on a bill issued by the commissioner, and (b) the balance due, including interest, is paid, in no more than two installments on or before May fifteenth, nineteen hundred ninety-eight or the date prescribed therefor on a bill issued by the commissioner.

6. Amnesty shall not be granted to any contributor who is a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof or is a party to any civil or criminal litigation which is pending on the date of the employer's application in any court of this state or the United States relating to any action or failure to act which is the basis for the penalty with respect to which amnesty is sought. A civil litigation shall be deemed not to be pending on the date of the application if the employer withdraws from such litigation prior to the granting of amnesty.

7. Amnesty contribution return forms shall be in a form prescribed by the commissioner and shall provide for specifications by the applicant of the contribution liability with the respect to which amnesty is sought. The applicant shall also provide such additional information as required by the commissioner. Amnesty shall be granted only with respect to contribution liabilities specified by the employer on such forms. Any return or report filed under the amnesty program established in this section is subject to verification and assessment as provided by law. If the applicant files a false or fraudulent contribution return or report, or attempts in any manner to defeat or evade a contribution under the

amnesty program, amnesty may be denied or rescinded.

8. No refund shall be granted or credit allowed with respect to any penalty paid prior to the time the employer applies for amnesty pursuant to subdivision four of this section.

9. Unless the commissioner on his or her own motion redetermines the amount of contribution due, including applicable interest, no refund shall be granted or credit allowed with respect to any contributions, including applicable interest paid under this program.

10. The commissioner may promulgate regulations, issue forms and instructions and take any and all other actions necessary to implement this section. The commissioner shall publicize the amnesty program provided for in this section so as to maximize public awareness of and participation in such program.

11. For purposes of this section, the amnesty contribution return forms and other documents filed by employers shall be deemed to be reports and returns subject to the disclosure prohibitions of section five hundred thirty-seven of this article.

12. Where an employer against whom or which a penalty is assessed, was eligible for a waiver thereof under the amnesty program provided for pursuant to this section but did not make timely application for such waiver, such penalty shall be augmented by an amount equal to five percent of the amount of such penalty.

13. For purposes of accounting for moneys and revenues received under the amnesty program established pursuant to this section, the commissioner shall report the gross revenue collected under each contribution pursuant to the amnesty program. Such report shall be on a monthly basis, commencing the first day of the month after the amnesty program is established and ending on the last day of the month immediately prior to the issuance of the final report required pursuant to subdivision fourteen of this section. Such reports shall include information concerning the gross revenue collected under each

contribution and the year or other applicable period for or during which the liability was incurred.

14. On or before January thirty-first, two thousand the commissioner shall submit a report to the chairman of the assembly ways and means committee, the ranking minority member of the assembly ways and means committee, the chairman of the senate finance committee, the ranking minority member of the senate finance committee and the director of the division of the budget regarding the amnesty program established pursuant to this section. The report shall contain the following information:

(a) the number of cases in which requests for penalty and interest penalty waivers were made;

(b) the number of cases in which requests for penalty plus interest waivers were approved;

(c) the amount of contribution and interest due in all approved and unapproved cases;

(d) the amount of penalty and interest penalty waived in all approved cases;

(e) the gross revenue collected and the year or other applicable period for or during which the liability incurred;

(f) the amount of money spent on advertising, notification and outreach activities, by each activity;

(g) the amount paid by the department for services and expenses related to the establishment of the amnesty program;

(h) an estimate of the amount of revenue foregone as a result of diverting staff of the department from regular work responsibilities to work on the amnesty program;

(i) an estimate of the amount of revenue received during the period of amnesty program provided for in this section which would have otherwise been received at a later date; and

(j) an estimate of the set revenue generated from the amnesty program.

§ 581-d. Contributions to the interest assessment surcharge fund. 1. Each employer that is liable for contributions under this article shall pay an assessment to the commissioner at a rate established annually by

the commissioner sufficient to pay interest due on advances from the federal unemployment account under Title XII of the Social Security Act (42 U.S. Code Sections 1321 to 1324) during any period that such interest will accrue. The rate shall be applied to wages as defined in section five hundred eighteen of this article effective as of the beginning of the first calendar quarter of the year such interest becomes due. The commissioner shall establish the necessary procedures for payment of such assessments. The amounts received by the commissioner based on such assessments shall be paid over and credited to the interest assessment surcharge fund. At such time that the commissioner determines that this assessment is no longer necessary, any amount remaining from such assessments, after all such federal interest charges have been paid, shall be deposited into the unemployment insurance trust fund and credited to employer accounts. Such credits shall be determined based on the percentage of each employer's wages to the total statewide wages of the payroll year and credited to each employer's account as of the computation date of the year prior to which such assessment shall no longer be levied. The provisions of law applicable to the collection of contributions shall apply to the collection of such assessments.

2. The commissioner shall notify the chairpersons of the senate finance committee and the assembly ways and means committee of the amount being assessed on employers and the procedures for payment of such assessments no later than thirty days prior to the application of the interest assessment surcharge. On a quarterly basis the commissioner shall provide the chairpersons of the senate finance committee and the assembly ways and means committee the assessment rate that shall be applied to wages as well as the amount of any previous advances and the estimated amount of future monthly advances from the federal unemployment account under Title XII of the Social Security Act (42 U.S. Code Sections 1321 to 1324) for the calendar year, the amount of interest due and the amount of interest paid for the calendar year.

TITLE 7

BENEFITS AND CLAIMS

- Section 590. Rights to benefits.
- 591. Eligibility for benefits.
 - 591-a. Self-employment assistance program.
 - 592. Suspension of accumulation of benefit rights.
 - 593. Disqualification for benefits.
 - 594. Reduction and recovery of benefits and penalties for wilful false statement.
 - 595. Benefit right inalienable.
 - 596. Claim filing, registration, and reporting.
 - 597. Initial determination.
 - 598. Effect of payments for failure to provide notice of a facility closure.
 - 599. Career and related training; preservation of eligibility.
 - 600. Effect of retirement payments.
 - 601. Extended benefits.

§ 590. Rights to benefits. 1. Entitlement to benefits. A claimant shall be entitled to accumulate effective weeks for the purpose of benefit rights only if he has complied with the provisions of this article regarding the filing of his claim, including the filing of a valid original claim, registered as totally or partially unemployed, reported his subsequent employment and unemployment, and reported for work or otherwise given notice of the continuance of his unemployment.

2. Notice of eligibility upon separation from employment. Every employer liable under this article for contributions shall inform each employee of their right to file an application for unemployment benefits with the department. Such information shall be given at the time of each permanent or indefinite separation from employment, reduction in hours, temporary separation, and any other interruption of continued employment that results in total or partial unemployment. Such notice shall be given in writing on a form furnished or approved by the department and shall include:

- (a) the employer's name and registration number;
- (b) the address of the employer to which a request for remuneration and employment information with respect to such employee must be

directed; and

(c) such other information as is required by the commissioner.

3. Compensable periods. Benefits shall be paid for each effective week.

4. Duration. Benefits shall not be paid in an amount greater than twenty-six times the claimant's weekly benefit rate in any benefit year, except as provided in section six hundred one and subdivision two of section five hundred ninety-nine of this chapter.

* 5. Benefit rate. (a) A claimant's weekly benefit amount shall be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, liable for contributions or payments in lieu of contributions under this article, provided the claimant has remuneration paid in all four calendar quarters during his or her base period or alternate base period. However, for any claimant who has remuneration paid in all four calendar quarters during his or her base period or alternate base period and whose high calendar quarter remuneration during the base period is three thousand five hundred seventy-five dollars or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period by employers liable for contributions or payments in lieu of contributions under this article. A claimant's weekly benefit shall be one twenty-sixth of the average remuneration paid in the two highest quarters paid during the base period or alternate base period by employers liable for contributions or payments in lieu of contributions under this article when the claimant has remuneration paid in two or three calendar quarters provided however, that a claimant whose high calendar quarter is four thousand dollars or less but greater than three thousand five hundred seventy-five dollars shall have a weekly benefit amount of one twenty-sixth of such high calendar quarter. However, for any claimant who has remuneration paid in two or three calendar quarters during his or her base period or alternate base period and whose high calendar quarter remuneration during the base period is three thousand five hundred seventy-five dollars or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period

by employers liable for contributions or payments in lieu of contributions under this article. Any claimant whose high calendar quarter remuneration during the base period is more than three thousand five hundred seventy-five dollars shall not have a weekly benefit amount less than one hundred forty-three dollars. The weekly benefit amount, so computed, that is not a multiple of one dollar shall be lowered to the next multiple of one dollar. On the first Monday of September, nineteen hundred ninety-eight the weekly benefit amount shall not exceed three hundred sixty-five dollars nor be less than forty dollars, until the first Monday of September, two thousand, at which time the maximum benefit payable pursuant to this subdivision shall equal one-half of the state average weekly wage for covered employment as calculated by the department no sooner than July first, two thousand and no later than August first, two thousand, rounded down to the lowest dollar. On and after the first Monday of October, two thousand fourteen, the weekly benefit shall not be less than one hundred dollars, nor shall it exceed four hundred twenty dollars until the first Monday of October, two thousand fifteen when the maximum benefit amount shall be four hundred twenty-five dollars, until the first Monday of October, two thousand sixteen when the maximum benefit amount shall be four hundred thirty dollars, until the first Monday of October, two thousand seventeen when the maximum benefit amount shall be four hundred thirty-five dollars, until the first Monday of October, two thousand eighteen when the maximum benefit amount shall be four hundred fifty dollars, until the first Monday of October, two thousand nineteen when the maximum benefit amount shall be thirty-six percent of the average weekly wage until the first Monday of October, two thousand twenty when the maximum benefit amount shall be thirty-eight percent of the average weekly wage, until the first Monday of October two thousand twenty-one when the maximum benefit amount shall be forty percent of the average weekly wage, until the first Monday of October, two thousand twenty-two when the maximum benefit amount shall be forty-two percent of the average weekly wage, until the first Monday of October, two thousand twenty-three when the maximum benefit amount shall be forty-four percent of the average weekly wage, until the first Monday of October, two thousand twenty-four when the maximum benefit amount shall be forty-six percent of the average weekly wage, until the first Monday of October, two thousand twenty-five

when the maximum benefit amount shall be forty-eight percent of the average weekly wage, until the first Monday of October, two thousand twenty-six and each year thereafter on the first Monday of October when the maximum benefit amount shall be fifty percent of the average weekly wage provided, however, that in no event shall the maximum benefit amount be reduced from the previous year.

(b) Notwithstanding the foregoing, the maximum benefit amount shall not be increased in accordance with the schedule set forth in paragraph (a) of this subdivision in any year in which the balance of the fund is determined by the commissioner to not have reached or exceeded thirty percent of the average high cost multiple, as defined in 20 CFR Part 606 as the standard for receipt of interest-free federal loans, on at least one day between April first and June thirtieth of the same calendar year as the increase shall take effect. If, following such suspension of an increase in the maximum benefit amount, the commissioner shall determine, on at least one day between April first and June thirtieth that the balance of the fund is greater than such thirty percent average high cost multiple, then the maximum benefit amount shall increase to the percentage for the year previously scheduled to be established pursuant to paragraph (a) of this subdivision had the increase not been suspended and increased annually thereafter in accordance with the schedule set forth in paragraph (a) of this subdivision. In no case shall such suspension result in a reduction of the maximum benefit amount to less than the amount provided in the most recent year.

(c) Benefit for partial unemployment. Except as provided in paragraph (d) of this subdivision, any claimant who is partially unemployed with respect to any effective week shall be paid, with respect to such effective week, a benefit equal to his weekly benefit rate less the total of the remuneration, if any, paid or payable to him with respect to such week for services performed which is in excess of his partial benefit credit.

* NB Effective until certain provisions are met (see Ch. 56 of 2025, Part KK, § 4)

* 5. Benefit rate. (a) A claimant's weekly benefit amount shall be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, liable for contributions or payments in lieu of contributions under this article, provided the

claimant has remuneration paid in all four calendar quarters during such claimant's base period or alternate base period. However, for any claimant who has remuneration paid in all four calendar quarters during such claimant's base period or alternate base period and whose high calendar quarter remuneration during the base period is three thousand five hundred seventy-five dollars or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period by employers liable for contributions or payments in lieu of contributions under this article. A claimant's weekly benefit shall be one twenty-sixth of the average remuneration paid in the two highest quarters paid during the base period or alternate base period by employers liable for contributions or payments in lieu of contributions under this article when the claimant has remuneration paid in two or three calendar quarters provided however, that a claimant whose high calendar quarter is four thousand dollars or less but greater than three thousand five hundred seventy-five dollars shall have a weekly benefit amount of one twenty-sixth of such high calendar quarter. However, for any claimant who has remuneration paid in two or three calendar quarters during such claimant's base period or alternate base period and whose high calendar quarter remuneration during the base period is three thousand five hundred seventy-five dollars or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period by employers liable for contributions or payments in lieu of contributions under this article. Any claimant whose high calendar quarter remuneration during the base period is more than three thousand five hundred seventy-five dollars shall not have a weekly benefit amount less than one hundred forty-three dollars. The weekly benefit amount, so computed, that is not a multiple of one dollar shall be lowered to the next multiple of one dollar. On the first Monday of September, nineteen hundred ninety-eight the weekly benefit amount shall not exceed three hundred sixty-five dollars nor be less than forty dollars, until the first Monday of September, two thousand, at which time the maximum benefit payable pursuant to this subdivision shall equal one-half of the state average weekly wage for covered employment as calculated by the department no sooner than July first, two thousand and no later than August first, two thousand, rounded down to the lowest dollar. On and

after the first Monday of October, two thousand fourteen, the weekly benefit shall not be less than one hundred dollars, nor shall it exceed four hundred twenty dollars until the first Monday of October, two thousand fifteen when the maximum benefit amount shall be four hundred twenty-five dollars, until the first Monday of October, two thousand sixteen when the maximum benefit amount shall be four hundred thirty dollars, until the first Monday of October, two thousand seventeen when the maximum benefit amount shall be four hundred thirty-five dollars, until the first Monday of October, two thousand eighteen when the maximum benefit amount shall be four hundred fifty dollars, until the first Monday of October, two thousand nineteen when the maximum benefit amount shall be thirty-six percent of the average weekly wage until the first Monday of October, two thousand twenty-five when the maximum benefit amount shall be eight hundred sixty-nine dollars, until the first Monday of October, two thousand twenty-six and each year thereafter on the first Monday of October when the maximum benefit amount shall be fifty percent of the average weekly wage provided, however, that in no event shall the maximum benefit amount be reduced from the previous year.

(b) Notwithstanding the foregoing, except for the increase to the maximum benefit amount that is scheduled to occur on the first Monday of October in the year two thousand twenty-five, the maximum benefit amount shall not be increased in accordance with the schedule set forth in paragraph (a) of this subdivision in any year in which the balance of the fund is determined by the commissioner to not have reached or exceeded thirty percent of the average high cost multiple, as defined in 20 CFR Part 606 as the standard for receipt of interest-free federal loans, on at least one day between April first and June thirtieth of the same calendar year as the increase shall take effect. If, following such suspension of an increase in the maximum benefit amount, the commissioner shall determine, on at least one day between April first and June thirtieth that the balance of the fund is greater than such thirty percent average high cost multiple, then the maximum benefit amount shall increase to the percentage for the year previously scheduled to be established pursuant to paragraph (a) of this subdivision had the increase not been suspended and increased annually thereafter in accordance with the schedule set forth in paragraph (a) of

this subdivision. In no case shall such suspension result in a reduction of the maximum benefit amount to less than the amount provided in the most recent year.

(c) Benefit for partial unemployment. Any claimant who is partially unemployed with respect to any effective week shall be paid, with respect to such effective week, a benefit equal to their weekly benefit rate less the total of the remuneration, if any, paid or payable to them with respect to such week for services performed which is in excess of their partial benefit credit.

* NB Effective upon certain provisions (see Ch. 56 of 2025, Part KK, § 4)

6. Notification requirement. No effective week shall be counted for any purposes except effective weeks as to which notification has been given in a manner prescribed by the commissioner.

7. Waiting period. A claimant shall not be entitled to accumulate effective weeks for the purpose of benefit payments until he has accumulated a waiting period of one effective week.

8. Benefit payments to professional athletes. If substantially all of a claimant's employment during his base period is as a participant in sports or athletic events or in training or preparing to so participate, no benefits shall be payable for any week commencing during the period between two successive sports seasons or similar periods, provided there is a reasonable assurance that the claimant will perform services in such capacity for both of such seasons or similar periods.

For the purposes of this subdivision, "reasonable assurance" shall mean a written contract that the claimant will perform services in the same capacity during the ensuing sports season or similar period or a claimant's offering of services in the successive season or similar period and an interest by an employer in employing him.

9. Benefits based on employment performed by undocumented noncitizens. (a) Remuneration received by a claimant who was a noncitizen at the time such remuneration was paid shall not be taken into consideration for the

purpose of establishing rights to benefits under this article unless the claimant was then lawfully admitted for permanent residence in the United States, was then lawfully present for purposes of performing such services or was then permanently residing in the United States under color of law, including a claimant lawfully present pursuant to section 207 or 208 of the federal immigration and nationality act.

(b) A determination that benefits are not payable to a claimant because of the claimant's noncitizen status shall be made only upon a preponderance of the evidence, and shall be effective only if it is in conformity with section 3304 (a) (14) of the federal unemployment tax act.

(c) Any data or information required of a claimant to determine whether benefits are not payable to such claimant because of noncitizen status shall be uniformly required from all claimants.

(d) A noncitizen who is not eligible under 8 USC 1621(a) shall be eligible for benefits, provided such noncitizen is eligible for benefits under the provisions of this article and section 3304 (a) (14) of the federal unemployment tax act.

10. Benefits based on professional employment with educational institutions, including the state university of New York, the city university of New York and any public community colleges. If a claimant was employed in an instructional, research, or principal administrative capacity by an institution of education, including the state university of New York, the city university of New York and any public community colleges, or performed services in such an institution in such capacity while employed by an educational service agency, the following shall apply to any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms when the contract provides therefor instead, provided the claimant has a contract to perform, or there is a reasonable assurance that the claimant will perform, services in such capacity for any such institution or institutions for both of such academic years or such terms, and to any week commencing during an established and customary vacation period or holiday recess, not between such academic terms or years, provided the claimant performed services for such institution immediately before such vacation period or holiday

recess and there is a reasonable assurance that the claimant will perform any services described in this subdivision or subdivision eleven of this section in the period immediately following such vacation period or holiday recess:

(a) In the case of a claimant who has no current benefit year, whether the claimant meets the conditions of section five hundred twenty-seven in any such week shall be determined by disregarding the remuneration paid for such employment.

(b) In the case of a claimant who does have a current benefit year, no benefits shall be payable with respect to any such week provided the claimant would not have met the conditions of section five hundred twenty-seven in the week in which the claimant filed a valid original claim if the remuneration paid for such employment is disregarded.

(c) The benefit rate of a claimant with respect to any such week shall be determined or redetermined by disregarding the remuneration paid for such employment.

"Educational service agency" means a governmental agency or governmental entity or Indian tribal entity which is established and operated exclusively for the purpose of providing to one or more educational institutions services mentioned under this subdivision or subdivision eleven of this section.

For purposes of this subdivision or subdivision eleven of this section, "educational institution" shall include any not-for-profit community art school which is chartered as a school by the board of regents of the university of state of New York.

11. Benefits based on non-professional employment with certain educational institutions. If a claimant was employed in other than an instructional, research or principal administrative capacity by an educational institution, or performed services in such an institution in such capacity while employed by an educational service agency, the following shall apply to any week commencing during the period between two successive academic years or terms provided there is a reasonable assurance that the claimant will perform services in such capacity for any such institution or institutions for both of such academic years or terms, and to any week commencing during an established and customary

vacation period or holiday recess, not between such academic terms or years, provided the claimant performed services for such institution immediately before such vacation period or holiday recess and there is a reasonable assurance that the claimant will perform any services described in this subdivision or subdivision ten of this section in the period immediately following such vacation period or holiday recess:

(a) In the case of a claimant who has no current benefit year, whether the claimant meets the conditions of section five hundred twenty-seven in any such week shall be determined by disregarding the remuneration paid for such employment.

(b) In the case of a claimant who does have a current benefit year, no benefits shall be payable with respect to any such week provided the claimant would not have met the conditions of section five hundred twenty-seven in the week in which the claimant filed a valid original claim if the remuneration paid for such employment is disregarded.

(c) The benefit rate of a claimant with respect to any such week shall be determined or redetermined by disregarding the remuneration paid for such employment.

(d) Notwithstanding the foregoing provisions of this subdivision, a claimant who was not offered an opportunity to perform services for the educational institution for the second of such academic years or terms shall be entitled to be paid benefits retroactively for each week for which the claimant filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision.

"Educational service agency" means a governmental agency or governmental entity or Indian tribal entity which is established and operated exclusively for the purpose of providing to one or more educational institutions services mentioned under this subdivision or subdivision ten of this section.

12. An individual claimant who has received a determination of entitlement pursuant to section five hundred twenty-seven of this article may request the commissioner to reconsider the benefit rate to which such claimant is entitled under the following circumstances:

(a)(1) the claimant filed a valid original claim pursuant to subdivision one or two of section five hundred twenty-seven of this article or, in the event the claimant exercised his or her right to

apply to the commissioner to determine his or her benefits pursuant to paragraph (b) of subdivision two of such section, the claimant selected the base period to be utilized; and

(2) after the establishment of the base period to utilize pursuant to subparagraph one of this paragraph, and within ten days of the date of the mailing of the determination of the benefit rate to which the claimant is entitled for such base period by the commissioner, the claimant produces proof satisfactory to the commissioner and consistent with wage data contained in the statewide wage reporting system maintained by the department of taxation and finance or, in the commissioner's sole discretion, sufficient to warrant its use in the event that it is inconsistent with such wage data, that he or she has at least twenty weeks of employment, as defined in section five hundred twenty-four of this chapter, in such established base period. Such proof shall include paycheck stubs, payroll envelopes, or cancelled checks.

(b) in the event that a claimant submits a request for reconsideration of the benefit rate to the commissioner pursuant to paragraph (a) of this subdivision, and one-half of the average weekly wage of all wages paid for all weeks of employment for which proof satisfactory to the commissioner was submitted pursuant to subparagraph two of paragraph (a) of this subdivision during the established base period referenced in such paragraph is at least five dollars more than the weekly benefit amount calculated pursuant to subdivision five of this section, the commissioner shall determine the claimant's benefit rate to be such amount, but in no event shall such amount be more than the maximum benefit rate in effect pursuant to subdivision five of this section.

§ 591. Eligibility for benefits. * 1. Unemployment. Benefits, except as provided in section five hundred ninety-one-a of this title, shall be paid only to a claimant who is totally unemployed or partially unemployed. A claimant who is receiving benefits under this article shall not be denied such benefits pursuant to this subdivision or to subdivision two of this section because of such claimant's service on a grand or petit jury of any state or of the United States.

* NB Effective until December 7, 2027

* 1. Unemployment. Benefits shall be paid only to a claimant who is

totally unemployed or partially unemployed. A claimant who is receiving benefits under this article shall not be denied such benefits pursuant to this subdivision or to subdivision two of this section because of such claimant's service on a grand or petit jury of any state or of the United States.

* NB Effective December 7, 2027

* 2. Availability and capability. Except as provided in section five hundred ninety-one-a of this title, no benefits shall be payable to any claimant who is not capable of work or who is not ready, willing and able to work in his usual employment or in any other for which he is reasonably fitted by training and experience.

* NB Effective until December 7, 2027

* 2. Availability, capability, and work search. No benefits shall be payable to any claimant who is not capable of work or who is not ready, willing and able to work in his or her usual employment or in any other for which he or she is reasonably fitted by training and experience and who is not actively seeking work. In order to be actively seeking work a claimant must be engaged in systematic and sustained efforts to find work. The commissioner shall promulgate regulations defining systematic and sustained efforts to find work and setting standards for the proof of work search efforts. Such regulations shall take into account the need for claimants to provide child care for their child or children.

* NB Effective December 7, 2027

3. Vacation period or holiday.

(a) Compensation paid to a claimant for any day during a paid vacation period, or for a paid holiday, shall be considered compensation from employment and shall be included in the calculation of a claimant's benefit for partial unemployment as set forth in subdivision five of section five hundred ninety of this article.

(b) The term "vacation period", as used in this subdivision, means the time designated for vacation purposes in accordance with the collective bargaining agreement or the employment contract or by the employer and the claimant, his union, or his representative. If either the collective bargaining agreement or the employment contract is silent as to such time, or if there be no collective bargaining agreement or employment contract, then the time so designated in writing and announced to the

employees in advance by the employer is to be considered such vacation period.

(c) A paid vacation period or a paid holiday is a vacation period or a holiday for which a claimant is given a payment or allowance not later than thirty days thereafter, directly by his employer or through a fund, trustee, custodian or like medium provided the amount thereof has been contributed solely by the employer on behalf of the claimant and the amount so contributed by the employer is paid over in full to the claimant without any deductions other than those required by law, even if such payment or allowance be deemed to be remuneration for prior services rendered as an accrued contractual right, and irrespective of whether the employment has or has not been terminated.

(d) Any agreement expressed or implied by a claimant or by his union or other representative to a plant or department shut down for vacation purposes is not of itself to be considered either a withdrawal by such employee from the labor market during the time of such vacation shut down or to render him unavailable for employment during the time of such vacation shut down.

4. (a) An unemployed individual shall be eligible to receive benefits with respect to any week only if such individual participates in reemployment services, such as job search assistance services, available under any state or federal law, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the commissioner, unless the commissioner determines that:

(i) the individual has completed such services; or

(ii) there is justifiable cause for the claimant's failure to participate in such services.

(b) Such profiling system shall be established pursuant to a plan of the department which shall include, but not be limited to:

(i) specification of the profiling methodology, including factors used to determine a claimant's required participation in reemployment services and the statistical relationship of such factors to the exhaustion of benefits by certain claimants;

(ii) standards to be used to insure that all claimants are uniformly evaluated against the profiling criteria;

(iii) a description of criteria to be used to make assignments to basic reemployment services offered;

(iv) procedures for notification of the right of appeal and for appeal by a claimant of the profiling assessment and referral of the department;

(v) an evaluation of the extent to which reemployment services are available throughout the state and accessible to claimants;

(vi) a demonstration of efforts by the department to coordinate with the local providers offering reemployment services, to avoid duplication of services among providers offering similar reemployment services to the same participant group;

(vii) policies and procedures for referrals to reemployment services, including referrals to providers other than the department; and

(viii) guidelines governing the extent to which education and skills or occupational training shall be offered.

(c) The department shall, at a time and in a manner consistent with federal requirements, submit a report to the temporary president of the senate and the speaker of the assembly on the profiling system authorized herein except that such report:

(i) shall be submitted to the temporary president of the senate and the speaker of the assembly no later than September first, nineteen hundred ninety-five and annually thereafter, and

(ii) shall include data on the number of individuals profiled and the number of profiled individuals exhausting benefits as well as a description of the service or services provided to profiled individuals and the number of individuals referred for reemployment services during the program year ending the preceding June thirtieth.

5. Maximum combined payments. If a claimant is receiving benefits pursuant to subdivision six of section fifteen of the workers' compensation law, the unemployment benefits to which a claimant may be entitled pursuant to this article shall be limited to the difference between the amount of workers' compensation benefits and one hundred percent of the claimant's average weekly wage.

6. Dismissal pay. (a) No benefits shall be payable to a claimant for any week during a dismissal period for which a claimant receives

dismissal pay if such weekly dismissal pay exceeds the claimant's maximum weekly benefit rate plus the claimant's partial benefit credit.

(b) The term "dismissal pay", as used in this subdivision, means one or more payments made by an employer to an employee due to his or her separation from service of the employer regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments. The term does not include payments for pension, retirement, accrued leave, and health insurance or payments for supplemental unemployment benefits.

(c) The term "dismissal period", as used in this subdivision, means the time designated for weeks of dismissal pay attributable to the claimant's weekly earnings in accordance with the collective bargaining agreement, employment contract, employer's dismissal policy, dismissal agreement with the employer or other such agreement. If no such agreement, contract or policy designates a dismissal period, then the dismissal period shall be the time designated in writing in advance by the employer to be considered the dismissal period. If no time period is designated, the dismissal period shall commence on the day after the claimant's last day of employment. If the dismissal payment is in a lump sum amount or for an indefinite period, dismissal payments shall be allocated on a weekly basis from the day after the claimant's last day of employment and the claimant shall not be eligible for benefits for any week for which it is determined that the claimant receives dismissal pay. The amount of dismissal pay shall be allocated based on the claimant's actual weekly remuneration paid by the employer during his or her employment or, if such amount cannot be determined, the amount of the claimant's average weekly wage for the highest calendar quarter.

(d) Notwithstanding the foregoing, the provisions of this subdivision shall not apply during any weeks in which the initial payment of dismissal pay is made more than thirty days from the last day of the claimant's employment.

*** § 591-a. Self-employment assistance program.** 1. The department is hereby authorized and empowered to establish and operate a self-employment assistance program as authorized pursuant to subsection (t) of section 3306 of the internal revenue code.

2. For the purposes of this section, the term "self-employment assistance program" means a program under which:

(a) individuals who meet the requirements described in paragraph (c) of this subdivision are eligible to receive an allowance in lieu of regular unemployment benefits for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(b) the allowance payable to individuals pursuant to paragraph (a) of this subdivision is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment benefits and the sum of any allowance paid under this section and regular benefits, as defined in this section, paid for any benefit year shall not exceed the maximum amount of benefits payable under this article, except:

(i) requirements relating to total unemployment, as defined in section five hundred twenty-two of this article, availability for work and search for work, as set forth in subdivision two of section five hundred ninety-one of this title and refusal to accept work, as set forth in subdivision two of section five hundred ninety-three of this title, are not applicable to such individuals;

(ii) requirements relating to disqualifying income, as set forth in sections five hundred twenty-five and five hundred ninety of this article, are not applicable to income earned from self-employment entered into by such individuals as a result of their participation in self-employment assistance programs as defined in this section; and

(iii) such individuals are considered to be unemployed for the purposes of laws applicable to unemployment benefits, as long as such individuals meet the requirements applicable under this subdivision;

(c) individuals may receive the allowance described in paragraph (a) of this subdivision if such individuals:

(i) are eligible to receive regular unemployment benefits or would be eligible to receive such benefits except for the requirements set forth in subparagraphs (i) and (ii) of paragraph (b) of this subdivision. For purposes of this section, regular unemployment benefits means benefits payable under this article, including benefits payable to federal civilian employees and to ex-servicemen and servicewomen pursuant to 5 USC Chapter 85, and benefits authorized to be used for the

self-employment assistance program pursuant to the Federal-State Extended Unemployment Compensation Act of 1970 but excluding additional benefits;

(ii) are identified pursuant to a worker profiling system as individuals likely to exhaust regular unemployment benefits;

(iii) are participating in self-employment assistance activities approved by the department and by the department of economic development which include but need not be limited to entrepreneurial training, business counseling, and technical assistance, including financing assistance for qualified individuals as appropriate, offered by entrepreneurship assistance centers established pursuant to section two hundred eleven of the economic development law, state university of New York small business development centers, programs offered by community-based organizations, local development corporations, and boards of cooperative educational services (BOCES) as established pursuant to section one thousand nine hundred fifty of the education law; and, unless otherwise required by federal law or regulation, no individual shall be prohibited from or disqualified from eligibility for the program if prior to applying for the program, an individual has printed business cards or has a website that is designed but not active, and neither are being used to solicit or conduct business;

(iv) are actively engaged on a full-time basis in activities, which may include training, relating to the establishment of a business and becoming self-employed;

(v) are not individuals who have previously participated in self-employment assistance programs pursuant to this section; and

(d) the aggregate number of individuals receiving the allowance under the program does not at any time exceed five percent of the number of individuals receiving regular unemployment benefits at such time.

3. Each self-employment assistance program applicant shall provide at a minimum, in such form and at such time as the commissioner may prescribe, the following information:

(a) a description of the proposed self-employment;

(b) a description of such applicant's knowledge of experience in self-employment or such applicant's knowledge of and experience with the particular product to be manufactured, produced, processed, distributed

or sold or service to be provided;

(c) the names and addresses of such applicant's previous employers during the two years immediately preceding the date of applying for regular unemployment insurance benefits; and a

(d) a description of each applicant's work activity and the applicant's previous employer's activity at the work locations to which the applicant was assigned during said two year period.

4. Among individuals seeking participation in a self-employment assistance program, the department shall give preference to those individuals who propose businesses not likely to compete directly with the business of any base period employer of the individual.

* NB Repealed December 7, 2027

§ 592. Suspension of accumulation of benefit rights. 1. Industrial controversy. (a) The accumulation of benefit rights by a claimant shall be suspended during a period of one week beginning with the day after such claimant lost their employment because of a strike or other industrial controversy except for lockouts, including concerted activity not authorized or sanctioned by the recognized or certified bargaining agent of the claimant, and other concerted activity conducted in violation of any existing collective bargaining agreement, in the establishment in which such claimant was employed, except that benefit rights may be accumulated before the expiration of such one week period beginning with the day after such strike or other industrial controversy was terminated.

(b) Benefits shall not be suspended under this section if:

(i) The employer hires a permanent replacement worker for the employee's position. A replacement worker shall be presumed to be permanent unless the employer certifies in writing that the employee will be able to return to such employee's prior position upon conclusion of the strike, in the event the strike terminates prior to the conclusion of the employee's eligibility for benefit rights under this chapter. In the event the employer does not permit such return after such certification, the employee shall be entitled to recover any benefits lost as a result of the one week suspension of benefits, and

the department may impose a penalty upon the employer of up to seven hundred fifty dollars per employee per week of benefits lost. The penalty collected shall be paid into the unemployment insurance control fund established pursuant to section five hundred fifty-two-b of this article; or

(ii) The commissioner determines that the claimant:

(A) is not employed by an employer that is involved in the industrial controversy that caused such claimant's unemployment and is not participating in the industrial controversy; or

(B) is not in a bargaining unit involved in the industrial controversy that caused such claimant's unemployment and is not participating in the industrial controversy.

2. Concurrent payments prohibited. No weeks of total unemployment or partial unemployment shall be deemed to occur in any week with respect to which a claimant has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States, provided that this provision shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits.

3. Terms of suspension. No waiting period may be served during a suspension period.

The suspension of accumulation of benefit rights shall not be terminated by subsequent employment of the claimant irrespective of when the claim is filed except as provided in subdivision one of this section and shall not be confined to a single benefit year.

A "week" as used in subdivision one of this section means any seven consecutive calendar days.

§ 593. Disqualification for benefits. 1. Voluntary separation; separation for a compelling family reason. (a) No weeks of total unemployment or partial unemployment shall be deemed to occur after a claimant's voluntary separation without good cause from employment until

he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate. In addition to other circumstances that may be found to constitute good cause, including a compelling family reason as set forth in paragraph (b) of this subdivision, voluntary separation from employment shall not in itself disqualify a claimant if circumstances have developed in the course of such employment that would have justified the claimant in refusing such employment in the first instance under the terms of subdivision two of this section or if the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a temporary layoff because of lack of work, has elected to be separated for a temporary period and the employer has consented thereto.

(b) A claimant shall not be disqualified from receiving benefits for separation from employment due to any compelling family reason. For purposes of this paragraph, the term "compelling family reason" shall include, but not be limited to, separations related to any of the following:

(i) domestic violence, verified by reasonable and confidential documentation which causes the individual reasonably to believe that such individual's continued employment would jeopardize his or her safety or the safety of any member of his or her immediate family.

(ii) the illness or disability of a member of the individual's immediate family. For the purposes of this subparagraph:

(A) The term "illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise).

(B) The term "disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise).

"Disability" encompasses all types of disability, including: (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities.

(iii) the need for the individual to accompany such individual's spouse (A) to a place from which it is impractical for such individual to commute and (B) due to a change in location of the spouse's

employment.

- * (iv) where the spouse of the individual is a member of the armed forces of the United States, the need for the individual to accompany such individual's spouse (A) to a place from which it is impractical for such individual to commute and (B) due to a change in location as a result of a military transfer of the spouse.

- * NB There are 2 sbpar (iv)'s

- * (iv) the need for the individual to provide child care to the individual's child if such individual has made reasonable efforts to secure alternative child care.

- * NB There are 2 sbpar (iv)'s

(c) A disqualification as provided in this subdivision shall also apply after a claimant's voluntary separation from employment if such voluntary separation was due to claimant's marriage.

2. Refusal of employment. No weeks of total unemployment or partial unemployment shall be deemed to occur beginning with the week in which a claimant, without good cause, refuses to accept an offer of employment for which he or she is reasonably fitted by training and experience, including employment not subject to this article, until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate. Except that claimants who are not subject to a recall date or who do not obtain employment through a union hiring hall and who are still unemployed after receiving ten weeks of benefits shall be required to accept any employment proffered that such claimants are capable of performing, provided that such employment would result in a wage not less than eighty percent of such claimant's high calendar quarter wages received in the base period and not substantially less than the prevailing wage for similar work in the locality as provided for in paragraph (d) of this subdivision. No refusal to accept employment shall be deemed without good cause nor shall it disqualify any claimant otherwise eligible to receive benefits if:

- (a) a refusal to accept employment which would interfere with a claimant's right to join or retain membership in any labor organization or otherwise interfere with or violate the terms of a collective bargaining agreement shall be with good cause;

(b) there is a strike, lockout, or other industrial controversy in the establishment in which the employment is offered; or

(c) the employment is at an unreasonable distance from his residence, or travel to and from the place of employment involves expense substantially greater than that required in his former employment unless the expense be provided for; or

(d) the wages or compensation or hours or conditions offered are substantially less favorable to the claimant than those prevailing for similar work in the locality, or are such as tend to depress wages or working conditions; or

(e) the claimant is seeking part-time work as provided in subdivision five of section five hundred ninety-six of this title and the offer of employment is not comparable to his or her part-time work as defined in such subdivision.

3. Misconduct. No weeks of total unemployment or partial unemployment shall be deemed to occur after a claimant lost employment through misconduct in connection with his or her employment until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate.

4. Criminal acts. No weeks of total unemployment or partial unemployment shall be deemed to occur during a period of twelve months after a claimant loses employment as a result of an act constituting a felony in connection with such employment, provided the claimant is duly convicted thereof or has signed a statement admitting that he or she has committed such an act. Determinations regarding a benefit claim may be reviewed at any time. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith. In addition, remuneration paid to the claimant by the affected employer prior to the claimant's loss of employment due to such criminal act may not be utilized for the purpose of establishing entitlement to a subsequent, valid original claim. The provisions of this subdivision shall apply even if the employment lost as a result of such act is not the claimant's last employment prior to the filing of his or her claim.

5. Terms of disqualification. A disqualification pursuant to the provisions of this section shall not be confined to a single benefit year.

6. Determinations and hearings. The commissioner shall issue a determination for any protest that is filed by any base period employer within the time specified in the notification of potential charges based on voluntary separations or misconduct. An employer or claimant may request a hearing of such determination pursuant to section six hundred twenty of this article.

§ 594. Reduction and recovery of benefits and penalties for wilful false statement. (1) A claimant who has wilfully made a false statement or representation to obtain any benefit under the provisions of this article shall forfeit benefits for at least the first one but not more than the first twenty effective weeks following discovery of such offense for which he or she otherwise would have been entitled to receive benefits. Such penalty shall apply only once with respect to each such offense.

(2) For the purpose of subdivision four of section five hundred ninety of this article, the claimant shall be deemed to have received benefits for such forfeited effective weeks.

(3) The penalty provided in this section shall not be confined to a single benefit year but shall no longer apply in whole or in part after the expiration of two years from the date of the final determination. Such two-year period shall be tolled during the time period a claimant has an appeal pending.

(4) A claimant shall refund all moneys received because of such false statement or representation and pay a civil penalty in an amount equal to the greater of one hundred dollars or fifteen percent of the total overpaid benefits determined pursuant to this section. The penalties collected hereunder shall be deposited in the fund. The penalties assessed under this subdivision shall apply and be assessed for any benefits paid under federal unemployment and extended unemployment programs administered by the department in the same manner as provided

in this article. The penalties in this section shall be in addition to any penalties imposed under this chapter or any state or federal criminal statute. No penalties or interest assessed pursuant to this section may be deducted or withheld from benefits.

(5) (a) Upon a determination based upon a willful false statement or representation becoming final through exhaustion of appeal rights or failure to exhaust hearing rights, the commissioner may recover the amount found to be due by commencing a civil action, or by filing with the county clerk of the county where the claimant resides the final determination of the commissioner or the final decision by an administrative law judge, the appeal board, or a court containing the amount found to be due including interest and civil penalty. The commissioner may only make such a filing with the county clerk when:

(i) The claimant has responded to requests for information prior to a determination and such requests for information notified the claimant of his or her rights to a fair hearing as well as the potential consequences of an investigation and final determination under this section including the notice required by subparagraph (iii) of paragraph (b) of this subdivision. Additionally if the claimant requested a fair hearing or appeal subsequent to a determination, that the claimant was present either in person or through electronic means at such hearing, or subsequent appeal from which a final determination was rendered;

(ii) The commissioner has made efforts to collect on such final determination; and

(iii) The commissioner has sent a notice, in accordance with paragraph (b) of this subdivision, of intent to docket such final determination by first class or certified mail, return receipt requested, ten days prior to the docketing of such determination.

(b) The notice required in subparagraph (iii) of paragraph (a) of this subdivision shall include the following:

(i) That the commissioner intends to docket a final determination against such claimant as a judgment;

(ii) The total amount to be docketed; and

(iii) Conspicuous language that reads as follows: "Once entered, a judgment is good and can be used against you for twenty years, and your money, including a portion of your paycheck and/or bank account, may be taken. Also, a judgment will hurt your credit score and can affect your

ability to rent a home, find a job, or take out a loan."

§ 595. Benefit right inalienable. 1. Waiver agreement void. No agreement by an employee to waive his rights under this article shall be valid.

2. Assignment of benefits void. Benefits shall not be assigned, pledged, encumbered, released, or commuted and shall be exempt from all claims of creditors and from levy, execution, and attachment, or other remedy for recovery or collection of a debt. This exemption may not be waived.

§ 596. Claim filing, registration, and reporting. 1. Claim filing and certification to unemployment. A claimant shall file a claim for benefits in such manner as the commissioner shall prescribe. The claimant shall disclose whether he or she owes child support obligations, as hereafter defined. If a claimant making such disclosure is eligible for benefits, the commissioner shall notify the state or local child support enforcement agency, as hereafter defined, that the claimant is eligible.

A claimant shall correctly report any weeks of employment and any compensation received for such employment, including employment not subject to this article, and the weeks during which he or she was totally unemployed or partially unemployed and shall make such reports in accordance with such regulations as the commissioner shall prescribe.

2. Child support obligations. (a) The term "child support obligations" means obligations enforced pursuant to an approved plan under section four hundred fifty-four of the federal social security act. The term "state or local child support enforcement agency" means any agency of the state or a political subdivision thereof operating pursuant to such a plan.

(b) Notwithstanding the provisions of section five hundred ninety-five of this article, the commissioner shall deduct and withhold child

support obligations from benefits payable to a claimant (including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment) in the amount specified by the claimant, the amount determined pursuant to an agreement between the claimant and the state or local child support enforcement agency submitted to the commissioner, or the amount required to be deducted and withheld through legal process, whichever amount is the greatest. Such amount shall be paid to the appropriate state or local child support enforcement agency, and shall be treated for all purposes as if paid to the claimant as benefits and paid by the claimant to such agency in satisfaction of the claimant's child support obligations. Each such agency shall reimburse the commissioner for the administrative costs attributable to child support obligations being enforced by the commissioner.

3. Uncollected overissuance of food stamps. (a) The term "uncollected overissuance of food stamps" has the meaning prescribed in section thirteen (c)(1) of the federal food stamp act of 1977. The term "appropriate state food stamp agency" means any agency of the state or a political subdivision thereof enforcing the collection of such overissuance.

(b) Notwithstanding the provisions of section five hundred ninety-five of this article, the commissioner shall deduct and withhold uncollected over issuances of food stamps from benefits payable to a claimant pursuant to section thirteen (c)(3) of the federal food stamp act of 1977; provided, however, that no agreement pursuant to this section shall reduce benefits by an amount in excess of the greater of ten percent of the weekly benefit amount or ten dollars, unless claimant specifically requests, in writing, to reduce benefits by a greater amount. Any amount deducted and withheld under this subdivision shall be paid to the appropriate state food stamp agency, and shall be treated for all purposes as if paid to the claimant as benefits and as if paid by the claimant to such agency in satisfaction of claimant's over issuance of food stamps coupons. To the extent permitted by federal law, the procedures for correcting overpayments shall be designed to minimize adverse impact on the claimant, and to the extent possible, avoid undue hardship.

(c) Each such agency shall reimburse the commissioner for the administrative costs incurred under this subdivision in a manner consistent with a memorandum of understanding as approved by the director of the division of the budget. Such reimbursement shall be consistent with federal law and regulations.

4. Registration and reporting for work. A claimant shall register as totally unemployed or partially unemployed with the department in accordance with such regulations as the commissioner shall prescribe. After so registering, such claimant shall report for work at the same local state employment office or otherwise give notice of continued total or partial unemployment as often and in such manner as the commissioner shall prescribe.

5. Part time work. Notwithstanding any other provisions of this article, a claimant who for reasons personal to himself or herself is unable or unwilling to work full time and who customarily worked less than the full time prevailing in his or her place of employment for a majority of the weeks worked during the applicable base period, shall not be denied unemployment insurance solely because the claimant is only seeking part time work. For purposes of this subdivision, "seeking part time work" shall mean the claimant is willing to work for a number of hours per week that are comparable to the claimant's part time work during the majority of time in the base period.

6. An individual filing a new claim for unemployment benefits shall, at the time of filing such claim, be advised that:

(a)(1) Unemployment benefits are subject to federal, state and local income tax;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal and/or state income tax deducted and withheld from the individual's payment of unemployment benefits at the amount specified under the federal internal revenue code (26 U.S.C.A. 3402(p)(2)) and/or the state income tax withholding tax schedules as specified under the tax law and relevant regulations; and

(4) The individual shall be permitted to change a previously elected withholding status.

(b) Notwithstanding the provisions of section five hundred ninety-five of this article, the commissioner shall deduct and withhold federal and/or state income tax from benefits payable to an individual if such individual elects such withholding. Amounts deducted and withheld from unemployment benefits shall remain in the unemployment trust fund until transferred to the appropriate taxing authority as a payment of income tax.

(c) The commissioner shall follow all procedures specified by the United States department of labor, the federal internal revenue service, the state department of labor and the state department of taxation and finance pertaining to the deducting and withholding of income tax authorized under this subdivision.

(d) Amounts shall be deducted and withheld under this subdivision only after amounts are deducted and withheld for any overpayment of unemployment benefits, child support obligations, food stamp over issuances or any other amounts required to be deducted and withheld under this article.

7. Notwithstanding the provisions of section five hundred ninety-five of this title, the commissioner shall deduct and withhold any overpayments established under this article or under any state or federal unemployment compensation program from benefits payable to an individual. No penalties or interest assessed pursuant to section five hundred ninety-four of this title may be deducted or withheld from benefits.

§ 597. Initial determination. 1. Issuance. The validity of the claim and the amount of benefits payable to the claimant shall be determined in accordance with the regulations and procedure established by the commissioner and, when such determination is issued by the commissioner, it shall be deemed the initial determination of the claim.

2. Obtaining information necessary for determinations. (a) When filing an original claim, each claimant shall furnish to the commissioner all information which the commissioner shall require concerning his or her prior employment.

(b) Whenever a claimant's base period includes a completed calendar quarter for which a wage data report is not due or has not been received and the claimant provides information as required by the commissioner, the commissioner shall determine such claimant's entitlement and benefit rate using the information the claimant provided for such quarter. However, in those instances where the claimant is unable to provide such information to the commissioner's satisfaction, the commissioner may request the employer to provide the amount of remuneration paid to such individual. The commissioner shall notify each base period employer upon the establishment of a valid original claim, of such claim. If an employer provides new or corrected information in response to the initial notice of monetary entitlement, adjustments to the claimant's benefit rate and adjustments to the employer's experience rating account shall be prospective as of the date such information was received by the department.

(c) Notwithstanding paragraph (b) of this subdivision, adjustments to the claimant's benefit rate and adjustment to the experience rating charges to the employers' accounts will be retroactive to the beginning of the benefit claim in the following circumstances:

(i) the new or corrected information results in a higher benefit rate, or

(ii) the new or corrected information results in the claimant's failure to establish a valid original claim, or

(ii) the amount of the previously established benefit rate was based upon the claimant's willful false statement or representation.

(d) Notwithstanding any provisions of this article, unless a commissioner's error is shown or the failure is the direct result of a disaster emergency declared by the governor or president, an employer's account shall not be relieved of charges resulting in an overpayment of benefits when the commissioner determines that the overpayment was made because the employer or the agent of the employer failed to timely or adequately respond to a request for information in the notice of potential charges or other such notice requesting information in relation to a claim under this article, provided, however, that the commissioner shall relieve the employer of charges the first time that the employer fails to provide timely or adequate information, if the employer provides good cause for such failure as determined by the

commissioner.

"Timely" shall mean a response is provided in the time period specified in the notice as prescribed by the commissioner.

The term "adequately" shall mean that the employer or its agent submitted information sufficient to render a correct determination.

This prohibition for relief of charges shall apply to all employers under this article including employers electing payment in lieu of contributions.

3. Limitation on review of determinations. Any determination regarding a benefit claim may, in the absence of fraud or wilful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information, or, if the review is based thereon, within six months from a retroactive payment of remuneration, provided that no decision on the merits of the case has been made upon hearing or appeal. Such review shall be conducted and a new determination issued in accordance with the provisions of this article and regulations and procedure prescribed thereunder with respect to the adjudication and payment of claims, including the right of appeal.

4. Effect of review. Whenever a new determination in accordance with the preceding subdivision or a decision by a referee, the appeal board, or a court results in a decrease or denial of benefits previously allowed, such new determination or decision, unless it shall be based upon a retroactive payment of remuneration, shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or representation and did not wilfully conceal any pertinent fact in connection with his or her claim for benefits.

§ 598. Effect of payments for failure to provide notice of a facility closure. Payments to an employee under article twenty-five-a of this

chapter by an employer who has failed to provide the advance notice of a facility closure required by such article or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 1201 et seq.) or amendments thereto, shall not be construed as remuneration under this article. Unemployment insurance benefits may not be denied or reduced because of the receipt of payments related to an employer's violation of article twenty-five-a of this chapter or the federal Worker Adjustment and Retraining Notification Act.

§ 599. Career and related training; preservation of eligibility. 1.

Notwithstanding any other provision of this article, a claimant shall not become ineligible for benefits because of the claimant's regular attendance in a program of training which the commissioner has approved. The commissioner shall give due consideration to existing and prospective conditions of the labor market in the state, taking into account present and anticipated supply and demand regarding the occupation or skill to which the training relates, and to any other relevant factor. However, in no event shall the commissioner approve such training for a claimant unless:

(a) (1) the training will upgrade the claimant's existing skill or train the claimant for an occupation likely to lead to more regular long term employment; or

(2) employment opportunities for the claimant are or may be substantially impaired because of:

(i) existing or prospective conditions of the labor market in the locality or in the state or reduced opportunities for employment in the claimant's occupation or skill; or

(ii) technological change, plant closing or plant removal, discontinuance of specific plant operations, or similar reasons; or

(iii) limited opportunities for employment throughout the year due to the seasonal nature of the industry in which the claimant is customarily employed; or

(iv) the claimant's personal traits such as physical or mental handicap; and

(b) the training relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable

employment opportunities in the state; and

(c) the training is offered by a competent and reliable agency and does not require more than twenty-four months to complete; and

(d) the claimant has the required qualifications and aptitudes to complete the training successfully.

2. (a) Notwithstanding any other provision of this chapter, a claimant attending an approved training course or program under this section may receive additional benefits of up to twenty-six times his or her weekly benefit amount following exhaustion of regular and, if in effect, any other extended benefits, provided that entitlement to a new benefit claim cannot be established. Certification of continued satisfactory participation and progress in such training course or program must be submitted to the commissioner prior to the payment of any such benefits. The amount of such additional benefits shall in no case exceed twice the amount of regular benefits to which the claimant is entitled at the time the claimant is accepted in, or demonstrates application for appropriate training.

(b) No more than twenty million dollars of benefits per year shall be made available for payment to claimants participating in such courses or programs.

(c) Participation in such training course or program shall not be limited to any selected areas or localities of the state but subject to the availability of funds, shall be available to any claimant otherwise eligible to participate in training courses or programs pursuant to this section.

(d) The additional benefits paid to a claimant shall be charged to the general account.

3. Notwithstanding any other provision of this article, a claimant who is in training approved under the federal trade act of nineteen hundred seventy-four shall not be disqualified or become ineligible for benefits because he is in such training or because he left employment which is not suitable employment to enter such training. For purposes hereof, "suitable employment" means work of a substantially equal or higher skill level than the claimant's past adversely affected employment and for which the remuneration is not less than eighty percent of the

claimant's average weekly wage.

§ 600. Effect of retirement payments. 1. Reduction of benefit rate.

(a) The benefit rate of a claimant who is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on his previous work, shall be reduced as hereinafter provided, if such payment is made under a plan maintained or contributed to by his base period employer and, except for payments made under the social security act or the railroad retirement act of 1974, the claimant's employment with, or remuneration from, such employer after the beginning of the base period affected his eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment.

(b) The claimant's benefit rate shall be reduced by the largest number of whole dollars which is not more than the pro-rated weekly amount of such payment. If the claimant was the sole contributor for the pension, retirement or retired pay, annuity, or other similar periodic payment, no reduction shall apply.

(c) If, at the time benefits are payable, it has not been established that the claimant will be receiving such pension, retirement or retired pay, annuity or other payment, benefits due shall be paid without a reduction, subject to review within the period and under the conditions as provided in subdivisions three and four of section five hundred ninety-seven with respect to retroactive payment of remuneration.

(d) For the purposes of this section, the terms "pension or retirement payment" and "governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on previous work" shall not include payments made from a qualified trust to an eligible retirement plan under the terms and conditions specified in section four hundred two of the internal revenue code for federal income tax purposes, such payments commonly known as eligible rollover distributions.

§ 601. Extended benefits. 1. Definitions. For the purposes of this section:

(a) (1) There shall be a "state 'on' indicator" for a week if, as determined by the commissioner in accordance with the regulations of the secretary of labor of the United States, the rate of insured unemployment for the period consisting of such week and the preceding twelve weeks

(i) equaled or exceeded five per centum and

(ii) equaled or exceeded one hundred and twenty per centum of the average of such rates for the corresponding thirteen-week periods ending in each of the preceding two calendar years; or

(iii) for weeks of unemployment beginning on or after February first, two thousand nine until the week ending three weeks prior to the last week for which one hundred percent federal sharing is authorized by section 2005(a) of Public Law 111-5, or for weeks of unemployment ending three weeks prior to the last week for which Congress, pursuant to any future amendment of the Federal State Extended Compensation Act of 1970, has authorized one hundred percent federal sharing, which meet the following:

(A) the average rate of total unemployment (seasonably adjusted), as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent, and

(B) the average rate of total unemployment in the state (seasonably adjusted), as determined by the United States secretary of labor, for the three-month period referred to in item (A) of this clause, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years; or

(iv) for any period of high unemployment which shall otherwise meet all of the provisions of clause (iii) of this subparagraph, except that "eight percent" is substituted for "six and one-half percent" in item (A) of clause (iii) of this subparagraph.

(2) There shall be a "state 'off' indicator" for a week only, if for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subparagraph one of this paragraph result in an "on" indicator. Notwithstanding any provision of this article, there shall be a "state 'off' indicator" with respect to

clauses (iii) and (iv) of subparagraph one of this paragraph for the week ending three weeks prior to the last week for which one hundred percent federal sharing is authorized by section 2005(a) of Public Law 111-5 or for the week ending three weeks prior to the last week for which Congress, pursuant to any future amendment of the Federal State Extended Compensation Act of 1970, has authorized one hundred percent federal sharing.

(3) "Rate of insured unemployment" means for the purposes of this paragraph the percentage obtained upon dividing the average weekly number of persons filing claims for regular benefits in this state for unemployment with respect to the most recent thirteen consecutive week period, as determined by the commissioner on the basis of his or her reports to the secretary of labor of the United States, by the average monthly employment subject to this article for the first four of the last six calendar quarters ending before the end of such period. Computations required hereunder shall be made in accordance with regulations prescribed by the secretary of labor of the United States.

(4) "Rate of total unemployment" means, for the purposes of this paragraph, the average percentage obtained by dividing the total number of unemployed residents of the state for the most recent three consecutive months, as determined by the United States Bureau of Labor Statistics, by the total civilian labor force of the state for the same three-month period, also as determined by the United States Bureau of Labor Statistics. Computations required hereunder shall be made in accordance with regulations prescribed by the secretary of labor of the United States.

(5) Notwithstanding the provisions of subparagraphs one and two of this paragraph, with respect to compensation for weeks of unemployment beginning after January thirty-first, two thousand eleven, and ending on or before the expiration dates set forth in Public Law 111-312:

There shall be a "state 'on' indicator" for a week if, as determined by the commissioner in accordance with the regulations of the secretary of labor of the United States, the rate of insured unemployment for the period consisting of such week and the preceding twelve weeks

(i) equaled or exceeded five percentum and

(ii) equaled or exceeded one hundred twenty per centum of the average

of such rates for the corresponding thirteen-week periods ending in each of the preceding three calendar years; or

(iii) for weeks of unemployment beginning on or after February first, two thousand nine until the week ending three weeks prior to the last week for which one hundred percent federal sharing is authorized by section 2005(a) of Public Law 111-5, or for weeks of unemployment ending three weeks prior to the last week for which Congress, pursuant to any future amendment of the Federal State Extended Compensation Act of 1970, has authorized one hundred percent federal sharing, which meet the following:

(A) the average rate of total unemployment (seasonably adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent, and

(B) the average rate of total unemployment in the state (seasonably adjusted), as determined by the United States secretary of labor, for the three-month period referred to in item (A) of this clause, equals or exceeds one hundred ten percent of the average for any or all of the corresponding three-months periods ending in the three preceding calendar years.

(b) "Extended benefit period" means a period

(1) beginning with the third week after the first week for which there is a state "on" indicator, except that it may not begin before the fourteenth week after the end of a prior extended benefit period, and

(2) ending with the third week after the first week for which there is a state "off" indicator, except that the duration of such period shall in no event be less than thirteen weeks.

(c) "Eligibility period" of a claimant means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any provision of this article, a claimant's eligibility period shall include any alternative eligibility period provided for in section 2005(b) of Public Law 111-5 or other federal law.

(d) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C.

chapter 85, payable to a claimant under the provisions of this section for unemployment in his or her eligibility period.

(e) "Regular benefits" means benefits payable to a claimant under this article or under any other State unemployment insurance law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

2. Eligibility conditions. Extended benefits shall be payable to a claimant for effective weeks occurring within an eligibility period, provided the claimant

(a) has exhausted his or her rights to regular benefits under this article in his or her current benefit year or, his or her benefit year having expired prior to such week, he or she does not have the required weeks of employment or earnings to establish a new benefit year, and he or she has no rights to benefits under the unemployment insurance law of any other state;

(b) has no rights to unemployment benefits or allowances under the railroad unemployment insurance act, the trade expansion act of nineteen hundred sixty-two, the automotive products trade act of nineteen hundred sixty-five, or such other federal laws as are specified in regulations issued by the secretary of labor of the United States;

(c) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada unless, if he or she is seeking such benefits, the appropriate agency finally determines that he or she is not entitled to benefits under such law;

(d) has satisfied the conditions of this article, required to render a claimant eligible for regular benefits, which are applicable to extended benefits, including not being subject to a disqualification or suspension, or has satisfied the conditions of this article required to render a claimant eligible to participate in the self-employment assistance program pursuant to section five hundred ninety-one-a of this title and the Federal-State Extended Unemployment Compensation Act of 1970;

(e) is not claiming benefits pursuant to an interstate claim filed under the interstate benefit payment plan in a state where an extended benefit period is not in effect, except that this condition shall not

apply with respect to the first two effective weeks for which extended benefits shall otherwise be payable pursuant to an interstate claim filed under the interstate benefit payment plan; and

(f) in his or her base period has remuneration of one and one-half times the high calendar quarter earnings in accordance with section five hundred twenty-seven of this article.

3. Extended benefit amounts; rate and duration. Extended benefits shall be paid to a claimant

(a) at a rate equal to his or her rate for regular benefits during his or her applicable benefit year but

(b) for not more than fifty percentum of the total maximum amount of regular benefits payable in such benefit year, and

(c) if a claimant's benefit year ends within an extended benefit period, the remaining balance of extended benefits to which he or she would be entitled, if any, shall be reduced by the amount of benefits for which he or she was entitled to receive trade readjustment allowances under the federal trade act of nineteen hundred seventy-four during such benefit year, and

(d) for periods of high unemployment for not more than eighty effective days with respect to the applicable benefit year with a total maximum amount equal to eighty percent of the total maximum amount of regular benefits payable in such benefit year.

4. Charging of extended benefits. The provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article shall apply to benefits paid pursuant to the provisions of this section, and if they were paid for effective weeks following the end of a benefit year, they shall be deemed paid with respect to that benefit year. However, except for governmental entities as defined in section five hundred sixty-five and Indian tribes as defined in section five hundred sixty-six of this article, only one-half of the amount of such benefits shall be debited to the employers' account; the remainder thereof shall be debited to the general account, and such account shall be credited with the amount of payments received in the fund pursuant to the provisions of the federal-state extended unemployment compensation act. Notwithstanding the foregoing, where the state has entered an extended

benefit period triggered pursuant to subparagraph one of paragraph (a) of subdivision one of this section for which federal law provides for one hundred percent federal sharing of the costs of benefits, all charges shall be debited to the general account and such account shall be credited with the amount of payments received in the fund pursuant to the provisions of the federal-state extended unemployment compensation act or other federal law providing for one hundred percent federal sharing for the cost of such benefits.

5. Applicability of other provisions. (a) Unless inconsistent with the provisions of this section, all provisions of this article shall apply to extended benefits in the same manner as they apply to regular benefits.

(b) No weeks of total unemployment or partial unemployment shall be deemed to occur within an eligibility period during which a claimant fails to accept any offer of suitable work or fails to apply for suitable work to which he or she was referred by the commissioner, who shall make such referral if such work is available, or during which he or she fails to engage actively in seeking work by making a systematic and sustained effort to obtain work and providing tangible evidence of such effort, and until he or she has worked in employment during at least four subsequent weeks and earned remuneration of at least four times his or her benefit rate.

(c) For purposes of this subdivision, "suitable work" means any employment which is within the claimant's capabilities, but if he or she furnishes evidence that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the provisions of subdivision two of section five hundred ninety-three of this article shall apply instead of the provisions hereof.

(d) Notwithstanding the foregoing, a claimant shall not be disqualified for a failure to accept an offer of or apply for suitable work if

(i) the gross average weekly remuneration payable for the employment does not exceed the claimant's benefit rate plus the amount of any supplemental unemployment compensation benefits (as defined in section five hundred one (c) (17) (D) of the internal revenue code of nineteen hundred fifty-four) payable to the claimant for such week; or

(ii) the employment was not offered to the claimant in writing and was not listed with the department; or

(iii) such failure would not result in denial of regular benefits, to the extent that the provisions of this article for payment of regular benefits are not inconsistent with the provisions of this subdivision; or

(iv) the employment pays wages less than the higher of the minimum wage provided by section six (a) (1) of the fair labor standards act of nineteen hundred thirty-eight, without regard to any exemption, or the minimum wage provided under this chapter; or

(v) the claimant is in approved training pursuant to section five hundred ninety-nine of this title.

(e) No weeks of total unemployment or partial unemployment shall be deemed to occur within an eligibility period under section five hundred ninety-three of this article, until he or she has subsequently worked in employment in accordance with the requirements set forth in section five hundred ninety-three of this article.

6. Suspension of condition for state indicators. The governor, by executive order, upon advice by the commissioner and the commissioner of economic development may for a period specified in the order suspend the applicability of the provisions of clause (ii) of subparagraph one of paragraph (a) of subdivision one of this section, or of the reference to such subparagraph one in subparagraph two of such paragraph, or of both, if he or she finds that such suspension is required in order to assure adequate payment of benefits to unemployed workers in the state who are experiencing unemployment for an extended duration, provided the rate of insured unemployment for the applicable period equals or exceeds six per centum and such suspension is not in conflict with the provisions of the federal-state extended unemployment compensation act. The governor may at any time prolong or shorten the period specified in such order.

TITLE 7-A

SHARED WORK PROGRAMS

Section 602. Application.

602-a. Outreach.

- 603. Definitions.
- 604. Eligibility conditions.
- 605. Qualified employers; application.
- 605-a. Shared work program.
- 606. Revocation of approval.
- 607. Benefits.
- 608. Maximum payments.
- 609. Training.
- 610. Commencement.
- 611. Charging of benefits.
- 612. Severability.

§ 602. Application. This title shall apply to a claimant employed by an employer whose application to participate in a shared work program has been approved by the commissioner. The provisions of subdivision four of section five hundred twenty-seven, subdivisions three and seven of section five hundred ninety and subdivision four of section five hundred ninety-six of this article shall not be applicable to such claimant and he or she shall not be required to be available for work with any other employer nor shall he or she be required to search for work in accordance with subdivision two of section five hundred ninety-one of this article if he or she is available for his or her usual hours of work with his or her employer that has been accepted to participate in the shared work program. The other provisions of this article shall apply to such claimants and their employers to the extent that they are not inconsistent with the provisions of this title.

§ 602-a. Outreach. 1. The commissioner shall have the obligation and duty of providing informational materials regarding shared work program eligibility. Such materials shall be made available on the department's website and provided to each employer within the state annually through such means as the commissioner deems appropriate.

2. The department shall conduct outreach to employers within the state for purposes of providing information regarding the benefits of shared

work programs, including by remote and in-person information sessions, correspondence, assistance in completing an application for approval of a shared work program, and such other means as the commissioner may deem appropriate. The department shall consult and coordinate with the department of economic development, small business development centers and any other relevant agency, department, office, division, board, bureau, commission or authority.

3. The department shall report to the governor, the temporary president of the senate and the speaker of the assembly on any and all outreach efforts made pursuant to this section on an annual basis beginning one year after the effective date of this section.

§ 603. Definitions. For purposes of this title: "Total unemployment" shall mean the total lack of any employment during any week and "partial unemployment" shall mean any employment during any week that is less than full-time employment so long as the compensation paid is less than the claimant's weekly benefit rate plus the claimant's partial benefit credit, other than with an employer applying for a shared work program. "Work force" shall mean the total work force, a clearly identifiable unit or units thereof, or a particular shift or shifts. The work force subject to reduction shall consist of no less than two employees.

§ 604. Eligibility conditions. A claimant shall be eligible for benefits under this title if he or she works less than his or her normal hours in a week for his customary employer, and that employer has reduced or restricted the claimant's weekly hours of work, or has rehired a claimant previously laid off and reduced his or her weekly hours of work from those previously worked, as the result of a plan by the employer to stabilize the work force by a program of sharing the work remaining after a reduction in total hours of work and a corresponding reduction in wages, provided the program requires not less than a twenty percent nor more than a sixty percent reduction in hours and wages among the work force. A claimant receiving supplemental unemployment compensation benefits, as defined in section five hundred

one (c) (17) (D) of the internal revenue code of nineteen hundred fifty-four, shall not be eligible hereunder. Any employee who was otherwise eligible for benefits under this title but was denied benefits during the period beginning October first, two thousand one and ending on December first, two thousand one because more than five percent of his or her wages were derived from piece work, shall be entitled to make a retroactive claim for such benefits provided such claim is filed within sixty days of the effective date of this sentence.

§ 605. Qualified employers; application. An employer who has at least two full time employees may apply to participate in a shared work program. The written application shall be made according to such forms and procedures as the commissioner may specify and shall include such information as the commissioner may require, including such other information that the United States Secretary of Labor determines to be appropriate for purposes of a shared work program. The commissioner shall not approve such application unless the employer (1) certifies that for the duration of the program it will not eliminate or diminish health insurance, medical insurance, retirement benefits or any other fringe benefits provided to employees immediately prior to the application unless such benefits provided to employees that do not participate in the shared work program are reduced or diminished to the same extent as those employees that participate in the shared work program; (2) certifies that the collective bargaining agent for the employees, if any, has agreed to participate in the program; (3) certifies that if not for the shared work program to be initiated the employer would reduce or would have reduced its work force to a degree equivalent to the total number of working hours proposed to be reduced or restricted for all included employees; (4) certifies that it will not hire additional part time or full time employees for the affected work force while the program is in operation; (5) agrees that no participant of the program shall receive, in the aggregate, more than twenty-six weeks of benefits exclusive of the waiting week; (6) provides a description of how workers in the work force will be notified of the shared work program in advance of it taking effect, if feasible, and if such notice is not feasible, provides an explanation of why such notice

is not feasible; (7) provides an estimate of the number of workers who would be laid off if the employer could not participate in the shared work program; and (8) certifies that the terms of the employer's written plan and implementation shall be consistent with employer obligations under applicable federal and state laws.

§ 605-a. Shared work program. 1. Any group of employees who may reasonably be expected to experience an employment loss as a consequence of a reduction in workforce or have experienced employment loss as a consequence of a reduction in workforce may petition in writing the employer of such group of employees to apply to participate in a shared work program pursuant to this article for purposes of avoiding such reduction in workforce or for purposes of re-hiring any former employee or employees of the employer that were laid off due to a reduction in workforce. Such employer shall, no later than seven days after such petition has been made, respond in writing to such group of employees. Such response shall state the decision of the employer to apply or not to apply to participate in a shared work program, and the reason for deciding to apply or not to apply to participate in a shared work program, and if the employer did apply, the outcome of the application, if available.

2. No employer or their agent, or person acting as or on behalf of a hiring entity, or the officer or agent of any corporation, partnership, or limited liability company, shall discriminate, retaliate against, or take adverse action against any employee for exercising the rights afforded to them under this section.

§ 606. Revocation of approval. For good cause shown, the commissioner may, in his discretion, revoke approval of an employer's application previously granted. Good cause may include, but shall not be limited to, failure to comply with the assurances and certifications required under section six hundred five hereof, failure to supply information requested relative to the operation of a shared work program, unreasonable revision of productivity standards for the work force, or other conduct

or occurrences tending to defeat the purposes, intent and effective operation of a shared work program.

§ 607. Benefits. 1. Amount. An eligible claimant shall be paid benefits for any week equal to his or her benefit rate multiplied by the percentage of reduction of his or her wages resulting from reduced hours of work, but only if such percentage is no less than twenty percent. The weekly benefit amount shall be rounded off to the nearest dollar. A claimant shall not be paid such benefits in excess of twenty-six times the amount of regular compensation (including dependents' allowances) payable to such individual for a week of total unemployment during a benefit year.

2. Waiting period. A claimant shall not be entitled to benefits for the first week of unemployment under a shared work program unless he or she has served a waiting period in his or her benefit year pursuant to subdivision seven of section five hundred ninety of this article.

§ 608. Maximum payments. In no event shall total benefits paid in any benefit year, either under this title, the other titles of this article, or both, exceed the maximum amount for which a claimant would be eligible under the other titles of this article alone.

§ 609. Training. Eligible employees may participate, as appropriate, in training to enhance job skills if such program has been approved by the commissioner. Such training may include employer-sponsored training or worker training funded under the Workforce Investment Act of 1998.

§ 610. Commencement. A shared work program and payment of benefits to claimants thereunder shall begin with the first week following approval of an application by the commissioner or the first week specified by the employer, whichever is later.

§ 611. Charging of benefits. Benefits paid to a claimant shall be charged to the employers' accounts as provided in paragraph (e) of subdivision one of section five hundred eighty-one of this article.

§ 612. Severability. If any amendment contained in a clause, sentence, paragraph, section or part of this title shall be adjudged by the United States Department of Labor to violate requirements for maintaining benefit standards required of the state in order to be eligible for any financial benefit offered through federal law or regulation including, but not limited to, the waiver of interest on advances or the waiver of obligations to repay such advances to the state unemployment insurance fund, such amendments shall be severed from this act and shall not affect, impair or invalidate the remainder thereof.

TITLE 8

HEARINGS AND APPEALS

Section 620. Referees' hearings.

621. Appeals to appeal board.

622. Rules governing hearings and appeals.

623. Decisions final.

624. Appeals to courts.

625. Undertaking on appeal.

626. Exclusive procedure.

§ 620. Referees' hearings. 1. Disputed claims for benefits. (a) A claimant who is dissatisfied with an initial determination of his or her claim for benefits or any other party, including any employer whose employer account percentage might be affected by such determination may, within thirty days after the mailing or personal delivery of notice of such determination, request a hearing. The referee may extend the time fixed for requesting a hearing, upon evidence that the physical condition or mental incapacity of the claimant prevented the claimant from filing an appeal within thirty days of the initial determination.

Any employer whose employer account percentage might be affected by such determination, irrespective of whether or not such employer was a party to a hearing brought hereunder, shall have access to all records of any hearing brought hereunder by any party relating to such determination, provided, however, that those records shall be subject to redaction or shall be withheld in accordance with applicable federal or state statutory and regulatory requirements governing information confidentiality and personal privacy, including, but not limited to, article six and article six-A of the public officers law.

(b) When the initial determination of a claim for benefits, upon which a hearing has been requested, involves the question whether any person is or was an employer within the meaning of this article and is or was liable for the payment of contributions under this article, or the question whether an employer has fully complied with the obligations imposed by this article, written notice of the hearing shall be given to such persons or employer, either personally or by mail, and thereupon he, she or such employer shall be deemed a party to the proceeding, entitled to be heard. Upon such notice having been given, the referee may then decide such question or questions and any other issue related thereto, and his or her decision shall not be deemed limited in its effect to the immediate claimant making the claim for benefits but shall be deemed a general determination of such questions with respect to all those employed by such person or employer for all the purposes of this article, and such decision shall be conclusive and binding upon the claimant and such person or employer, subject, however, to the right to appeal hereinafter provided.

2. Contested determinations, rules, or orders. Any employer who claims to be aggrieved by the commissioner's determination of the amount of the employer's contributions or by any other rule or order of the commissioner under any provision of this article may apply to the commissioner for a hearing within thirty days after mailing or personal delivery of notice of such determination, rule, or order.

3. Decisions. Every hearing as herein provided for shall be held by a referee who shall render his or her decision within five days after the hearing is concluded. Written notice of the referee's decision,

containing the reasons therefor, shall be promptly given to the claimant or employer, to the commissioner, and to any party affected thereby who appeared at the hearing. Publication of a referee's decision or of any appeal board decision shall be subject to redaction or shall be withheld in accordance with applicable federal or state statutory and regulatory requirements governing information confidentiality and personal privacy, including, but not limited to, article six and article six-A of the public officers law.

The decision of a referee shall be deemed the decision of the appeal board from the date of the filing thereof in the department, unless an appeal is taken from such decision to the board in accordance with the provisions of this article or unless the board on its own motion or on application duly made to it modify or rescind such decision.

4. Whenever any deaf person is a party to a hearing conducted before a referee, or a witness thereon, the referee shall in all instances, appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority to interpret the proceedings to and the testimony of such deaf person. The commissioner shall determine a reasonable fee for all such interpreting services, the cost of which shall constitute expenses under this article.

§ 621. Appeals to appeal board. 1. Disputed claims for benefits. Within twenty days after the mailing or personal delivery of notice of the decision of a referee on contested benefit claims, the claimant and the employer, provided he appeared at the hearing, may appeal to the appeal board by filing a notice of appeal in the local state employment office in accordance with such rules as the appeal board shall prescribe. Within the same period of time and in the same manner, the commissioner may also appeal to the appeal board, regardless of whether or not he appeared or was represented at the hearing before the referee.

2. Contested determinations, rules, or orders. Within twenty days after the mailing or personal delivery of notice of the decision after a hearing on contested determinations, rules or orders by the

commissioner, the employer may take an appeal to the appeal board, provided he appeared at the hearing, by filing a notice of appeal with the commissioner, and the commissioner may likewise within such period take an appeal to the board by giving written notice thereof to the employer, regardless of whether or not the commissioner appeared or was represented at the hearing before the referee.

3. Conduct of appeals. The appeal board may decide any case appealed to it under any provision of this article on the basis of the record and of evidence previously submitted in such case, or it may in its discretion hear argument or hold a further hearing, or remand such case to a referee for such purposes as it may direct. If a further hearing is to be held or argument had, the board shall fix a time therefor and shall notify the commissioner, regardless of whether or not he had appeared or been represented at the hearing before the referee, and any other party affected, provided such other party appeared at the hearing before the referee. The board may affirm or reverse, wholly or in part, or may modify the decision appealed from and shall render its decision promptly and shall thereupon send written notice thereof together with the reasons therefor to the commissioner and any other party affected thereby who appeared at the hearing before the referee.

§ 622. Rules governing hearings and appeals. 1. Rules and regulations. The manner in which disputes and appeals shall be presented before referees and the appeal board, respectively, and the conduct of hearings before referees and the board shall be governed by suitable rules and regulations established by the board.

2. Evidence and procedure. At any hearing held as herein provided, evidence may be offered to support a determination, rule, or order or to prove that it is incorrect. The appeal board and the referees, in hearings and appeals under any provision of this article, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties. Hearings governed by this article may be closed and hearing transcripts

may be redacted in accordance with applicable federal or state statutory and regulatory requirements governing information confidentiality and personal privacy, including, but not limited to, article six and article six-A of the public officers law.

§ 623. Decisions final. 1. A decision of a referee, if not appealed from, shall be final on all questions of fact and law. A decision of the appeal board shall be final on all questions of fact and, unless appealed from, shall be final on all questions of law.

2. No finding of fact or law contained in a decision rendered pursuant to this article by a referee, the appeal board or a court shall preclude the litigation of any issue of fact or law in any subsequent action or proceeding; provided, however, that this subdivision shall not apply to causes of action which (i) arise under this article, (ii) seek to collect or challenge liability for unemployment insurance contributions, (iii) seek to recover overpayments of unemployment insurance benefits, or (iv) allege that a claimant or employer was denied constitutional rights in connection with the administrative processing, hearing, determination or decision of a claim for benefits or assessment of liability for unemployment insurance contributions.

§ 624. Appeals to courts. Within thirty days after the mailing or personal delivery of notice of a decision by the appeal board, the commissioner or any other party affected thereby who appeared at the appeal before the board may appeal questions of law involved in such decision to the appellate division of the supreme court, third department. The board may also, in its discretion, certify to such court questions of law involved in its decisions. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court except cases arising under the workmen's compensation law. The commissioner shall be represented in court by the attorney-general without additional compensation. An appeal may be taken from the decision of such court to the court of appeals in the same manner and subject to the same

limitations, not inconsistent herewith, as is provided for in civil action. It shall not be necessary to file exception to the rulings of the appeal board. No bond shall be required to be filed upon an appeal to the appellate division or to the court of appeals, except as hereinafter provided. Upon final determination of an appeal, the appeal board shall enter an order in accordance with such determination.

625. Undertaking on appeal. No appeal shall be taken by an employer from a decision of the appeal board determining a sum to be due from such employer unless the amount involved, with interest and penalties thereon, if any, shall be first deposited with the commissioner and an undertaking filed with the commissioner, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that the employer will pay all costs and charges which may be adjudged against him in the prosecution of such appeal. At the option of the employer, such undertaking may be in a sum sufficient to cover the said amount, interest, penalties, costs, and charges as aforesaid, in which event the employer shall not be required to deposit such amount, with the interest and penalties, as a condition precedent to the taking of an appeal.

§ 626. Exclusive procedure. The procedure herein provided for hearings before referees with respect to any determination, rule, or order of the commissioner, and for decisions thereon and for appeals therefrom, first to the appeal board and thereafter to the courts, shall be the sole and exclusive procedure notwithstanding any other provision of law.

TITLE 9

PENALTIES AND MISDEMEANORS

Section 630. Penalties.

631. Corporation officers' liability.

632. False statements or representations.

633. Wilful failure to pay contributions.

634. Refusal to permit inspections of records.

635. Deductions from wages.

636. No fees to be charged for services rendered by free public employment bureaus.

§ 630. Penalties. Any misdemeanor defined in this title shall be punishable by a fine of not more than five hundred dollars or imprisonment for not more than one year, or both.

The penalties and misdemeanors imposed by this title are in addition to those otherwise prescribed in this entire article.

§ 631. Corporation officers' liability. If a corporation is convicted of any violation under this title, the president, secretary, treasurer, or officers exercising corresponding functions shall each be guilty of a misdemeanor.

§ 632. False statements or representations. 1. Benefits and contributions. Any person shall be guilty of a misdemeanor who wilfully makes a false statement or representation

(a) with the effect of obtaining, either for himself or for any other person, any benefit or payment under the provision of this article or of any similar law of another state or the United States in regard to which this state acted as agent pursuant to an arrangement authorized by this article, or

(b) in order to reduce the amount of contributions to the fund.

2. Sale price of commodities. Any person who, in connection with the sale or offer for sale of any commodity or service, or for the purpose of making such sale, makes any statement, written or oral, ascribing a particular part of the price of such commodity or service to a contribution imposed under this article knowing that such statement is false or that the contribution is not so great as the portion of such price ascribed to such contribution, shall be guilty of a misdemeanor.

§ 633. Wilful failure to pay contributions. Any person who wilfully refuses or fails to pay a contribution to the fund shall be guilty of a misdemeanor.

§ 634. Refusal to permit inspections of records. Any person who refuses to allow the commissioner or his authorized representative to inspect his payroll or other records or documents relative to the enforcement of this article shall be guilty of a misdemeanor.

§ 635. Deductions from wages. Any employer who shall make a deduction from the remuneration of any employee to pay any portion of the contribution which the employer is required to make shall be guilty of a misdemeanor.

§ 636. No fees to be charged for services rendered by free public employment bureaus. A person connected with or employed in a free public employment bureau, who shall charge or receive directly or indirectly any fee or compensation from any person applying to such bureau for help or employment, is guilty of a misdemeanor.

TITLE 10

GENERAL AND MISCELLANEOUS PROVISIONS

Section 640. Prosecution and litigation.

642. Separability of provisions.

643. Saving clause.

§ 640. Prosecution and litigation. The failure by any person to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the industrial commissioner in Albany and committed in part in the place where the person resides or has a place for the regular transaction of business.

The certificate of the industrial commissioner or deputy industrial commissioner to the effect that contribution has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this article, shall be prima-facie evidence that such contribution has not been paid, that such report has not been filed, or that such information has not been supplied.

§ 642. Separability of provisions. If any provision of this article or the application thereof to any person or circumstance is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 643. Saving clause. The legislature reserves the right to amend, alter, or repeal any provision of this article; and no person shall be or be deemed to be vested with any property or other right by virtue of the enactment or operation of this article.

ARTICLE 19

MINIMUM WAGE ACT

Section 650. Statement of public policy.

651. Definitions.

652. Minimum wage.

653. Investigation of adequacy of wages.

654. Basis of changes in minimum wage.

655. Wage board; procedure; report.

656. Action by commissioner upon wage board report.

657. Appeals from wage orders and regulations.

658. Appeals from compliance orders.

659. Reconsideration of wage orders and regulations.

660. Commissioner's powers of investigation.

661. Records of employers.

662. Penalties.

663. Civil action.

664. Referrals by employment agencies.

665. Savings clause.

§ 650. Statement of public policy. There are persons employed in some occupations in the state of New York at wages insufficient to provide adequate maintenance for themselves and their families. Such employment impairs the health, efficiency, and well-being of the persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that wages be supplemented by the payment of public moneys for relief or other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of this state and injures the overall economy.

Accordingly, it is the declared policy of the state of New York that such conditions be eliminated as rapidly as practicable without substantially curtailing opportunities for employment or earning power. To this end minimum wage standards shall be established and maintained.

§ 651. Definitions. As used in this article:

1. "Commissioner" means the industrial commissioner.
2. "Department" means the labor department.
3. "Board" or "wage board" means a board created as provided in this article.
4. "Occupation" means an industry, trade, business or class of work in which employees are gainfully employed.
5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who

is employed or permitted to work: (a) on a casual basis in service as a part time baby sitter in the home of the employer; (b) in a bona fide executive, administrative, or professional capacity; (c) as an outside salesman; (d) as a driver engaged in operating a taxicab; (e) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (f) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (g) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (h) in or for such a religious, educational or charitable institution if such individual is a student; (i) in or for such a religious, educational or charitable institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; (j) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (k) as a staff counselor in a children's camp; (l) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; (m) by a federal, state or municipal government or political subdivision thereof; (n) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year, where (1) any such volunteer shall be at least eighteen years of age, (2) a business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article, and (3) such notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for

thirty-six months; (o) in the delivery of newspapers or shopping news to the consumer by a person who is not performing commercial goods transportation services for a commercial goods transportation contractor within the meaning of article twenty-five-C of this chapter; or (p) having entered into a contract to play baseball at the minor league level and who is compensated pursuant to the terms of a collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of employees. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner.

"Employee" also includes any individual employed or permitted to work in any non-teaching capacity by a school district or board of cooperative educational services except that the provisions of sections six hundred fifty-three through six hundred fifty-nine of this article shall not be applicable in any such case.

6. "Employer" includes any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as employer.

7. "Wage" includes allowances, in the amount determined in accordance with the provisions of this article, for gratuities and, when furnished by the employer to employees, for meals, lodging, apparel, and other such items, services and facilities.

8. "Non-profitmaking institution" means any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

9. "Food service worker" means any employee primarily engaged in the serving of food or beverages to guests, patrons or customers in the hotel or restaurant industries, including, but not limited to, wait staff, bartenders, captains and bussing personnel; and who regularly receive tips from such guests, patrons or customers.

§ 652. Minimum wage. 1. Statutory. 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, and until December 31, 2016, 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.

(a) New York City. (i) Large employers. Every employer of eleven or more employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

- \$11.00 per hour on and after December 31, 2016,
- \$13.00 per hour on and after December 31, 2017,
- \$15.00 per hour on and after December 31, 2018, 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.

(ii) Small employers. Every employer of ten or less employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

- \$10.50 per hour on and after December 31, 2016,
- \$12.00 per hour on and after December 31, 2017,
- \$13.50 per hour on and after December 31, 2018,
- \$15.00 per hour on and after December 31, 2019, 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) Remainder of downstate. Every employer shall pay to each of its employees for each hour worked in the counties of Nassau, Suffolk and Westchester a wage not less than:

\$10.00 per hour on and after December 31, 2016,
\$11.00 per hour on and after December 31, 2017,
\$12.00 per hour on and after December 31, 2018,
\$13.00 per hour on and after December 31, 2019,
\$14.00 per hour on and after December 31, 2020,
\$15.00 per hour on and after December 31, 2021,

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) Remainder of state. Every employer shall pay to each of its employees for each hour worked outside of the city of New York and the counties of Nassau, Suffolk, and Westchester, a wage of not less than:

\$9.70 on and after December 31, 2016,
\$10.40 on and after December 31, 2017,
\$11.10 on and after December 31, 2018,
\$11.80 on and after December 31, 2019,
\$12.50 on and after December 31, 2020,

and on each following December thirty-first up to and until December 31, 2022, a wage published by the commissioner on or before October first, based on the then current minimum wage increased by a percentage determined by the director of the budget in consultation with the commissioner, with the result rounded to the nearest five cents, totaling no more than fifteen dollars, where the percentage increase shall be based on indices including, but not limited to, (i) the rate of inflation for the most recent twelve month period ending June of that year based on the consumer price index for all urban consumers on a national and seasonally unadjusted basis (CPI-U), or a successor index as calculated by the United States department of labor, (ii) the rate of state personal income growth for the prior calendar year, or a successor index, published by the bureau of economic analysis of the United States department of commerce, or (iii) wage growth; 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 schedules established in paragraphs (a) and (b) of

this subdivision shall not be deemed to be the minimum wage under this subdivision for purposes of the calculations specified in subdivisions one and two of section five hundred twenty-seven of this chapter.

1-a. Annual minimum wage from January 1, 2024 to December 31, 2026.

(a) New York city. Notwithstanding subdivision one of this section, every employer regardless of size shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

\$16.00 on and after January 1, 2024,

\$16.50 on and after January 1, 2025,

\$17.00 on and after January 1, 2026, 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) Remainder of downstate. Notwithstanding subdivision one of this section, every employer shall pay to each of its employees for each hour worked in the counties of Nassau, Suffolk, and Westchester, a wage of not less than:

\$16.00 on and after January 1, 2024,

\$16.50 on and after January 1, 2025,

\$17.00 on and after January 1, 2026, 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) Remainder of state. Notwithstanding subdivision one of this section, every employer shall pay to each of its employees for each hour worked outside the city of New York and the counties of Nassau, Suffolk, and Westchester, a wage of not less than:

\$15.00 on and after January 1, 2024,

\$15.50 on and after January 1, 2025,

\$16.00 on and after January 1, 2026, 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.

1-b. Annual minimum wage increase beginning on January first, two thousand twenty-seven. (a) New York city. On and after January first,

two thousand twenty-seven, every employer regardless of size shall pay to each of its employees for each hour worked in the city of New York, a wage of not less than the adjusted minimum wage rate established annually by the commissioner. Such adjusted minimum wage rate shall be determined by increasing the then current year's minimum wage rate by the rate of change in the average of the three most recent consecutive twelve-month periods between the first of August and the thirty-first of July, each over their preceding twelve-month periods published by the United States department of labor non-seasonally adjusted consumer price index for northeast region urban wage earners and clerical workers (CPI-W) or any successor index as calculated by the United States department of labor, with the result rounded to the nearest five cents.

(b) Remainder of downstate. On and after January first, two thousand twenty-seven, every employer shall pay to each of its employees for each hour worked in the counties of Nassau, Suffolk, and Westchester, a wage of not less than the adjusted minimum wage rate established annually by the commissioner. Such adjusted minimum wage rate shall be determined by increasing the then current year's minimum wage rate by the rate of change in the average of the three most recent consecutive twelve-month periods between the first of August and the thirty-first of July, each over their preceding twelve-month periods published by the United States department of labor non-seasonally adjusted consumer price index for the northeast region urban wage earners and clerical workers (CPI-W) or any successor index as calculated by the United States department of labor, with the result rounded to the nearest five cents.

(c) Remainder of state. On and after January first, two thousand twenty-seven, every employer shall pay to each of its employees for each hour worked outside of the city of New York and the counties of Nassau, Suffolk, and Westchester a wage of not less than the adjusted minimum wage rate established annually by the commissioner. Such adjusted minimum wage rate shall be determined by increasing the then current year's minimum wage rate by the rate of change in the average of the three most recent consecutive twelve-month periods between the first of August and the thirty-first of July, each over their preceding twelve-month periods published by the United States department of labor non-seasonally adjusted consumer price index for northeast region urban wage earners and clerical workers (CPI-W) or any successor index as

calculated by the United States department of labor, with the result rounded to the nearest five cents.

(d) Exceptions. Effective January first, two thousand twenty-seven and thereafter, notwithstanding paragraphs (a), (b) and (c) of this subdivision, there shall be no increase in the minimum wage in the state for the following year if any of the following conditions are met, provided, however, that such exception shall be limited to no more than two consecutive years:

(i) the rate of change in the average of the most recent period of the first of August to the thirty-first of July over the preceding period of the first of August to the thirty-first of July published by the United States department of labor non-seasonally adjusted consumer price index for the northeast region urban wage earners and clerical workers (CPI-W), or any successor index as calculated by the United States department of labor, is negative;

(ii) the three-month moving average of the seasonally adjusted New York state unemployment rate as determined by the U-3 measure of labor underutilization for the most recent period ending the thirty-first of July as calculated by the United States department of labor rises by one-half percentage point or more relative to its low during the previous twelve months; or

(iii) seasonally adjusted, total non-farm employment for New York state in July, calculated by the United States department of labor, decreased from the seasonally adjusted, total non-farm employment for New York state in April, and seasonally adjusted, total non-farm employment for New York state in July, calculated by the United States department of labor, decreased from the seasonally adjusted, total non-farm employment for New York state in January.

(e) The commissioner shall publish the adjusted minimum wage rates no later than the first of October of each year to take effect on the following first day of January.

2. Existing wage orders. The minimum wage orders in effect on the effective date of this act shall remain in full force and effect, except as modified in accordance with the provisions of this article; provided, however, that the minimum wage order for farm workers codified at part one hundred ninety of title twelve of the New York code of rules and

regulations in effect on January first, two thousand twenty shall be deemed to be a wage order established and adopted under this article and shall remain in full force and effect except as modified in accordance with the provisions of this article or article nineteen-A of this chapter.

Such minimum wage orders shall be modified by the commissioner to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage as provided in subdivisions one, one-a, and one-b of this section, including the amounts specified in such minimum wage orders as allowances for gratuities, and when furnished by the employer to its employees, for meals, lodging, apparel and other such items, services and facilities. All amounts so modified shall be rounded off to the nearest five cents. The modified orders shall be promulgated by the commissioner without a public hearing, and without reference to a wage board, and shall become effective on the effective date of such increases in the minimum wage except as otherwise provided in this subdivision, notwithstanding any other provision of this article.

3. Non-profitmaking institutions. (a) Application of article. This article shall apply to non-profitmaking institutions.

(b) Option available to non-profitmaking institutions. The provisions of any wage order issued under this article shall not apply, however, to any non-profitmaking institution which pays and continues to pay to each of its employees in every occupation a wage, exclusive of allowances, of not less than the minimum wage provided in subdivision one of this section provided that such institution had certified under oath to the commissioner, on or before September first, nineteen hundred sixty, that on or before October first, nineteen hundred sixty it would pay and thereafter intended to pay such wage to each of its employees in every occupation and provided further that all the provisions of this article have not become applicable to such institution by operation of paragraph (c) of this subdivision. If such institution was not organized or did not hire any employees as defined in subdivision five of section six hundred fifty-one of this chapter before September first, nineteen hundred sixty, such provisions shall not apply so long as, commencing

six months after it was organized, or first employed such employees it paid and continues to pay such wage to each of its employees in every occupation, provided that such institution certified under oath within six months after it was organized or first employed such employees that it would pay and thereafter intended to pay such wage to each of its employees in every occupation and provided further that all the provisions of this article have not become applicable to such institution by operation of paragraph (c) of this subdivision.

(c) Termination of option. All the provisions of this article, including all of the provisions of any wage order issued thereunder which, but for the operation of paragraph (b) of this subdivision, would apply to any non-profitmaking institution, shall become fully applicable to such institution sixty days after such institution files a notice with the commissioner requesting that the provisions of such wage order apply to it, or immediately upon the issuance of an order by the commissioner finding that such institution has failed to pay the wages provided in paragraph (b) of this subdivision, but in no event shall any such order discharge the obligation of such institution to pay the wages provided by paragraph (b) of this subdivision for any period prior to the issuance of such order.

4. Notwithstanding subdivisions one, one-a, one-b, and two of this section, the wage for an employee who is a food service worker receiving tips shall be a cash wage of at least two-thirds of the minimum wage rates set forth in subdivision one of this section, rounded to the nearest five cents or seven dollars and fifty cents, whichever is higher, provided that the tips of such an employee, when added to such cash wage, are equal to or exceed the minimum wage in effect pursuant to subdivisions one, one-a, and one-b of this section and provided further that no other cash wage is established pursuant to section six hundred fifty-three of this article.

5. Notwithstanding subdivisions one, one-a, one-b, and two of this section, meal and lodging allowances for a food service worker receiving a cash wage pursuant to subdivision four of this section shall not increase more than two-thirds of the increase required by subdivision two of this section as applied to state wage orders in effect pursuant

to subdivisions one, one-a, and one-b of this section.

6. Notwithstanding subdivision one of this section, and sections six hundred fifty-three and six hundred fifty-five of this article, on or after January first, two thousand nineteen, and each January first thereafter until such time as the minimum wage is fifteen dollars in all areas of the state, the division of budget shall conduct an analysis of the state of the economy in each region, and the effect of the minimum wage increases listed in this section, to determine whether there should be a temporary suspension or delay in any scheduled increases. In conducting its analysis, the division of budget shall consult the department, the department's division of research and statistics, the United States department of labor, the federal reserve bank of New York and other economic experts. The division of budget will reference well-established economic indexes and accepted economic factors, including those set forth in section six hundred fifty-four of this article, to justify and explain its decision. After reviewing such indexes and factors, the division shall determine whether scheduled increases in the minimum wage shall continue up to and including fifteen dollars. The division of budget will issue a report and recommendation to the commissioner, who shall take action on that report and recommendation pursuant to section six hundred fifty-six of this article.

§ 653. Investigation of adequacy of wages. (1) The commissioner shall have power on his own motion to cause an investigation to be made of the wages being paid to persons employed in any occupation or occupations to ascertain whether the minimum wages established in accordance with the provisions of this article are sufficient to provide adequate maintenance and to protect the health of the persons employed in such occupation or occupations. The commissioner shall, on the petition of fifty or more residents of the state engaged in or affected by an occupation or occupations sought to be investigated, cause such an investigation of such occupation or occupations to be conducted. If, on the basis of information in his possession with or without such an investigation, the commissioner is of the opinion that any substantial

number of persons employed in any occupation or occupations are receiving wages insufficient to provide adequate maintenance and to protect their health, he shall appoint a wage board to inquire into and report and recommend adequate minimum wages and regulations for employees in such occupation or occupations.

(2) The commissioner shall, within six months after enactment of any change in the statutory minimum wage set forth in subdivision one of section six hundred fifty-two of this article, appoint a wage board to inquire and report and recommend any changes to wage orders governing wages payable to food service workers. Such wage board shall be established consistent with the provisions of subdivision one of section six hundred fifty-five of this article, except the representatives of the employees shall be selected upon the nomination of the state American Federation of Labor/Congress of Industrial Organizations; and provided, further, that the representatives of the employers shall be selected upon the nomination of the New York State Business Council. Any wage order authorizing a lesser wage than the previously and statutorily mandated minimum wage for such employees shall be reviewed by the wage board to ascertain at what level such wage order is sufficient to provide adequate maintenance and to protect the health and livelihood of employees subject to such a wage order after a statutory increase in the mandated minimum wage.

§ 654. Basis of changes in minimum wage. In establishing minimum wages and regulations for any occupation or occupations pursuant to the provisions of the following sections of this article, the wage board and the commissioner shall consider the amount sufficient to provide adequate maintenance and to protect health and, in addition, the wage board and the commissioner shall consider the value of the work or classification of work performed, and the wages paid in the state for work of like or comparable character.

§ 655. Wage board; procedure; report. 1. Wage board. A wage board shall be composed of not more than three representatives of employers, an equal number of representatives of employees and an equal number of

persons selected from the general public. The commissioner shall appoint the members of the board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by employers and employees in such occupation or occupations. The commissioner shall designate as the chairman one of the members selected from the general public. The members of the board shall not receive a salary or other compensation, but shall be paid actual and necessary traveling expenses while engaged in the performance of their duties.

2. Organization. The chairman of the board is authorized to delegate to a panel of the members, composed of an equal number of employer, employee and public members, any or all of the powers which the board itself may exercise, except as otherwise provided in subdivision four of this section. Two-thirds of the members of the board or of a panel, as the case may be, shall constitute a quorum. The commissioner may from time to time formulate rules governing the manner in which the wage board shall function and perform its duties under this article.

3. Powers. The wage board shall have power to conduct public hearings. The board may also consult with employers and employees, and their respective representatives, in the occupation or occupations involved, and with such other persons, including the commissioner, as it shall determine. The board shall also have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to any matters under inquiry. Such subpoenas shall be signed and issued by the chairman of the board, or any other public member, and shall be served and have the same effect as if issued out of the supreme court. The board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the supreme court. The board shall not be bound by common law or statutory rules of procedure or evidence.

4. Report. Within forty-five days of the appointment of the wage board to inquire into wages in any occupation or occupations, the board shall (a) conduct public hearings and (b) submit to the commissioner a report,

including its recommendations as to minimum wages and regulations for the employees in such occupation or occupations. The report and recommendations of the board shall be submitted only after a vote of not less than a majority of all its members in support of such report and recommendations. No report or recommendation of a panel shall be submitted without the prior vote of not less than a majority of all the members of the board in support of such report or recommendation. The commissioner may extend up to ninety days the time in which the report shall be submitted.

5. Minimum wage recommendations. (a) The minimum wage recommended by the wage board shall not be in excess of an amount sufficient to provide adequate maintenance and to protect the health of the employees. In no event, however, shall any minimum wage recommended by the board be less than the wage specified in section six hundred fifty-two of this chapter, except (1) as expressly otherwise provided in paragraph (c) of this subdivision, and (2) where the board finds conditions of employment are such as to make an hourly rate impracticable, in which event the board may recommend a wage rate other than an hourly rate, provided that such recommended rate carries out the purposes of this article and safeguards the minimum wage specified in section six hundred fifty-two of this chapter. The board may classify employments in any occupation according to the nature of the work rendered and recommend minimum wages in accordance with such classification. The board may also recommend a minimum wage varying with localities if, in the judgment of the board, conditions make such variation appropriate.

(b) In addition to recommendations for minimum wages, the wage board may recommend such regulations as it deems appropriate to carry out the purposes of this article and to safeguard minimum wages. Such recommended regulations may include regulations defining the exclusions from the term "employee" set forth in subdivision five of section six hundred fifty-one. Such recommended regulations may also include, but are not limited to, regulations governing piece rates, incentives, and commissions in relation to time rates; overtime or part-time rates; waiting time and call-in pay rates; wage rate provisions governing split shift, excessive spread of hours and weekly guarantees; and allowances for gratuities and, when furnished by the employer to his employees, for

meals, lodging, apparel and other such items, services and facilities.

(c) The wage board may also recommend, to the extent necessary in order to prevent curtailment of opportunities for employment, regulations for (1) the employment of learners and apprentices, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and subject to such limitations as to time, number, proportion and length of service as shall be prescribed in such regulation, (2) the employment of individuals whose earning capacity is affected or impaired by youth or age or by physical or mental deficiency or injury, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulation, (3) the establishment of a period not extending beyond seventeen consecutive weeks during which a resort hotel or camp may employ students under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article as shall be prescribed in such regulation, and (4) the employment of residential employees in a non-profit making religious, charitable or educational organization or in a non-profit making college or university sorority or fraternity under special certificates issued by the commissioner at such weekly wage as shall be prescribed in such regulation.

§ 656. Action by commissioner upon wage board report. When the wage board submits its report and recommendations to the commissioner, the commissioner shall forthwith file them with the secretary of the department. Within five days of their receipt, the commissioner shall publish a notice of such filing in at least ten newspapers of general circulation in the state. Any objections to the report and recommendations shall be filed with the commissioner within fifteen days after such publication. The commissioner may, if he deems it appropriate, order oral argument, which shall be scheduled before the commissioner, or such representative as he may designate, on five days' notice to the persons who have filed objections to the report and recommendations. Whether or not oral argument is scheduled, the commissioner shall by order accept or reject the board's report and

recommendations within forty-five days after filing with the secretary of the department. The commissioner may by such order modify the regulations recommended by the board. Such order of the commissioner shall become effective thirty days after publication, in the manner prescribed in this section, of a notice of such order. The commissioner may, within such forty-five days, confer with the wage board, which may make such changes in its report or recommendations as it may deem fit. The commissioner also may, within such forty-five days, remand the matter to the board for such further proceeding as he may direct.

§ 657. Appeals from wage orders and regulations. 1. Finality. Any minimum wage order and regulation issued by the commissioner pursuant to this article shall, unless appealed from as provided in this section, be final. The findings of the commissioner as to the facts shall be conclusive on any appeal from an order of the commissioner issued pursuant to sections six hundred fifty-two, six hundred fifty-six, or six hundred fifty-nine.

2. Review by board of standards and appeals. Any person in interest, including a labor organization or employer association, in any occupation for which a minimum wage order or regulation has been issued under the provisions of this article who is aggrieved by such order or regulation may obtain review before the board of standards and appeals by filing with said board, within forty-five days after the date of the publication of the notice of such order or regulation, a written petition requesting that the order or regulation be modified or set aside. A copy of such petition shall be served promptly upon the commissioner. On such appeal, the commissioner shall certify and file with the board of standards and appeals a transcript of the entire record, including the testimony and evidence upon which such order or regulation was made and the report of the wage board. The board of standards and appeals, upon the record certified and filed by the commissioner, shall, after oral argument, determine whether the order or regulation appealed from is contrary to law. Within forty-five days after the expiration of the time for the filing of a petition, the board of standards and appeals shall issue an order confirming, amending or

setting aside the order or regulation appealed from. The appellate jurisdiction of the board of standards and appeals shall be exclusive and its order final except that the same shall be subject to an appeal taken directly to the appellate division of the supreme court, third judicial department, within sixty days after its order is issued. The commissioner shall be considered an aggrieved party entitled to take an appeal from an order of the board of standards and appeals.

3. Security. The taking of an appeal by an employer to the board of standards and appeals shall not operate as a stay of a minimum wage order or regulation issued under this article unless and until, and only so long as, the employer shall have provided security determined by the board of standards and appeals in accordance with this section. The security shall be sufficient to guarantee to the employees affected the payment of the difference between the wage they receive and the minimum wage they would be entitled to receive under the terms of the minimum wage order or regulation (such difference being hereinafter referred to as "underpayments") in the event that such order or regulation is affirmed by the board of standards and appeals. The security shall be either:

a. A bond filed with the board of standards and appeals issued by a fidelity or surety company authorized to do business in this state. The bond shall be sufficient to cover the amount of underpayments due at the time the bond is filed with the board of standards and appeals and the amount of underpayments that can reasonably be expected to accrue within the following sixty days; or

b. An escrow account established by the employer in behalf of employees and deposited in a bank or trust company in this state, of which the employer has notified the board of standards and appeals in writing that he has established such account. The account shall be sufficient to cover the amount of underpayments due at the time of notification to the board of standards and appeals and shall be kept current by the employer depositing therein the amount of underpayments accruing each and every pay period. Such deposits shall be made no later than the day on which the wages for each pay period are payable. As an

alternative thereto, an employer may deposit the amount of underpayments due at the time the deposit is made and the amount of underpayments that can reasonably be expected to accrue within the following sixty days, as determined by the board of standards and appeals. The employer shall keep accurate records showing the total amount of each deposit, the period covered, and the name and address of each employee and the amount deposited to his account. The employees' escrow account shall be deemed to be a trust fund for the benefit of the employees affected, and no bank or trust company shall release funds in such account without the written approval of the board of standards and appeals.

4. Maintenance of security. The commissioner, at the request and on behalf of the board of standards and appeals, shall have the right to inspect the books and records of every employer who appeals from an order or who provides a security in accordance with subdivision eight of this section. In the event that the board of standards and appeals finds that the security provided by an employer is insufficient to cover the amount of underpayments, it shall notify the employer to increase the amount of the security. If the employer fails to increase the security to the amount requested within seven days after such notice, the stay shall be terminated. If the board of standards and appeals finds that the amount of the security is excessive, it shall decrease the amount of security required.

5. Review of determination as to security. Notwithstanding any provision in this chapter, any determination of the board of standards and appeals with reference to subdivisions three and four of this section shall be reviewable only by a special proceeding under article seventy-eight of the civil practice law and rules instituted in the supreme court in the third judicial district within ten days after such determination.

6. Security on court review. In the event that an appeal is taken from the order of the board of standards and appeals to the supreme court in the third judicial district pursuant to subdivision two of this section, the court may continue the security in effect or require such security as it deems proper.

7. Waiver of security. Notwithstanding any provision in this section, the board of standards and appeals may, in its discretion, waive the requirement of a security for an employer who the board of standards and appeals finds is of such financial responsibility that payments to employees of any underpayments due or to accrue are assured without the security provided by this section.

8. Stay for other employers. Any employer affected by a minimum wage order or regulation from which an appeal has been taken by another employer to the board of standards and appeals or to the supreme court in the third judicial district, may obtain a stay of proceedings against him by providing a security in accordance with subdivisions three and four of this section within thirty days after the filing of the appeal by the other employer.

§ 658. Appeals from compliance orders. An appeal pursuant to section two hundred eighteen or two hundred nineteen of this chapter from an order issued by the commissioner directing compliance with any provision of this article or with any minimum wage order or regulation promulgated thereunder, shall not bring under review any minimum wage order or regulation promulgated under this article. The provisions of subdivision two of section six hundred fifty-seven relating to appeals from determinations of the board and the provisions of subdivisions three through seven of section six hundred fifty-seven shall apply to an appeal from a compliance order.

§ 659. Reconsideration of wage orders and regulations. 1. By wage board. At any time after a minimum wage order has been in effect for six months or more, the commissioner, on his own motion or on a petition of fifty or more residents of the state engaged in or affected by the occupation or occupations to which an order is applicable, may reconvene the same wage board or appoint a new wage board to recommend whether or not the minimum wage and regulations prescribed by such order should be modified, and the provisions of section six hundred fifty-five through

six hundred fifty-seven shall thereafter apply.

2. By commissioner. The commissioner, without referral to the wage board, may, at any time after public hearing, by order propose such modifications of or additions to any regulations as he may deem appropriate to effectuate the purposes of this article. Notice of hearing and promulgation of any such order shall be published in accordance with the provisions contained in section six hundred fifty-six. Such order shall be effective thirty days after such publication and section six hundred fifty-seven shall thereafter apply.

§ 660. Commissioner's powers of investigation. The commissioner or his authorized representative shall have power: (a) to investigate the wages of persons in any occupation in the state; (b) to enter the place of business or employment of any employer for the purpose of (1) examining and inspecting any and all books, registers, payrolls and other records that in any way relate to or have a bearing upon the wages paid to, or the hours worked by any employees, (2) ascertaining whether the provisions of this article and the orders and regulations promulgated hereunder are being complied with; and (c) to require from any employer full and correct statements and reports in writing, at such times as the commissioner may deem necessary, of the wages paid to and the hours worked by his employees.

§ 661. Records of employers. For all employees covered by this article, every employer shall establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee, plus such other information as the commissioner deems material and necessary. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the payroll

records must include the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the payroll records shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. On demand, the employer shall furnish to the commissioner or his duly authorized representative a sworn statement of the hours worked, rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other basis; gross wages; deductions; and allowances, if any, claimed as part of the minimum wage, for each employee, plus such other information as the commissioner deems material and necessary. Every employer shall keep such records open to inspection by the commissioner or his duly authorized representative at any reasonable time. Every employer of an employee shall keep a digest and summary of this article or applicable wage order, which shall be prepared by the commissioner, posted in a conspicuous place in his establishment and shall also keep posted such additional copies of said digest and summary as the commissioner prescribes. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge. Employers shall permit the commissioner or his duly authorized representative to question without interference any employee of such employer in a private location at the place of employment and during working hours in respect to the wages paid to and the hours worked by such employee or other employees.

§ 662. Penalties. 1. Failure to pay minimum wage or overtime compensation. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who pays or agrees to pay to any employee less than the wage applicable under this article shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand

dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each payment to any employee in any week of less than the wage applicable under this article shall constitute a separate offense.

2. Failure to keep records. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, who fails to keep the records required under this article or to furnish such records or any information required to be furnished under this article to the commissioner or his or her authorized representative upon request, or who hinders or delays the commissioner or his or her authorized representative in the performance of his or her duties in the enforcement of this article, or refuses to admit the commissioner or his or her authorized representative to any place of employment, or falsifies any such records or refuses to make such records accessible to the commissioner or his or her authorized representative, or refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this article to the commissioner or his or her authorized representative, shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than five hundred nor more than five thousand dollars or imprisoned for not more than one year, and, in the event that any second or subsequent offense occurs within six years of the date of conviction for a prior offense, shall be guilty of a felony for the second or subsequent offense, and upon conviction therefor, shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year plus one day, or punished by both such fine and imprisonment, for each such offense. Each day's failure to keep the records requested under this article or to furnish such records or information to the commissioner or his or her authorized representative shall constitute a separate offense.

§ 663. Civil action. 1. By employee. If any employee is paid by his or her employer less than the wage to which he or she is entitled under the provisions of this article, he or she shall recover in a civil action the amount of any such underpayments, together with costs all reasonable

attorney's fees, prejudgment interest as required under the civil practice law and rules, and unless the employer proves a good faith basis to believe that its underpayment of wages was in compliance with the law, an additional amount as liquidated damages equal to one hundred percent of the total of such underpayments found to be due. Any agreement between the employee, and the employer to work for less than such wage shall be no defense to such action.

2. By commissioner. On behalf of any employee paid less than the wage to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment, plus costs, and unless the employer proves a good faith basis to believe that its underpayment was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of underpayments found to be due the employee. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of underpayments found to be due the employee.

3. Limitation of time. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded. Investigation by the commissioner shall not be a prerequisite to nor a bar against a person bringing a civil action under this article.

4. Attorneys' fees. In any civil action by an employee or by the commissioner, the employee or commissioner shall have the right to collect attorneys' fees and costs incurred in enforcing any court

judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

§ 664. Referrals by employment agencies. No employment agency shall place or attempt to place any employee in an occupation at less than the wage applicable to such occupation under this article.

The term "employment agency" as used in this section shall mean an employment agency as defined in section one hundred seventy-one of the general business law.

§ 665. Savings clause. If any provision of this article or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

ARTICLE 19-A

MINIMUM WAGE STANDARDS AND PROTECTIVE LABOR PRACTICES FOR FARM WORKERS

Section 670. Statement of public policy; findings.

671. Definitions.

672. Application of article.

673. Minimum wage.

673-a. Farm workers; mandatory work agreements.

674. Regulations.

674-a. Farm laborers wage board.

676. Appeals from regulations.

677. Appeals from compliance orders.

678. Commissioner's powers of investigation.

679. Records of employers.

- 680. Penalties.
- 681. Civil action.
- 682. Referrals by employment agencies.
- 683. Savings clause.

§ 670. Statement of public policy; findings. The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act that minimum wage standards shall apply to farm workers, so as to eliminate as rapidly as practicable the employment of farm workers at wages insufficient to provide adequate maintenance and protection of health, without substantially curtailing opportunities for employment or earning power.

The legislature hereby finds that the establishment of minimum wage standards for farm laborers involves distinct and unusual problems; that the agricultural labor force is made up of regular all-year workers as well as short-term seasonal workers; that although some workers are paid on an hourly basis, many are paid on a piecework, weekly, monthly, or other basis; and that the agricultural industry is particularly affected by weather and market conditions and by perishability of products. Accordingly, the legislature further declares that it is the purpose of this act to provide a flexible approach with full consideration of the unusual problems involved.

§ 671. Definitions. As used in this article: 1. "Farm" includes stock, dairy, poultry, furbearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses, or other similar structures, used primarily for the raising of agricultural or horticultural commodities.

2. "Employee" includes any individual employed or permitted to work by an employer on a farm but shall not include: (a) domestic service in the home of the employer; (b) the parent, spouse, child or other member of the employer's immediate family; (c) a minor under seventeen years of age employed as a hand harvest worker on the same farm as his parent or guardian and who is paid on a piece-rate basis at the same piece rate as

employees seventeen years of age or over; or (d) an individual employed or permitted to work for a federal, state, or a municipal government or political subdivision thereof.

3. "Employer" includes any individual, partnership, association, corporation, cooperative, business trust, legal representative, or any organized group of persons acting as an employer of an individual employed or permitted to work on a farm. If a farm labor contractor recruits or supplies farm workers for work on a farm, such farm workers shall, for the purposes of this article, be deemed to be employees of the owner, lessee or operator of such farm.

4. "Farm labor contractor" includes: a. Any person who, for a fee, recruits, transports, supplies, or hires farm or food processing workers to work for, or under the direction, supervision, or control of, a third person; or

b. Any person who recruits, transports, supplies, or hires farm or food processing workers and who, for a fee, directs, supervises or controls all or any part of the work of such workers. "Fee" includes any money or other valuable consideration paid or promised to be paid to a farm labor contractor for the performance of any of the services enumerated in this definition. The term "farm labor contractor" shall not include an employment agency licensed in accordance with the provisions of article eleven of the general business law.

5. "Wage" includes allowances in the amount determined in accordance with the provisions of this article for meals, lodging, and other items, service and facilities when furnished by the employer to his employees.

6. "Hours worked" means the time that a farm worker is permitted to work in the fields or at his assigned place of work, and shall include time spent on a single farm in going from one field to another, or in waiting for baskets, pick-up, or for similar purposes; provided, however, that time not worked because of weather conditions shall not be considered as hours worked.

7. "Work agreement" means a job service recruitment or placement order; a farm labor contract or migrant labor registration; an agricultural employment contract executed by the employer or its representative with the Commonwealth of Puerto Rico or with the representatives of a foreign government; an agreement voluntarily entered into by the employer and the worker; or any comparable agreement.

§ 672. Application of article. This article shall apply to every employer during any part of the twelve consecutive months beginning February first, nineteen hundred seventy and February first of each subsequent year, preceded by a calendar year in which the cash remuneration paid to all employees aggregated twelve hundred dollars or more, provided, however, that one hundred eighty days after this act shall take effect this article shall apply to every employer if in the previous calendar year the cash remuneration paid to all employees aggregated two thousand dollars or more and on July first, nineteen hundred eighty-four this article shall apply to every employer if in the previous calendar year the cash remuneration paid to all employees aggregated three thousand dollars or more.

§ 673. Minimum wage. 1. Statutory. Every employer shall pay to each of its employees for each hour worked a wage of not less than the wage established pursuant to subdivision one of section six hundred fifty-two of this chapter, or such other wage as may be established in accordance with the provisions of this article.

2. Existing wage order. The minimum wage order in effect on the effective date of this act shall remain in full force and effect, except as modified in accordance with the provisions of this article.

§ 673-a. Farm workers; mandatory work agreements. Notwithstanding the provisions of any general, special or local law, rule or regulation to the contrary, for the purpose of notifying each employee, in writing, of

the conditions of employment every employer shall utilize the farm work agreement prescribed by the commissioner.

§ 674. Regulations. 1. The commissioner may promulgate such regulations as he deems appropriate to carry out the purposes of this article and to safeguard minimum wage standards. Such regulations may include, but are not limited to, the defining of the circumstances or conditions for the acceptance of non-hourly rates and piece rates as equivalent to the minimum hourly rates established by this article. Such regulations also may include, but are not limited to, waiting time and call-in pay rates; wage provisions governing guaranteed earnings during specified periods of work; allowances for meals, lodging, and other items, services and facilities when furnished by the employer; or by physical or mental deficiency or injury, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulations.

2. Such regulations may vary with localities if in the judgment of the commissioner conditions make such variation appropriate.

3. Such regulations shall be promulgated by the commissioner after a public hearing held after due notice.

A notice of the public hearing and a notice of the promulgation of any such regulation shall be published in the state bulletin. The notice of the promulgation of any such regulation shall be published at least twenty days before the effective date of the regulation.

§ 674-a. Farm laborers wage board. 1. Wage board. The commissioner shall hereby convene a farm laborers wage board. The wage board shall be comprised of three members: one representative of the farm bureau, one representative of the New York State AFL-CIO and one member appointed by the commissioner, who shall be selected from the general public and designated as chairperson. The wage board shall hold its first hearing

no later than March first, two thousand twenty. The members of the board shall not receive a salary or other compensation, but shall be paid actual and necessary traveling expenses while engaged in the performance of their duties.

2. Organization. Two-thirds of the members of the board shall constitute a quorum. The chairperson may from time to time formulate rules governing the manner in which the wage board shall function and perform its duties under this article.

3. Powers. The wage board shall have power to conduct public hearings. The board may also consult with agricultural employers and farm laborers, and their respective representatives, in the occupation or occupations involved, and with such other persons, including the commissioner and the commissioner of agriculture and markets, as it shall determine. The board shall also have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to any matters under inquiry. Such subpoenas shall be signed and issued by the chairperson of the board and shall be served and have the same effect as if issued out of the supreme court. The board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the supreme court. The board shall not be bound by common law or statutory rules of procedure or evidence.

4. Public hearings. Within forty-five days of the appointment of the wage board, the board shall conduct public hearings. The wage board shall only meet within the state and must hold at least three hearings at which the public will be afforded an opportunity to provide comments. At least one Spanish language interpreter shall be present at each public hearing to interpret oral testimony delivered in Spanish. Where a witness reveals the need for an interpreter in a language other than Spanish, to the extent practicable, an interpreter in that language shall be provided. Any materials advertising such hearings shall be bilingual in English and Spanish. Any written materials disbursed at the hearing or subsequent to the hearing, including written testimony and

hearing transcripts, shall be available in English, Spanish, and, to the extent practicable, any other language upon request.

5. Report. The wage board shall make a report to the governor and the legislature, including its recommendations as to overtime work for farm laborers. The report and recommendations of the board shall be submitted only after a vote of not less than a majority of all its members in support of such report and recommendations. Such report shall be submitted no later than December thirty-first, two thousand twenty. The overtime rates recommended by the wage board shall not be in excess of sixty hours, and the wage board shall specifically consider the extent to which overtime hours can be lowered below such amount set in law, and may provide for a series of successively lower overtime work thresholds and phase-in dates as part of its determinations.

6. The wage board shall consider existing overtime rates in similarly situated industries in New York state. Nothing contained in the wage board's report or recommendations shall diminish or limit any rights, protections, benefits or entitlements currently available to any farm laborer.

7. The commissioner shall comply with section six hundred fifty-six of this chapter upon receipt of the wage board's recommendations. The commissioner may reconvene the same wage board or appoint a new wage board in compliance with section six hundred fifty-nine of this chapter.

§ 676. Appeals from regulations. 1. Finality. Any regulation issued by the commissioner pursuant to this article shall, unless appealed from as provided in this section, be final. The findings of the commissioner as to the facts shall be conclusive.

2. Review by board of standards and appeals. Any person in interest, including a labor organization or employer association, who is aggrieved by such regulation may obtain review before the board of standards and appeals by filing with said board, within forty-five days after the date of the publication of the notice of such regulation, a written petition

requesting that the regulation be modified or set aside. A copy of such petition shall be served promptly upon the commissioner. On such appeal, the commissioner shall certify and file with the board of standards and appeals a transcript of the entire record, including the testimony and evidence upon which such regulation was made. The board of standards and appeals, upon the record certified and filed by the commissioner, shall, after oral argument, determine whether the regulation appealed from is contrary to law. Within forty-five days after the expiration of the time for the filing of a petition, the board of standards and appeals shall issue an order confirming, amending or setting aside the regulation appealed from. The appellate jurisdiction of the board of standards and appeals shall be exclusive and its order final except that the same shall be subject to an appeal taken directly to the appellate division of the supreme court, third judicial department, within sixty days after its order is issued. The commissioner shall be considered an aggrieved party entitled to take an appeal from an order of the board of standards and appeals.

3. Security. The taking of an appeal by an employer to the board of standards and appeals shall not operate as a stay of a minimum wage regulation issued under this article unless and until, and only so long as, the employer shall have provided security determined by the board of standards and appeals in accordance with this section. The security shall be sufficient to guarantee to the employees affected the payment of the difference between the wage they receive and the minimum wage they would be entitled to receive under the terms of the minimum wage regulation (such difference being hereinafter referred to as "underpayments") in the event that such regulation is affirmed by the board of standards and appeals. The security shall be either:

a. A bond filed with the board of standards and appeals issued by a fidelity or surety company authorized to do business in this state. The bond shall be sufficient to cover the amount of underpayments due at the time the bond is filed with the board of standards and appeals and the amount of underpayments that can reasonably be expected to accrue within the following sixty days; or

b. An escrow account established by the employer in behalf of employees and, deposited in a bank or trust company in this state, of which the employer has notified the board of standards and appeals in writing that he has established such account. The account shall be sufficient to cover the amount of underpayments due at the time of notification to the board of standards and appeals and shall be kept current by the employer depositing therein the amount of underpayments accruing each and every pay period. Such deposits shall be made no later than the day on which the wages for each pay period are payable. As an alternative thereto, an employer may deposit the amount of underpayments due at the time the deposit is made and the amount of underpayments that can reasonably be expected to accrue within the following sixty days, as determined by the board of standards and appeals. The employer shall keep accurate records showing the total amount of each deposit, the period covered, and the name and address of each employee and the amount deposited to his account. The employees escrow account shall be deemed to be a trust fund for the benefit of the employees affected, and no bank or trust company shall release funds in such account without the written approval of the board of standards and appeals.

4. Maintenance of security. The commissioner, at the request and on behalf of the board of standards and appeals, shall have the right to inspect the books and records of every employer who appeals or who provides a security in accordance with subdivision eight of this section. In the event that the board of standards and appeals finds that the security provided by an employer is insufficient to cover the amount of underpayments, it shall notify the employer to increase the amount of the security. If the employer fails to increase the security of the amount requested within seven days after such notice, the stay shall be terminated. If the board of standards and appeals finds that the amount of the security is excessive, it shall decrease the amount of security required.

5. Review of determination as to security. Notwithstanding any provision in this chapter, any determination of the board of standards and appeals with reference to subdivisions three and four of this section shall be reviewable only by a special proceeding under article

seventy-eight of the civil practice law and rules instituted in the supreme court in the third judicial district within ten days after such determination.

6. Security on court review. In the event that an appeal is taken from the order of the board of standards and appeals to the supreme court in the third judicial district pursuant to subdivision two of this section, the court may continue the security in effect or require such security as it deems proper.

7. Waiver of security. Notwithstanding any provision in this section, the board of standards and appeals may, in its discretion, waive the requirement of a security for an employer who the board of standards and appeals finds is of such financial responsibility that payments to employees of any underpayments due or to accrue are assured without the security provided by this section.

8. Stay for other employers. Any employer affected by a minimum wage regulation from which an appeal has been taken by another employer to the board of standards and appeals or to the supreme court in the third judicial district, may obtain a stay of proceedings against him by providing a security in accordance with subdivisions three and four of this section within thirty days after the filing of the appeal by the other employer.

§ 677. Appeals from compliance orders. Within sixty days after the issuance by the commissioner of an order to comply with any provision of this article or with any minimum wage regulation promulgated thereunder, any person aggrieved may appeal questions of law and fact involved in such order to the board of standards and appeals by filing with said board a written petition in accordance with such rules as the board shall prescribe, provided, however, that no such appeal shall bring under review any minimum wage regulation promulgated under this article. The provisions of subdivision two of section six hundred seventy-six relating to appeals from determinations of the board and the provisions of subdivisions three through seven of section six hundred seventy-six

shall apply to appeals such as herein provided. Unless an appeal such as herein provided is taken within the prescribed time, the findings of fact and conclusions of law contained in such order to comply shall be final and binding and no board or court shall have jurisdiction to review such order, or finding or conclusion contained therein, or to restrain or interfere with its enforcement.

§ 678. Commissioner's powers of investigation. The commissioner or his authorized representative shall have power: (a) to investigate the wages of persons employed on a farm; (b) to enter the place of business or employment of any employer for the purpose of (1) examining and inspecting any and all books, registers, payrolls and other records that in any way relate to or have a bearing upon the wages paid to, or the hours worked by any employee, (2) ascertaining whether the provisions of this article and the regulations promulgated hereunder are being complied with; and (c) to require from any employer full and correct statements and reports in writing of the records required by this article, at such times as the commissioner may deem necessary.

§ 679. Records of employers. Every employer shall keep true and accurate records of hours worked by each employee, the wages paid, and such other information as the commissioner deems material and necessary, and shall, on demand, furnish to the commissioner or his duly authorized representative a sworn statement of the same. Every employer shall keep such records open to inspection by the commissioner or his duly authorized representative at any reasonable time. Every employer of an employee shall keep a digest or summary of this article and regulations, which shall be prepared by the commissioner, posted in a conspicuous place in his establishment and shall also keep posted such additional copies of said digest or summary as the commissioner prescribes. Employers shall, on request, be furnished with copies of this article and regulations, and of digests or summaries thereof, without charge.

Employers shall permit the commissioner or his duly authorized representative to question any individual employed by such employer in

the place of employment and during working hours in respect to the wages paid and the hours worked when records of hours worked are required under this article.

§ 680. Penalties. 1. Discrimination against employee. Any employer or his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has made a complaint to his employer, or to the commissioner or his authorized representative, that he has not been paid in accordance with the provisions of this article, or because such employee has caused to be instituted a proceeding under or related to this article, or because such employee has testified or is about to testify in an investigation or proceeding under this article, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty dollars nor more than five hundred dollars.

2. Payment of less than minimum wage. Any employer or his agent, or the officer or agent of any corporation, who pays or agrees to pay to any employee less than the wage applicable under this article shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten nor more than ninety days or by both such fine and imprisonment, and each payment to any employee in any week of less than the wage applicable under this article shall constitute a separate offense.

3. Failure to keep records. Any employer or his agent, or the officer or agent of any corporation, who fails to keep the records required under this article or to furnish such records or any information required to be furnished under this article to the commissioner or his authorized representative upon request, or who hinders or delays the commissioner or his authorized representative in the performance of his duties in the enforcement of this article, or refuses to admit the commissioner or his authorized representative to any place of employment, or falsifies any such records or refuses to make such records accessible to the commissioner or his authorized representative,

or refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this article to the commissioner or his authorized representative, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and each day's failure to keep the records required under this article or to furnish such records or information to the commissioner or his authorized representative shall constitute a separate offense.

§ 681. Civil action. 1. By employee. If any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees as may be allowed by the court, and if such underpayment was willful, an additional amount as liquidated damages equal to twenty-five percent of the total of such underpayment found to be due him and any agreement between him and his employer to work for less than such wage shall be no defense to such action.

2. By commissioner. On behalf of any employee paid less than the wage to which he is entitled under the provisions of this article, the commissioner may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and if such underpayment was willful, an additional amount as liquidated damages equal to twenty-five percent of the total of such underpayments found to be due him.

3. Limitation of time. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years.

§ 682. Referrals by employment agencies. No employment agency shall place or attempt to place any employee in an occupation at less than the wage applicable to such occupation under this article.

The term "employment agency" as used in this section shall mean an employment agency as defined in section one hundred seventy-one of the general business law.

§ 683. Savings clause. If any portion of this article or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

ARTICLE 19-B

DOMESTIC WORKERS AND HOUSEHOLD EMPLOYEES

Section 690. Application.

691. Statement of employee rights and employer obligations under state and federal law.

692. Statement of job conditions; records.

693. Enforcement.

694. Violations.

§ 690. Application. The provisions of this article shall apply to all employment agencies, under the authority of this chapter and as defined in section one hundred seventy-one of the general business law, which arrange employment for domestic or household employees.

§ 691. Statement of employee rights and employer obligations under state and federal law. 1. Every licensed employment agency under the jurisdiction of the commissioner and engaged in the job placement of domestic workers or household employees shall provide to each applicant for employment as a domestic worker or household employee and his or her prospective employer, before job placement is arranged, a written statement indicating the rights of such worker and employee and the obligations of his or her employer under state and federal law. In the event any such licensed employment agency maintains a website, the text

of such written statement shall also be provided on the agency's website. The department shall promulgate rules and regulations detailing what information should be included in such written statement. Such rules and regulations shall require that such statement of rights and obligations embody provisions of state and federal laws that pertain to domestic workers or household employees, both in their capacity as workers and employees in New York state and the United States and in their capacity specifically as domestic workers or household employees in New York state and the United States. Such statement of rights and obligations shall include, but not be limited to, a general description of employee rights and employer obligations pursuant to laws regarding minimum wage, overtime and hours of work, record keeping, social security payments, unemployment insurance coverage, disability insurance coverage and workers' compensation. Every licensed employment agency under the jurisdiction of the commissioner and to which this article applies shall certify that the written statement required by this subdivision conforms to rules and regulations promulgated by the department and shall file a copy of such written statement with the department.

2. Every employment agency engaged in the job placement of domestic workers or household employees shall keep on file in its principal place of business for a period of three years a statement, signed by the employer of a domestic worker or household employee whom the employment agency has placed with such employer, indicating that the employer has read and understands the statement of rights and obligations he or she received pursuant to subdivision one of this section.

§ 692. Statement of job conditions; records. 1. Every licensed employment agency under the jurisdiction of the commissioner and engaged in the job placement of domestic workers or household employees shall provide to each applicant for employment as a domestic worker or household employee a written statement, in a form approved by the commissioner, of the job conditions of each potential employment position to which the agency recommends that the applicant apply. Each such statement shall fully and accurately describe the nature and terms

of employment, including the name and address of the person to whom the applicant is to apply for such employment, the name and address of the person authorizing the hiring for such position, wages, hours of work, the kind of services to be performed and agency fee.

2. Every employment agency engaged in the job placement of domestic workers or household employees shall keep on file in its principal place of business for a period of three years a duplicate copy of the written statement of job conditions required by subdivision one of this section.

§ 693. Enforcement. The commissioner, or his or her duly authorized agent or inspector, is authorized pursuant to section one hundred eighty-nine of the general business law to implement and carry out the requirements of this article.

§ 694. Violations. Any person who violates, and the officers of a corporation and stockholders holding ten percent or more of the stock of a corporation which is not publicly traded who knowingly permit the corporation to violate, subdivisions one and two of sections six hundred ninety-one and six hundred ninety-two of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed one thousand dollars, or imprisonment for not more than one year, or both, by any court of competent jurisdiction. Criminal proceedings based upon violation of such sections may be instituted by the commissioner and/or any persons aggrieved by such violations.

ARTICLE 19-C

REPRESENTATION OF CHILD CARE PROVIDERS

Section 695-a. Statement of public policy; findings.

695-b. Definitions.

695-c. Representation units.

695-d. Procedure for recognition.

695-e. Challenges.

695-f. Application of this article.

§ 695-a. Statement of public policy; findings. The legislature declares that it is the public policy of the state and the purpose of this act to create a framework for child care providers to secure representation to help improve the environment in which they work.

The legislature hereby finds child care providers perform an essential service for working parents and guardians in this state by creating a safe, educational and enjoyable home-like environment for their children. Many of New York's children spend a significant part of their crucial early years of development under the supervision of child care providers. It is in the best interest of New York state to maintain a child care delivery system that fosters quality child care options and compensation, and benefits and working conditions for child care providers commensurate with the value of the work they perform.

Accordingly child care providers are hereby given the option to organize themselves and select representatives for the purpose of discussing with the state the conditions of their employment, the stability of funding and operations of child care programs and the expansion of quality child care.

§ 695-b. Definitions. As used in this article, "child care provider" shall mean:

1. An operator of a group family day care home as defined in paragraph (d) of subdivision one of section three hundred ninety of the social services law or
2. A family day care home as defined in paragraph (c) of subdivision one of section three hundred ninety of the social services law or
3. An individual providing child care in reference to one or more children who are receiving child care assistance under title five-c of

article six of the social services law under circumstances where the individual is not required to be licensed or registered under section three hundred ninety of the social services law or to be licensed under the administrative code of the city of New York.

§ 695-c. Representation units. For purposes of this article only, New York's child care providers shall be divided into four representation units as follows:

1. All child care providers in New York city who are paid from funds administered by New York city pursuant to section four hundred ten-u of the social services law.

2. All registered or licensed child care providers in New York city who are not paid from funds administered by New York city pursuant to section four hundred ten-u of the social services law.

3. All registered or licensed child care providers outside the city of New York and

4. All child care providers outside New York city who provide child care in a residence to one or more children who are receiving child care assistance under title 5-c of article six of the social services law under circumstances where the individual is not required to be licensed or registered under section three hundred ninety of the social services law.

§ 695-d. Procedure for recognition. 1. For the purpose of this article, New York state shall recognize as the representative of the child care providers in any unit set forth in section six hundred ninety-five-c of this article each representative as is designated by a majority of the providers in the unit pursuant to the following procedure: A perspective representative may demonstrate majority designation upon submission of authorization cards, approved within twelve months of this submission, by the majority of providers in the

unit, to the state employment relations board (SERB) or any successor agency for the purpose of review. The SERB and/or its designee shall review the cards and if it determines that the cards constitute at least fifty percent plus one of the providers in the unit at issue, then the SERB shall certify the party making application as the designated representative of the unit. If the SERB determines that cards submitted constitute at least thirty percent of providers in the unit at issue, but not more than fifty percent, it shall conduct an election in a manner directed by the SERB and consistent with its standard election procedure to determine if a majority of members designate the prospective representative.

2. Any relevant state agency, including the office of children and family services shall provide the SERB with information necessary to determine the size of the units and the identities of members of said unit subject to any limitations or dissemination of information as the agency believes necessary to protect confidentiality, or as otherwise required by law.

§ 695-e. Challenges. Any party seeking to challenge the status of a unit representative may submit information to the SERB. The SERB shall determine whether the information provides a reasonable basis to constitute that a majority of the unit wishes to be represented by a different representative or a majority of the unit decides no representation. If the SERB so determines, it shall adopt a process it believes warranted to ascertain the majority's choice of representation, including by the submission of authorization cards or election, unless such process has been undertaken in the previous two years.

§ 695-f. Application of this article. 1. The office of children and family services shall meet with the designated representative of those units of child care providers, either jointly or separately, for the purpose of entering into a written agreement to the extent feasible. The agreement may address the stability, funding and operation of child care programs, expansion of quality child care, improvement of working

conditions, salaries and benefits and payment for child care providers. If issues under discussion require the participation and/or approval of other state agencies, those agencies shall participate in the discussions. Nothing herein shall require that an agreement be reached on any matters described above.

2. In the event an agreement is reached, it shall be embodied in writing between the office of children and family services and other affected agencies and the designated representative. The agreement shall be binding on the state, contingent upon any regulatory or legislative action that may be required.

3. If legislative or regulatory action or appropriation of funds is required the parties will jointly seek such action.

§ 695-g. Legal effect. Nothing herein shall:

1. Permit child care providers collectively the right to engage in a strike or to take work action to secure any right or privilege from the state or its agencies;

2. Render a child care provider a state officer or employee or in any way imply an employee-employer relationship with the state or its subdivisions, including but not limited to a public retirement system, public health insurance program, unemployment insurance, workers compensation, disability coverage, New York civil service law or indemnification under the public officers law;

3. Alter any current regulations, policies or procedures for health, safety, discipline inspection or enforcement applicable to child care providers or programs unless agreed to and enacted;

4. Interfere with the existing relationship between consumers and child care providers including existing rights of parents or guardians to change or terminate a provider's service;

5. Interfere with any ability of child care providers or child care provider representatives to meet or correspond with any state agency with regard to any matter of relevance; and

6. Create any contractual right or obligations.

ARTICLE 19-D

MINIMUM WAGE RATES FOR COVERED AIRPORT WORKERS

Section 696-a. Definitions.

696-b. Minimum wage rate for covered airport workers.

696-c. Commissioner's powers of investigation.

696-d. Records of employers.

696-e. Penalties.

696-f. Civil action.

696-g. Regulations.

696-h. Savings clause.

§ 696-a. Definitions. As used in this article: 1. "Covered airport location" means John F. Kennedy International Airport and LaGuardia Airport or any location used to perform work related to the preparation or delivery of food for consumption on airplanes departing from John F. Kennedy International Airport or LaGuardia Airport.

2. (a) "Covered airport worker" means any person employed to perform work at a covered airport location.

(b) "Covered airport worker" shall include any person employed to perform work at a covered airport location, provided at least half of the employee's time during any workweek is performed at a covered airport location.

(c) "Covered airport worker" shall not include persons employed in an executive, administrative, or professional capacity as defined in subparagraph one of paragraph (a) of section thirteen of the Fair Labor Standards Act of 1938 (29 U.S.C. s.213 et seq.), or persons employed by the Port Authority of New York and New Jersey or any other governmental agency.

3. "Successor airport employer" means any employer that employs covered airport workers who provide services at a covered airport location that are substantially similar to those that were provided by covered airport workers previously employed by another employer at such covered airport location.

4. "Employer" means any person, corporation, limited liability company, or association employing any individual in an occupation, industry, trade, business or service. The term "employer" shall not include a governmental agency or employers with ten or fewer employees.

5. The "applicable standard rate" means the wage and benefit rates designated by the commissioner based on the determinations made by the General Services Administration pursuant to the federal McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et seq.), for the appropriate localities and classifications of building service employees; provided, however, that in no event shall the prevailing wage rate applicable to a covered airport worker on and after January first, two thousand twenty-five and every year thereafter be less than the following:

(a) any otherwise applicable minimum wage rate established through a regulation of the Port Authority of New York and New Jersey; and

(b) an amount of supplemental wages or a supplemental healthcare contribution equal to the rate for health and welfare for all occupations, designated by the commissioner based on the determinations made by the federal department of labor pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et seq.) for the geographic region in which the covered airport location is situated and in effect on the date of the designation by the commissioner; and

(c) paid leave equal to the paid leave requirements designated by the commissioner the immediately preceding January first, based on the determinations made by the General Services Administration pursuant to the McNamara-O'Hara Service Contract Act of 1965 (41 U.S.C. 6701 et seq.).

6. "Commissioner" means the commissioner of labor of the state of New

York.

§ 696-b. Minimum wage rate for covered airport workers. All employers at a covered airport location shall ensure that every covered airport worker is compensated at a rate that is no less than the applicable standard rate. Nothing in this article shall alter or limit any employer's obligation to pay any otherwise applicable prevailing wage under article eight or nine of this chapter.

§ 696-c. Commissioner's powers of investigation. The commissioner or such commissioner's authorized representative shall have the power to:

1. investigate the compensation of covered airport workers in the state;
2. enter the place of business or employment of any employer for the purpose of (a) examining and inspecting any and all books, registers, payrolls, and other records that in any way relate to or have a bearing upon the compensation provided to, or the hours worked by any employees, and (b) ascertaining whether the provisions of this article and the rules and regulations promulgated hereunder are being complied with; and
3. require from any employer full and correct statements and reports in writing, at such times as the commissioner may deem necessary, of the compensation provided to and the hours by such employer's employees.

§ 696-d. Records of employers. For every employee covered by this article, every employer shall establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked, the compensation provided, plus such other information as the commissioner deems material and necessary. For all covered airport workers who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law, rule, or regulation, the payroll

records shall include the compensation provided and the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, the number of overtime hours worked and the cost of benefits and/or benefit supplements. On demand, the employer shall furnish to the commissioner or such commissioner's duly authorized representative a sworn statement of the hours worked, rate or rates of compensation, for each covered airport worker, plus such other information as the commissioner deems material and necessary. Every employer shall keep such records open to inspection by the commissioner or such commissioner's duly authorized representative at any reasonable time. Every employer of a covered airport worker shall keep a digest and summary of this article which shall be prepared by the commissioner, posted in a conspicuous place in their establishment and shall also keep posted such additional copies of said digest and summary as the commissioner prescribes. Employers shall, on request, be furnished with copies of this article and of orders, and of digests and summaries thereof, without charge. Employers shall permit the commissioner or such commissioner's duly authorized representative to question without interference any employee of such employer in a private location at the place of employment and during working hours in respect to the wages paid to and the hours worked by such employee or other employees.

§ 696-e. Penalties. 1. If the commissioner finds that any employer has violated any provision of this article or of a rule or regulation promulgated thereunder, the commissioner may, after an opportunity for a hearing, and by an order which shall describe particularly the nature of the violation, assess the employer a civil penalty of not more than ten thousand dollars for the first such violation within six years, not more than twenty thousand dollars for a second violation within six years and not more than fifty thousand dollars for a third or subsequent violation within six years. Such penalty shall be paid to the commissioner for deposit in the treasury of the state. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith basis of the employer to believe that its conduct was in compliance with the law, the gravity of the violation, the history of previous violations and the failure to comply

with record-keeping or other requirements.

2. Any order issued under subdivision one of this section shall be deemed a final order of the commissioner and not subject to review by any court or agency unless the employer files a petition with the industrial board of appeals for a review of the order, pursuant to section one hundred one of this chapter.

3. The civil penalty provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty provided for in this chapter.

4. Upon a showing by an employee organization, the commissioner may investigate by examining payroll records whether an employer withheld hours of work to employees for the purpose of reducing the employer's obligations under this article. If, after the opportunity for a hearing, the commissioner determines that an employer withheld hours of work to employees for the purpose of reducing the employer's obligations under this article, the commissioner may, in addition to any other penalty available, also require that the employer pay the applicable standard rate to all of the employer's employees, regardless of the number of hours worked by the employees.

§ 696-f. Civil action. 1. On behalf of any employee paid less than the applicable standard rate to which the employee is entitled under the provisions of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and the employer shall be required to pay the full amount of the underpayment, plus costs, and unless the employer proves a good faith basis to believe that its underpayment was in compliance with the law, an additional amount as liquidated damages. Liquidated damages shall be calculated by the commissioner as no more than one hundred percent of the total amount of underpayments found to be due the employee. In any action brought by the commissioner in a court of competent jurisdiction, liquidated damages shall be calculated as an amount equal to one hundred percent of underpayments found to be due the employee.

2. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years. The statute of limitations shall be tolled from the date an employee files a complaint with the commissioner or the commissioner commences an investigation, whichever is earlier, until an order to comply issued by the commissioner becomes final, or where the commissioner does not issue an order, until the date on which the commissioner notifies the complainant that the investigation has concluded.

3. In any civil action by the commissioner, the commissioner shall have the right to collect attorneys' fees and costs incurred in enforcing any court judgment. Any judgment or court order awarding remedies under this section shall provide that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal therefrom is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent.

§ 696-g. Regulations. The commissioner may promulgate such regulations as such commissioner deems appropriate to carry out the purposes of this article and to safeguard minimum compensation standards.

§ 696-h. Savings clause. 1. If any provision of this article or the application thereof to any person, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

2. If any clause, sentence, paragraph, subdivision, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly

involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this article would have been enacted even if such invalid provisions had not been included herein.

ARTICLE 20

NEW YORK STATE LABOR RELATIONS ACT

- Section 700. Findings and policy.
- 701. Definitions.
 - 702. Special mediators.
 - 702-a. Settlement of labor disputes.
 - 702-b. Impasse resolution procedures for agricultural employers and farm laborers.
 - 703. Rights of employees.
 - 704. Unfair labor practices.
 - 704-a. Unfair practices; performing arts.
 - 704-b. Unfair labor practices.
 - 705. Representatives and elections.
 - 706. Prevention of unfair labor practices.
 - 707. Judicial review.
 - 708. Investigatory powers.
 - 708-a. E-filing program for the purpose of filing papers electronically.
 - 709. Punitive provision.
 - 710. Public records and proceedings.
 - 710-a. Publicly accessible decision index.
 - 710-b. Electronically available information.
 - 711. Cooperation.
 - 712. Repeal of inconsistent provisions.
 - 713. Limitations.
 - 714. Separability.
 - 715. Application of article.
 - 716. Grievances and disputes in non-profitmaking hospitals and residential care centers.
 - 717. State mediation board, state labor relations board, and state employment relations board abolished.

§ 700. Findings and policy. In the interpretation and application of this article, and otherwise, it is hereby declared to be the public policy of the state to encourage the practice and procedure of collective bargaining, and to protect employees in the exercise of full freedom of association, self-organization and designation of representatives of their own choosing for the purposes of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers.

It is also hereby declared as the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes and that the voluntary resolution of such disputes will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state. Representatives of employers and employees engaged in such disputes are encouraged voluntarily to submit them to the agency created by this article prior to engaging in a strike, lock-out or other cessation of employment; and should participate fully and promptly in any meetings which may be arranged by the agency for the purpose of resolving the dispute.

To carry out such policy, the necessity for the enactment of the provisions of this article is hereby declared as a matter of legislative determination.

All the provisions of this article shall be liberally construed for the accomplishment of this purpose.

This article shall be deemed an exercise of the police power of the state for the protection of the public welfare, prosperity, health and peace of the people of the state.

§ 701. Definitions. When used in this article:

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2. (a) The term "employer" includes any person acting on behalf of or in the interest of an employer, directly or indirectly, with or without his knowledge, and shall include any person who is the purchaser of services performed by a person described in paragraph (b) of subdivision three of this section, but a labor organization or any officer or agent thereof shall only be considered an employer with respect to individuals employed by such organization.

(b) The term "employer" includes agricultural employers. The term "agricultural employer" shall mean any employer engaged in cultivating the soil or in raising or harvesting any agricultural or horticultural commodity including custom harvesting operators, and employers engaged in the business of crops, livestock and livestock products as defined in section three hundred one of the agriculture and markets law, or other similar agricultural enterprises.

3. (a) The term "employees" includes but is not restricted to any individual employed by a labor organization; any individual whose employment has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment; and shall not be limited to the employees of a particular employer, unless the article explicitly states otherwise, but shall not include any individual employed by his parent or spouse or in the domestic service of and directly employed, controlled and paid by any person in his home, any individual whose primary responsibility is the care of a minor child or children and/or someone who lives in the home of a person for the purpose of serving as a companion to a sick, convalescing or elderly person or any individuals employed only for the duration of a labor dispute, or any individual who participates in and receives rehabilitative or therapeutic services in a charitable non-profit rehabilitation facility or sheltered workshop or any individual employed in a charitable non-profit rehabilitation facility

or sheltered workshop who has received rehabilitative or therapeutic services and whose capacity to perform the work for which he is engaged is substantially impaired by physical or mental deficiency or injury.

(b) The term "employee" shall also include a professional musician or a person otherwise engaged in the performing arts who performs services as such. "Engaged in the performing arts" shall mean performing services in connection with production of or performance in any artistic endeavor which requires artistic or technical skill or expertise.

(c) The term "employee" shall also include farm laborers. "Farm laborers" shall mean any individual engaged or permitted by an employer to work on a farm. Members of an agricultural employer's immediate family who are related to the third degree of consanguinity or affinity shall not be considered to be employed on a farm if they work on a farm out of familial obligations and are not paid wages, or other compensation based on their hours or days of work.

4. The term "representatives" includes a labor organization or an individual whether or not employed by the employer of those whom he represents.

5. The term "labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein.

6. The term "company union" means any committee, employee representation plan or association of employees which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms and conditions of employment, which the employer has initiated or created or whose initiation or creation he has suggested, participated in or in the formulation of whose governing rules or policies or the conducting of whose management, operations or elections the employer participates in or supervises or which the employer maintains, finances, controls, dominates, or assists in maintaining or financing, whether by compensating anyone for services performed in its behalf or by donating free services, equipment, materials, office or

meeting space or anything else of value, or by any other means.

7. The term "unfair labor practice" means only those unfair labor practices listed in section seven hundred four.

8. The term "labor dispute" includes, but is not restricted to, any controversy between employers and employees or their representatives as defined in this section concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to negotiate, fix, maintain or change terms or conditions of employment, or concerning the violation of any of the rights granted or affirmed by this article, regardless of whether the disputants stand in the proximate relation of employer and employee.

9. The term "board" means the public employment relations board created by section two hundred five of the civil service law, in carrying out its functions under this article.

10. The term "policies of this article" means the policies set forth in section seven hundred.

11. The term "non-profitmaking hospital or residential care center" means an organized residential facility for the medical diagnosis, treatment and care of illness, disease, injury, infirmity or deformity, or a residential facility providing nursing care or care of the aged or dependent children, or a facility for the prevention of cruelty to children or animals, which is located anywhere in the state and which is maintained and operated by an association or corporation, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

12. The term "employee of a non-profitmaking hospital or residential care center" means any person employed or permitted to work by or at a non-profitmaking hospital or residential care center but shall not include any person employed or permitted to work: (a) in or for such a non-profitmaking hospital or residential care center, which work is

incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; or (b) as a volunteer.

§ 702. Special mediators. The board may, when necessary, appoint or designate special mediators who shall have the authority and power of members of the board with regard to such matter, provided that their authority and power to act for the board shall cease upon the conclusion of the specific matter so assigned to them or by revocation by the board of their appointment or designation. Such special mediators shall, when performing the work of the board as aforesaid, be compensated at a rate to be determined by the board subject to the approval of the director of the budget, together with an allowance for actual and necessary expenses incurred in the discharge of their duties hereunder.

§ 702-a. Settlement of labor disputes. 1. Upon its own motion, in an existing, imminent or threatened labor dispute, the board may and, upon the direction of the governor, the board shall take such steps as it may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threatened to precipitate or culminate in such labor dispute. In providing its services, the board shall take into consideration and make all parties aware of the availability of other mediation services, such as the federal mediation and conciliation service, and shall make every effort to give priority to those parties which do not have access to such other services. To this end, it shall be the duty of the board: (a) to arrange for, hold, adjourn, or reconvene a conference or conferences between the disputants and/or one or more of their representatives; (b) to invite the disputants and/or their representative to attend such conferences and submit, either orally or in writing, the grievances of and differences between the disputants; (c) to discuss such grievances and differences with the disputants and their representatives and in the course of such proceeding, upon the consent of all disputants and their representatives, to appoint fact-finding boards and to arbitrate such

grievances and differences; and (d) to assist in negotiating and drafting agreements for the adjustment in settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

2. The board shall have the power at the request of the parties to a collective bargaining agreement between an employer and its employees to arbitrate such grievances and differences as may arise thereunder and to establish panels of qualified persons to be available to serve as arbitrators of such grievances and differences. The board shall promulgate regulations setting forth eligibility requirements for inclusion on such panels, in order to ensure the availability of qualified, accessible, affordable arbitrators.

3. In carrying out any of its work under this article, the board may designate one of its members or an officer or employee of the board to act in its behalf and may delegate to such designee one or more of its duties hereunder and, for such purpose, such designee shall have all of the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated.

4. No member or officer of the board having any financial or other interest in a trade, business, industry or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

5. Members of the board and all other employees of the board, including any arbitrator serving on an arbitration panel established by the board, shall not be compelled to disclose to any administrative or judicial tribunal any information relating to, or acquired in, the course of their official activities under this article, nor shall any reports, minutes, written communications, or other documents of the board pertaining to such information be subject to subpoena; except that where the information so required indicates that the person appearing or who has appeared before the board has been the victim or subject of a

crime, said members of the board, the executive secretary and all other employees of the board, including any arbitrator serving on an arbitration panel established by the board, may be required to testify fully in relation thereto upon any examination, trial, or other proceeding in which the commission of a crime is the subject of inquiry.

§ 702-b. Impasse resolution procedures for agricultural employers and farm laborers. 1. For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement by the end of a forty-day period from the date of certification or recognition of an employee organization or from the expiration date of a collective bargaining agreement.

2. Upon impasse, agricultural employers or recognized employee organizations may request the board to render assistance as provided in this section. If the board determines an impasse exists in the course of collective negotiations between an agricultural employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute.

3. On request of either party, as provided in subdivision two of this section, and in the event the board determines that an impasse exists in collective negotiations between such employee organization and an agricultural employer as to the conditions of employment of farm laborers, the board shall render assistance as follows:

a. to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator from a list of qualified persons maintained by the board;

b. if the mediator is unable to effect settlement of the controversy within thirty days after his or her appointment, either party may petition the board to refer the dispute to a neutral arbitrator;

c. upon petition of either party, the board shall refer the dispute to a neutral arbitrator as hereinafter provided;

i. the neutral arbitrator shall be appointed jointly by the agricultural employer and employee organization within ten days after receipt by the board of a petition for arbitration. Each of the respective parties is to share equally the cost of the neutral arbitrator. If, within seven days after the mailing date, the parties are unable to agree upon the neutral arbitrator, the board shall submit to the parties a list of qualified, disinterested persons for the selection of a neutral arbitrator. Each party shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as the neutral arbitrator. This process shall be completed within five days of receipt of this list. The parties shall notify the board of the designated neutral arbitrator;

ii. the neutral arbitrator shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The panel may grant more than one adjournment each for each party; provided, however, that a second request of either party and any subsequent adjournments may be granted on request of either party, provided that the party which requests the adjournment shall pay the arbitrator's fee. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The arbitrator shall have authority to require the production of such additional evidence, either oral or written as she or he may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be borne by the requesting party. If such record is created, it shall be shared with both parties regardless of which party paid for it;

iii. the arbitrator shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the arbitrator shall specify the basis for her or his findings, taking into consideration, in addition to any factors stipulated by the parties or

any other relevant factors, the following:

A. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in agricultural employment in comparable communities;

B. the interests and welfare of the farm laborers and the financial ability of the agricultural employer to pay;

C. comparison of peculiarities in regard to other trades or professions, including specifically, (i) hazards of employment; (ii) physical qualifications; (iii) educational qualifications; (iv) mental qualifications; (v) job training and skills;

D. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits; and

E. the impact on the food supply and commodity pricing.

iv. the determination of the neutral arbitrator shall be final and binding upon the parties for the period prescribed by the arbitrator, but in no event shall such period exceed two years from the date of the arbitrator's determination;

v. the determination of the public arbitration panel shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.

§ 703. Rights of employees. Employees shall have the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, free from interference,

restraint, or coercion of employers, but nothing contained in this article shall be interpreted to prohibit employees from exercising the right to confer with their employer at any time, provided that during such conference there is no attempt by the employer, directly or indirectly, to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by this section.

Notwithstanding any other provision of law, for farm laborers the term "concerted activities" shall not include a right to strike or other concerted stoppage of work or slowdown.

§ 704. Unfair labor practices. It shall be an unfair labor practice for an employer:

1. To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of employees or their representatives in the exercise of the rights guaranteed by section seven hundred three.

2. To prepare, maintain, distribute or circulate any blacklist of individuals for the purpose of preventing any of such individuals from obtaining or retaining employment because of the exercise by such individuals of any of the rights guaranteed by section seven hundred three.

3. To dominate or interfere with the formation, existence, or administration of any employee organization or association, agency or plan which exists in whole or in part for the purpose of dealing with employers concerning terms or conditions of employment, labor disputes or grievances, or to contribute financial or other support to any such organization, by any means, including but not limited to the following:
(a) by participating or assisting in, supervising, controlling or dominating (1) the initiation or creation of any such employee organization or association, agency, or plan, or (2) the meetings, management, operation, elections, formulation or amendment of constitution, rules or policies, of any such employee organization or

association, agency or plan; (b) by urging the employees to join any such employee organization or association, agency or plan for the purpose of encouraging membership in the same; (c) by compensating any employee or individual for services performed in behalf of any such employee organization or association, agency or plan, or by donating free services, equipment, materials, office or meeting space or anything else of value for the use of any such employee organization or association, agency or plan; provided that, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

4. To require an employee or one seeking employment, as a condition of employment, to join any company union or to refrain from forming, or joining or assisting a labor organization of his own choosing.

5. To encourage membership in any company union or discourage membership in any labor organization, by discrimination in regard to hire or tenure or in any term or condition of employment: Provided that nothing in this article shall preclude an employer from making an agreement with a labor organization requiring as a condition of employment membership therein, if such labor organization is the representative of employees as provided in section seven hundred five.

6. To refuse to bargain collectively with the representatives of employees, subject to the provisions of section seven hundred five.

7. To refuse to discuss grievances with representatives of employees, subject to the provisions of section seven hundred five.

8. To discharge or otherwise discriminate against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this article.

9. To distribute or circulate any blacklist of individuals exercising any right created or confirmed by this article or of members of a labor organization, or to inform any person of the exercise by any individual of such right, or of the membership of any individual in a labor

organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining employment.

10. To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by section seven hundred three.

11. To utilize any state funding appropriated for any purpose to train managers, supervisors or other administrative personnel regarding methods to discourage union organization, or to discourage an employee from participating in a union organizing drive.

§ 704-a. Unfair practices; performing arts. It shall not be an unfair labor practice for an employer engaged in the performing arts to make an agreement with a labor organization, of which performing artists are members, covering employees engaged in the performing arts, or who, upon their employment, will be so engaged, because the majority status of such labor organization has not been established under the provisions of this article or because such agreement requires, as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of such agreement, whichever is later. Nothing in this section shall be construed as to bar any proceeding brought pursuant to section seven hundred five of this article.

§ 704-b. Unfair labor practices. 1. It shall be an unfair labor practice for a farm laborer or an employee organization representing farm laborers to strike any agricultural employer. The term "strike" shall mean, for the purposes of this section, any strike or other concerted stoppage of work or slowdown by farm laborers.

2. It shall be an unfair labor practice for an agricultural employer to:

a. lockout its laborers. The term "lockout" shall mean, for the

purposes of this section, a refusal by an agricultural employer to permit farm laborers to work as a result of a dispute with such farm laborers or employee organization representing such farm laborers that affects wages, hours and other terms and conditions of employment of such farm laborers, provided, however, that a lockout shall not include a termination of employment for good cause that does not involve such laborers exercising any rights guaranteed by this article;

b. refuse to continue all the terms of an expired agreement until a new agreement is negotiated;

c. discourage union organization or to discourage an employee from participating in a union organizing drive, engaging in protected concerted activity, or otherwise exercising the rights guaranteed under this article.

3. Nothing in this section shall be construed as to bar any proceeding brought pursuant to section seven hundred four or seven hundred five of this article.

§ 705. Representatives and elections. 1. Representatives designated by the board after a showing of majority interest or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted pursuant to this section shall be the exclusive representatives of all the employees in the appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that employees, directly or through representatives, shall have the right at any time to present grievances to their employer.

The board shall designate a representative for purposes of collective bargaining when such representative demonstrates a showing of majority interest by employees in the unit. In cases where the parties to a dispute are without agreement on the means to ascertain the choice, if any, of employee organization as their representative, the board shall

ascertain such employees' choice of employee organization, on the basis of dues deduction authorization and other evidence, or if necessary by conducting an election. In the event that either party provides to the board, prior to the designation of a representative, clear and convincing evidence that the dues deduction authorizations, and other evidence upon which the board would otherwise rely to ascertain the employees' choice of representative, are fraudulent or were obtained through coercion, the board shall promptly thereafter conduct an election. The board shall also investigate and consider a party's allegations that the dues deduction authorizations and other evidences submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn or withheld as a result of employer fraud, coercion or any other unfair employer labor practice as defined in section seven hundred four of this article. If the board determines that a representative would have had a majority interest but for the employer's fraud, coercion or unfair labor practice, it shall designate the representative without the conduct of an election.

1-a. If the choice available to the employees in a negotiating unit is limited to selecting or rejecting a single employee organization, that choice shall be ascertained by the board on the basis of dues deduction authorizations instead of by an election. In such case, the employee organization involved will be certified without an election if a majority of the employees within the unit have executed a showing dues deductions authorizations.

1-b. The board shall determine whether any supervisory employee shall be excluded from any negotiating unit that includes rank-and-file farm laborers; provided, however, that nothing in this subdivision shall be construed to limit or prohibit any supervisory employee from organizing a separate negotiating unit.

2. The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this article, the unit appropriate for the purposes of collective bargaining

shall be the employer unit, multiple employer unit, craft unit, plant unit, or any other unit; provided, however, that in any case where the majority of employees of a particular craft, or in the case of a non-profitmaking hospital or residential care center where the majority of employees of a particular profession or craft, shall so decide the board shall designate such profession or craft as a unit appropriate for the purpose of collective bargaining.

3. Whenever it is alleged by an employee or his representative, or by an employer or his representative, that there is a question or controversy concerning the representation of employees, the board shall investigate such question or controversy and certify in writing to all persons concerned the name or names of the representatives who have been designated or selected. In any such investigation the board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section seven hundred six or otherwise, and may conduct an election by secret ballot of employees, or use any other suitable method to ascertain such representatives (either before or after the aforesaid hearing), provided, however, that the board shall not have authority to investigate or determine any question or controversy between individuals or groups within the same labor organization nor between labor organizations affiliated with the same parent labor organization concerning the internal affairs of any labor organization but nothing contained in this proviso shall be deemed to preclude the board from investigating and determining which, if any, of affiliated groups or labor organizations have been designated or selected by employees as their representatives for the purposes of collective bargaining within the meaning of this article.

4. The board shall have power to determine who may participate in the election and to establish the rules governing any such election: Provided, that no election need be directed by the board solely because of the request of an employer or of employees prompted thereto by their employer, nor shall any individuals employed only for the duration of a strike or lockout be eligible to vote in such election; and provided further, that no such election shall be conducted under the employer's supervision, or, except as may be required by the board, on the

employer's property, during working hours, or with his participation or assistance.

5. If at an election conducted pursuant to this section three or more nominees for exclusive collective bargaining representatives appear on the ballot and no one of them receives a majority of the votes cast at the election, the two nominees who received the highest number of votes shall appear on the ballot of a second election to be conducted hereunder, and the one receiving a majority of the votes cast at the second election shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

6. A labor organization nominated as the representative of employees shall be listed by name on the ballots authorized by subdivision three of this section. In any investigation conducted by the board pursuant to this section the board may make a finding as to whether any committee, employee representation plan, or association of employees involved is a company union, and if any such committee, employee representation plan, or association of employees be found to be a company union, it shall not be listed on the ballots, certified or otherwise recognized as eligible to be the representative of employees under this article.

§ 706. Prevention of unfair labor practices. 1. The board is empowered and directed, as hereinafter provided, to prevent any employer from engaging in any unfair labor practice. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

2. Whenever a charge has been made that any employer has engaged in or is engaging in any unfair labor practice, the board or its agent shall have the power to serve upon such employer a copy of the charge that was filed with the board and a notice setting the date for the service and filing of an answer. Any such charge may be amended from time to time prior to the issuance of an order based thereon. The employer or the

person so charged shall have the right to file an answer to the original or amended charge and to appear in person or otherwise to give testimony at the place and time set by the board or its agent. In the discretion of a member or agent conducting the hearing, or of the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the board or its agent shall not be bound by technical rules of evidence prevailing in the courts of law or equity.

3. The testimony taken at the hearing shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument. If upon all the testimony taken the board shall determine that the respondent has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair labor practice, and to take such further affirmative or other action as will effectuate the policies of this article, including, but not limited to (a) withdrawal of recognition from and refraining from bargaining collectively with any employee organization or association, agency or plan defined in this article as a company union or established, maintained or assisted by any action defined in this article as an unfair labor practice; (b) awarding of back pay; (c) reinstatement with or without back pay of any employee discriminated against in violation of section seven hundred four, or maintenance of a preferential list from which such employee shall be returned to work; (d) reinstatement with or without back pay of all employees whose work has ceased or whose return to work has been delayed or prevented as the result of the aforementioned or any other unfair labor practice in respect to any employee or employees or maintenance of a preferential list from which such employees shall be returned to work. Such order may further require such person to make reports from time to time showing the extent to which the order has been complied with. If upon all the testimony the board shall be of the opinion that the person or persons named in the complaint have not engaged in or are not engaging in any such unfair labor practice, then the board shall make its findings of fact and shall issue an order dismissing the complaint.

4. Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

5. The board shall not require as a condition of taking action or issuing any order under this article, that employees on strike or engaged in any other lawful, concerted activity shall discontinue such strike or such activity.

6. The board shall consider all complaints or petitions filed with it and conduct all proceedings under this article with all possible expedition.

§ 707. Judicial review. 1. The board shall have power to petition the supreme court of the state within the county wherein the unfair labor practice in question occurred or wherein any person charged with the unfair labor practice resides or transacts business, or if such court be on vacation or in recess, then to the supreme court of any county adjoining the county wherein the unfair labor practice in question occurred or wherein any person charged with the unfair labor practice resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was made and the findings and order of the board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board.

2. No objection that has not been urged before the board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, its member, agent, or agency, the court may order such additional evidence to be taken before the board, its member, agent, or agency, and to be made a part of the transcript. The board may modify its finding as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

3. The jurisdiction of the supreme court shall be exclusive and its judgment and decree shall be final, except that appeals shall lie to the appellate division of said court and to the court of appeals, in the manner and subject to the limitations provided in the civil practice law and rules irrespective of the nature of the decree or judgment or the amount involved.

4. Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the supreme court of the county where the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business by filing in such court a written petition praying that the order of the board be modified or set aside, or if such court be on vacation or in recess, then to the supreme court of any county adjoining the county wherein the unfair labor practice in question occurred or wherein any such person resides or transacts business. A copy of such petition shall be forthwith served upon the board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the board, including the pleading and testimony and order of the board. Upon

such filing, the court shall proceed in the same manner as in the case of an application by the board under subdivision one of this section, and shall have the same exclusive jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; and the findings of the board as to the facts shall in like manner be conclusive.

5. The commencement of proceedings under subdivisions one and four of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

6. When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified or setting aside in whole or in part an order of the board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by acts pertaining to equity jurisdiction of courts.

7. Petitions filed under this article shall be heard expeditiously and shall be considered and determined upon the transcript filed, without requirement of printing. Upon the filing of a record in the supreme court, the case shall be heard with greatest possible expedition, and shall take precedence over all other matters except matters of the same character.

§ 708. Investigatory powers. For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by sections seven hundred five and seven hundred six,

1. The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purposes of examination, and the right to examine, copy or photograph any evidence, including payrolls or lists of employees, of any person being investigated or

proceeded against that relates to any matter under investigation or in question. The board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the board, its member, agent, or agency, conducting the hearing or investigation. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence.

2. If any witness resides outside of the state, or through illness or other cause is unable to testify before the board or its member, agent, or agency conducting the hearing or investigation, his or her testimony or deposition may be taken within or without this state, in such manner and in such form as the board or its member, agent or agency conducting the hearing may by special order or general rule, prescribe.

3. In case of contumacy or refusal to obey a subpoena issued to any person the supreme court of any county within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

4. Upon any such investigation or hearing, the board, a member thereof, or any officer duly designated by the board to conduct such investigation or hearing, may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law.

* 5. Charges, petitions, orders, and other process and papers of the board, its member, agent, or agency, may be served either personally or by regular mail or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office

receipt therefor when registered and mailed as aforesaid shall be proof of service of the same. Witnesses summoned before the board, its member, agent, or agency shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this state. Final orders issued by the board shall be served upon the parties by registered or certified mail.

* NB Effective until November 22, 2023

* 5. Complaints, charges, petitions, orders, notices of hearing, and other process and papers of the board, parties appearing before the board, its members, agents, or agency, may be served either personally or by regular mail or by leaving a copy thereof at the principal office or place of business of the person required to be served, provided that service shall be effectuated by e-filing pursuant to section seven hundred eight-a of this article upon the effectiveness of such section, and further provided that until the effectiveness of section seven hundred eight-a of this article, parties shall provide courtesy copies of all process and papers served by regular mail to the recipient party by electronic mail to the electronic mailing address designated by the party for such purpose unless the party can establish to the board that it does not have access to the means to send courtesy copies by electronic mail or that it would impose an undue burden. The verified return or certificate of service by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt therefor when registered and mailed as aforesaid shall be proof of service of the same. Witnesses summoned before the board, its member, agent, or agency shall be paid the same fees and mileage that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this state. The board shall e-file all orders, notices of hearing, and other process and papers originating from the board pursuant to section seven hundred eight-a of this article upon the effectiveness of such section, provided that until the effectiveness of section seven hundred eight-a of this article, the board shall serve final orders upon the parties by registered or certified mail and shall

send courtesy copies of such orders, notices of hearing, and other process and papers originating from the board by electronic mail upon all parties who have provided an electronic mailing address designated for such purpose.

* NB Effective November 22, 2023

6. All process of any court to which application may be made under this article may be served in the county wherein the person or persons required to be served reside or may be found.

7. The several departments, commissions, divisions, authorities, boards, bureaus, agencies and officers of the state or any political subdivision or agency thereof, shall furnish the board, upon its request, all records, papers, and information in their possession relating to any matter before the board.

8. Subpoenas under this article shall be subject to paragraph (k) of subdivision five of section two hundred five of the civil service law and the rules and regulations promulgated under paragraph (l) of subdivision five of section two hundred five of the civil service law.

*** § 708-a. E-filing program for the purpose of filing papers electronically.** 1. Notwithstanding any other provision of law, the New York state public employment relations board shall establish and promulgate rules authorizing an electronic filing program (hereinafter referred to as "e-filing"), in the use of electronic means for: (a) the commencement of a proceeding; and (b) the filing and service of papers in pending proceedings. The board's website shall contain the e-filing program along with instructions for e-filing, such rules regarding e-filing, and certain forms promulgated by the board that parties or other persons may use to prepare their documents for e-filing.

2. Unless otherwise permitted under this section, all documents filed in cases before the board shall be filed electronically (hereinafter referred to as "e-filed"), on the board's website, unless the party can establish to the board that it does not have access to the means for

e-filing or that e-filing would impose an undue burden.

* NB Effective November 22, 2023

§ 709. Punitive provision. Any person who shall wilfully resist, prevent, impede, or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this article, or who shall in any manner interfere with the free exercise by employees of their right to select representatives in an election directed by the board pursuant to section seven hundred and five, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

§ 710. Public records and proceedings. Subject to rules and regulations to be made by the board consistent with article six of the public officers law, the complaints, orders and testimony relating to a proceeding instituted by the board under section seven hundred six of this article may be made public records and be made available for inspection or copying. All proceedings pursuant to section seven hundred six of this article shall be open to the public.

*** § 710-a. Publicly accessible decision index.** The board shall establish and maintain a current index, by topic, of the principles of law established by the decisions rendered by the board and its predecessors and the courts concerning matters arising under this article. Such index shall cite all appropriate authority which supports such principles and, where appropriate, all conflicting authority. Such index shall also contain a glossary of technical and statutory terms commonly used by the board in its decisions. Copies of such index shall be made available to the public electronically on the board's website.

* NB Effective November 22, 2023

§ 710-b. Electronically available information. The board shall create written materials informing employers and employees of the rights

afforded pursuant to this article to be made available on the board's website. Such materials shall be translated into the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau. Such materials shall include the rights afforded under the farm laborers fair labor practices act pursuant to chapter one hundred five of the laws of two thousand nineteen.

§ 711. Cooperation. The department and the other departments of the state and the officers and employees thereof shall render such assistance to the board as it may request in connection with its work hereunder. The board shall at all times have the cooperation of and shall cooperate with the department and the several boards, divisions and officers thereof in carrying out the policy declared in section seven hundred of this article.

§ 712. Repeal of inconsistent provisions. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article shall be controlling.

§ 713. Limitations. Nothing in this article shall be construed so as to interfere with, impede or diminish in any way the right of employees to strike or engage in other lawful, concerted activities, except that it shall continue to be unlawful for the employees of a non-profitmaking hospital or residential care center, or their representatives, or any other persons to engage in or to induce or encourage, or to attempt to engage in or to induce or encourage any strike, work stoppage, slowdown or withholding of goods or services by such employees or other persons at such hospital or residential care center, provided, however, that nothing herein shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public that a grievance or dispute, as defined in section seven hundred sixteen of

this article, exists at such hospital or residential care center, as long as such publicity does not have the effect of inducing any persons to withhold goods or services at such hospital or residential care center.

It shall be unlawful for a non-profitmaking hospital or residential care center to institute, declare or cause, or to attempt to institute, declare or cause any lockout of the employees of such hospital or residential care center.

§ 714. Separability. If any clause, sentence, paragraph, or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this article, and the application thereof to other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this article would have been adopted had such invalid provisions not been included.

§ 715. Application of article. 1. The provisions of this article shall not apply to: (a) employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the federal railway labor act; (b) employees where the national labor relations board successfully asserts jurisdiction over any employer, employees, trades, or industries pursuant to an order by the federal district court established under article three of the United States constitution; or (c) employees of the state or of any political or civil subdivision or other agency thereof.

2. For all other employees, the board shall, upon application and verification, promptly certify the exclusive bargaining representative of any bargaining unit previously certified by another state or federal

agency. All existing terms and conditions of employment between a certified exclusive bargaining representative and an employer shall remain in full force and effect through the board's verification process.

§ 716. Grievances and disputes in non-profitmaking hospitals and residential care centers. 1. As used in this section "grievance" means any controversy or claim arising out of or relating to the interpretation, application or breach of the provisions of an existing collective bargaining contract. As used in this section "dispute" means all other controversies, claims or disputes between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center concerning wages, hours, union security, seniority or other economic matters, including, but not limited to, controversies, claims or disputes arising in the course of negotiating, fixing, maintaining, changing or arranging such terms or conditions.

2. Every collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which does not contain provisions for the final and binding determination of grievances shall be deemed to include provision for the submission of such grievances, upon the request of either or both parties, to final and binding arbitration pursuant to such rules as may be established from time to time by the board.

3. Every collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which does not contain provisions for the final and binding determination of disputes shall be deemed to include provisions for:

(a) the appointment of a fact-finding commission by the board upon the request of both parties to the dispute, or by the commissioner upon his own motion and upon certification by such board that in its opinion efforts to effect a voluntary settlement of the dispute have been

unsuccessful. Such fact-finding commission shall have all of the powers and duties, including the power to make recommendations for the settlement of the dispute, as are vested in a board of inquiry by article twenty-two of this chapter; and

(b) the submission of the dispute to final and binding arbitration, pursuant to such rules as may be established from time to time by the board, by such board upon the request of both parties to the dispute, or by the commissioner upon his own motion and upon certification by such board that in its opinion efforts to effect a voluntary settlement of the dispute have been unsuccessful. The commissioner or the board may submit a dispute to final and binding arbitration pursuant to this paragraph without first submitting it to a fact-finding commission pursuant to the preceding paragraph of this subdivision.

4. In the absence of a collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center, the board and the commissioner may, in the manner and upon the conditions provided in subdivision three of this section, exercise all of the powers vested in them by the provisions of such subdivision of such section.

5. Nothing in this section shall be deemed to affect, impair or alter any collective bargaining contract between the employees of a non-profitmaking hospital or residential care center, or their representatives, and such hospital or residential care center which was executed prior to July first, nineteen hundred sixty-three, during the term of such contract.

6. (a) A petition under section seven hundred seven of this article involving a non-profitmaking hospital or residential care center shall be filed directly with the appellate division of the supreme court in the department embracing the specified supreme court, and shall be heard upon the certified transcript of the record in the proceeding before the board, without requirement of printing. Such petition shall be heard in a summary manner and have precedence over all other cases in such court. An appeal may be taken to the court of appeals in the same manner and

subject to the same limitations not inconsistent herewith as is now provided in the civil practice law and rules and a preference shall be granted in the hearing thereof on motion of any party thereto.

(b) An application to confirm, modify, correct or vacate an arbitration award made pursuant to the procedure established by this section shall be made in accordance with the provisions of article seventy-five of the civil practice law and rules, and the provisions of paragraph (a) of this subdivision pertaining to a petition filed thereunder shall apply to an application filed hereunder.

(c) The supreme court shall have jurisdiction, upon such notice as it deems appropriate, to restrain or enjoin any violation of the provisions of this section or section seven hundred thirteen and to grant such other and further equitable relief as may be appropriate. The provisions of section eight hundred seven of this chapter shall not apply to an action or proceeding instituted pursuant to this section or section seven hundred thirteen.

7. The fact-finders and arbitrators appointed pursuant to subdivision three of this section may consider the following standards in arriving at a final arbitration decision in disputes referred to them:

(a) the interest and welfare of the public;

(b) changes in the cost of living as they affect employees' purchasing power;

(c) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings, and the wages, hours and conditions of employment of employees doing the same, similar or comparable work or work requiring the same, similar or comparable skills and expenditures of energy and effort, giving consideration to such factors as are peculiar to the industry involved;

(d) comparison of wages, hours and conditions of employment as reflected in non-profitmaking hospitals and residential care centers in other comparable areas;

(e) the security and tenure of employment with due regard for the effect of technological changes thereon as well as the effect of any unique skills, required training and other attributes developed in the industry and required for the job;

(f) economic factors of the respective parties which are relevant to

the arbitration decision;

(g) such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining arbitration or otherwise between the parties or in the industry.

8. Where the validity of a certification of representatives issued by the board has been questioned by a refusal to bargain by a non-profitmaking hospital or a residential care center, the provisions of subdivision three of this section pertaining to fact-finding and arbitration shall not apply unless and until an unfair labor practice charge for refusal to bargain has been filed with the board. If such unfair labor practice charge has been filed, (1) no application made pursuant to section seventy-five hundred three of the civil practice law and rules, or otherwise, shall be granted to stay fact-finding or arbitration under this section; (2) the court shall consolidate the petitions and applications filed pursuant to paragraphs (a) and (b) of subdivision six of this section; and (3) no arbitration award made pursuant to this subdivision shall become effective until there has been a final determination that the labor organization has the right to exclusive representation of the employees in the unit with respect to which such award was made, pursuant to sections seven hundred five and seven hundred seven of this article, provided that nothing herein shall be interpreted to limit the discretion of the arbitrators to make such award retroactive.

9. Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that there may have been a violation of section seven hundred thirteen of this article, the chief executive officer of the non-profitmaking hospital or residential care center involved, or, in the case of a lockout, any affected employee or his certified representative, shall forthwith apply to the supreme court for an injunction against such violation. If such chief executive officer, or employee or his representative, fails or refuses to act as aforesaid, and if the chief executive officer of the city or village in which such hospital or center is located, or the chief executive officer of a town

with respect to such hospital or center located in the area of the town outside any village therein, shall, in his discretion, determine that the violation constitutes a threat to the public health, safety and welfare of such city, village or town, as the case may be, such chief executive officer shall so advise in writing the chief legal officer of such city, village or town who shall forthwith apply to the supreme court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief executive officer, employee or his representative, or chief legal officer, as the case may be, shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law. As used in this paragraph, the term "chief executive officer" shall mean (i) in the case of cities, the mayor, except in those cities having a city manager, it shall mean such city manager; (ii) in the case of villages, the mayor, except in those villages having a president or manager, it shall mean such latter officer; and (iii) in the case of towns, the supervisor or presiding supervisor.

§ 717. State mediation board, state labor relations board, and state employment relations board abolished. The state mediation board created by chapter five hundred sixty-nine of the laws of nineteen hundred sixty-eight, the New York state labor relations board created by chapter four hundred forty-three of the laws of nineteen hundred thirty-seven, and the state employment relations board created by chapter one hundred sixty-six of the laws of nineteen hundred ninety-one are hereby abolished. All the functions, powers and duties of such boards are hereby assigned to and shall hereafter be exercised and performed by and through the board. Any controversy, proceeding or other matter pending before the New York state board of mediation, the state labor relations board or the state employment relations board at the time this section takes effect, may be conducted and completed by the board and for such purposes the board shall be deemed to be a continuation of the functions, powers and duties of the New York state board of mediation, the state labor relations board or the state employment relations board, respectively, and not a new entity. Upon the transfer of functions to the board pursuant to this section, all appropriations and

reappropriations heretofore or hereafter made to the department of labor relating to the state board of mediation or the state labor relations board or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated are hereby made available for use and expenditure by the board for the same purposes for which originally appropriated or reappropriated. Whenever the state board of mediation or the state labor relations board or the chairman of the state board of mediation or of the state labor relations board or the state employment relations board is referred to or designated in any general, special or local law or in any rule, regulation, contract or other document, such reference or designation shall be deemed to refer to the board and the chairman thereof, respectively.

§ 718. Short title. This article shall be known and may be cited and referred to as the "New York state employment relations act."

ARTICLE 20-A

LABOR AND MANAGEMENT IMPROPER PRACTICES ACT

- Section 720. Findings and policy.
721. Definitions.
722. Fiduciary obligations of officers and agents.
723. Specific prohibited financial interests and transactions.
724. Obligation of employers and others.
725. Enforcement of fiduciary obligations.
726. Financial reporting.
727. Accounting requirements.
728. Enforcement of financial reporting and accounting duties.
- 728-a. Limitation of prosecutions under this article.
729. Rules and regulations; extensions of time.
731. Construction and saving clause.
732. Separability.

§ 720. Findings and policy. The rights of employees to organize and to

bargain collectively through labor organizations of their own choosing have been affirmatively protected by the constitution and statutes of this state and by parallel federal laws. Encouraged by these laws, a substantial proportion of the employees in this state have become members of, and contribute financially to, labor organizations for the purpose of bargaining collectively with their employers concerning wages and other conditions of employment. To the officers and agents of their labor organizations, these employees have entrusted their funds and the power to act in their behalf in achieving the purposes of their labor organizations.

Experience has shown instances where officers and agents of some labor organizations have abused their positions of fiduciary responsibility.

Experience has also shown instances in which some employers, employer organizations and labor relations consultants have participated in or induced such abuses of fiduciary responsibility by officers and agents of such labor organizations.

Responsible leaders of the labor movement have recognized that union officers and agents have a fiduciary duty to serve the members of the union honestly and faithfully, and these leaders have taken courageous action against those who have violated their trust. Experience, however, has shown that labor's efforts to correct abuses from within need to be aided and supplemented by legislation.

Such abuses have had a harmful effect on the general welfare, health and safety of employees and the public. Accordingly, it is hereby declared to be the public policy of the state of New York that officers and agents of a labor organization shall be held to a fiduciary obligation in handling the labor organization's assets; that such officers and agents shall not acquire financial interests which interfere or tend to interfere with the faithful performance of their responsibility to the labor organization; and that such officers and agents shall account fully to the members of such labor organization for all assets and financial transactions. It is hereby further declared to be the public policy of the state of New York that employers, employer

organizations, labor relations consultants and other persons shall not participate in or induce violations of such fiduciary obligation by officers and agents of labor organizations.

§ 721. Definitions. When used in this article, the term:

1. "Person" includes one or more individuals, partnerships, associations, or corporations, whether acting for themselves or in a representative capacity.

2. "Labor organization" means any organization of any kind which exists for the purpose, in whole or in part, of representing employees employed within the state of New York in dealing with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof, concerning terms and conditions of employment, grievances, labor disputes, or other matters incidental to the employment relationship, and shall include the parent national or international organization of a local labor organization.

3. "Employer" means any person conducting a business or employing another within the state of New York, but shall not include a state government or any political or civil subdivision or other agency thereof.

4. "Employer organization" means any organization of any kind which exists for the purpose, in whole or in part, of representing employers in dealing with employees or labor organizations concerning terms and conditions of employment, grievances, labor disputes, or other matters incidental to the employment relationship at a place of business maintained in the state of New York.

5. "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities or collective bargaining activities, but shall not include a director, officer or regular employee of such employer, employer

organization or labor organization, or an attorney engaged in the practice of law.

6. "Officer" means any person holding or in fact performing or authorized to perform the functions of an office named or described in the constitution, charter, articles of incorporation, articles of association or by-laws of a labor organization or employer organization.

7. "Agent" means any person, other than an attorney engaged in the practice of law, who represents or is authorized to represent a labor organization or employer organization, alone or with others in its dealings with employers, employees, members, employer organizations, labor organizations, or other persons, regardless of whether his relationship to the labor organization or employer organization is that of an independent contractor or employee.

§ 722. Fiduciary obligations of officers and agents. No officer or agent of a labor organization shall, directly or indirectly

1. Have or acquire any pecuniary or personal interest which would conflict with his fiduciary obligation to such organization;

2. Engage in any business or financial transaction which conflicts with his fiduciary obligation; or

3. Act in any way which subordinates the interests of such labor organization to his own pecuniary or personal interests.

§ 723. Specific prohibited financial interests and transactions. 1. Without limiting his fiduciary obligation provided in section seven hundred twenty-two, it shall constitute a violation of his fiduciary obligation for an officer or agent of a labor organization:

(a) To have, directly or indirectly, any financial interest in any business or transaction of either an employer whose employees his labor organization represents or seeks to represent for purposes of collective

bargaining, or an employer who is in the same industry as such an employer;

(b) To have, directly or indirectly, any financial interest in the business or transaction of any person who sells to, buys from, or otherwise deals with (i) an employer whose employees his labor organization represents or seeks to represent for purposes of collective bargaining, or (ii) an employer organization which represents such employer, or (iii) an employer who is in the same industry as such an employer;

(c) To have, directly or indirectly, any financial interest in the business of any person who sells to, buys from, or otherwise deals with his labor organization;

(d) To have, directly or indirectly, any financial interest in any transaction with his labor organization for the purchase or sale of property or services, except reasonable compensation for services rendered by him to such organization as officer or agent;

(e) To receive, directly or indirectly, any payments, loans, or gifts from (i) an employer whose employees his labor organization represents or seeks to represent for purposes of collective bargaining, or (ii) an employer organization which represents such employer, or (iii) an employer who is in the same industry as such an employer; provided, however, that such an officer or agent may receive reasonable compensation for services rendered by him as an employee of such employer, or payments required by collective agreement to be made in lieu of wages for time lost from work while engaged in collective bargaining, handling of grievances, or otherwise in the administration of a collective agreement;

(f) To lend any funds of the labor organization, directly or indirectly, to either any officer, agent, or employee of such organization, or any business in which an officer, agent, or employee of such organization has, directly or indirectly, a financial interest; provided, however, that loans may be made from a loan fund which has been set aside in accordance with a written resolution of the governing board of the labor organization for the specific purpose of making personal loans to its officers, agents, and employees generally, in compliance with established, written rules; or

(g) To lend or invest any funds of the labor organization, directly or

indirectly, in any business of an employer whose employees his labor organization represents or seeks to represent for purposes of collective bargaining, except where the governing board of the labor organization has adopted a written resolution finding and determining that such loan or investment will promote the best interests of the employees and will not adversely affect collective bargaining.

2. The fact that conduct or acts of an officer or agent of a labor organization have not caused damage to such organization or any of its members, or have been ratified or acquiesced in by such organization or its members, shall not be relevant in determining whether such conduct or acts constitute a violation by such officer or agent of any of the obligations provided in section seven hundred twenty-two and in this section.

3. Nothing contained in this section shall prohibit an officer or agent of a labor organization from:

(a) holding a financial interest acquired as an employee through a regularly established employee benefit plan, including a stock purchase, profit sharing, pension or retirement plan;

(b) holding securities traded on a securities exchange registered as a national exchange under the securities exchange act of nineteen hundred thirty-four, or securities traded on over-the-counter markets within the meaning of such act, or shares in an investment company registered under the investment company act of nineteen hundred forty, or securities of a public utility holding company registered under the public utility holding company act of nineteen hundred thirty-five, and all federal laws amendatory and supplemental to such acts; provided, however, that any investment in such securities or shares shall not constitute more than one per cent of the outstanding securities or shares of the respective class or classes of securities or shares which he holds;

(c) lending to, or investing in, any business owned predominantly by a labor organization or labor organizations; or

(d) receiving gifts, otherwise lawful, from employers whose employees his labor organization represents and from employer organizations which represent such employers, provided the cumulative retail value of such gifts from all such employers and employer organizations does not exceed

one hundred dollars in any calendar year.

4. Nothing contained in this section shall prohibit any labor organization from:

(a) Acquiring a nominal number of shares in any corporation for the purpose of qualifying as stockholder in order to obtain financial statements of the corporation; or

(b) Lending to, or investing in, any business owned predominately by a labor organization or labor organizations.

§ 724. Obligation of employers and others. No employer, employer organization, labor relations consultant or other person shall knowingly participate in or induce any conduct or act which violates any of the obligations of any officer or agent of a labor organization provided in section seven hundred twenty-three.

§ 725. Enforcement of fiduciary obligations. 1. Where an officer or agent of a labor organization has violated or is violating any of his obligations provided in sections seven hundred twenty-two and seven hundred twenty-three, such labor organization and the parent organization of such labor organization shall each have the right to bring an action or proceeding in any court of competent jurisdiction for legal or equitable relief to redress such violation of obligation. Any member of such labor organization shall have the right to bring such action or proceeding if (a) after request by any member that such action or proceeding be brought, such organization shall fail to do so, or (b) such request would be futile, or (c) such organization has failed to prosecute diligently any such action or proceeding which it has brought.

2. If any such action or proceeding is determined in favor of such organization or any such member, the court may award, in addition to other costs authorized by law, reasonable attorneys' fees and disbursements out of any moneys awarded or funds or assets recovered in such action or proceeding.

3. Any employer, employer organization, labor relations consultant, or other person who knowingly participated in or induced any conduct or act which violates any of the obligations of an officer or agent of a labor organization provided in sections seven hundred twenty-two and seven hundred twenty-three, shall be subject to the same liabilities and judicial remedies as such officer or agent, including but not limited to joint and several liability with such officer or agent for any losses suffered by the labor organization, or any member thereof, as a result of any such violation of obligation, and joint and several liability to pay over to such labor organization or such member any gains or profits made as a result of such knowing participation or inducement.

4. Each wilful and knowing violation of any of the provisions of sections seven hundred twenty-three or seven hundred twenty-four of this article shall constitute a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

§ 726. Financial reporting. 1. Every labor organization and employer organization shall make available to each of its members a copy of its annual financial report, or such portions thereof as the industrial commissioner shall find relevant and appropriate, in such manner as the industrial commissioner shall prescribe. The president or chief executive officer and the treasurer or chief financial officer of the organization personally shall be responsible for the preparation of such report, and both shall verify such report. The officers responsible for the preparation of reports shall be responsible for providing copies of reports under this section.

§ 727. Accounting requirements. 1. Every labor organization, employer organization, employer and labor relations consultant shall maintain detailed and accurate books and records of account in conformity with generally accepted accounting principles and in accordance with standards prescribed by the industrial commissioner; provided, however, that the standards prescribed may vary according to the size and type of

the organization. All books and records of account shall be preserved for a period of five years. The persons required to prepare reports under section seven hundred twenty-six of this article, shall be responsible for the maintenance and preservation of books and records of account required by this section.

2. The industrial commissioner, when he has reasonable cause to believe that the required accounting standards have not been maintained or that the books and records do not accurately reflect the financial condition and financial transactions of the labor organization or employer organization, may examine the books and records of the organization, subpoena witnesses and documents, and make such other investigation as is necessary to enable him to determine the facts relative thereto.

The industrial commissioner, when he has reasonable cause to believe that the books and records and the annual financial report required by section seven hundred twenty-six do not accurately reflect the matters required to be maintained or reported by the labor organization, employer organization, employer or labor relations consultant, may examine the books and records of such labor organization, employer organization, employer or labor relations consultant, subpoena witnesses and documents, and make such other investigation as is necessary to enable him to determine the facts relative thereto.

§ 728. Enforcement of financial reporting and accounting duties. 1. Any officer, agent, or employee of any labor organization or employer organization, or any employer or labor relations consultant who wilfully fails or refuses to comply with any provision of sections seven hundred twenty-six or seven hundred twenty-seven of this article shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

2. Any officer, agent, or employee of a labor organization or employer organization, or any employer or labor relations consultant who knowingly causes any person to fail or refuse to comply with any

provision of sections seven hundred twenty-six or seven hundred twenty-seven of this article shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

3. Any prosecution brought under subdivisions one and two of this section shall, in the case of a labor organization or an employer organization, be conducted in the county where such organization has a place of business and, in the case of an employer or labor relations consultant, in the county where such person resides or has a place of business; provided, however, that if such organization does not have a place of business within the state of New York or such person has neither a residence nor place of business within the state, the prosecution shall be conducted in the county of Albany.

4. If any officer, agent, or employee of a labor organization or employer organization, or any employer or labor relations consultant fails or refuses to comply with any provision of sections seven hundred twenty-six or seven hundred twenty-seven of this article, or causes any person to fail or refuse to comply with the provisions of these sections, the industrial commissioner may issue an order directing compliance. If the order is not complied with within ten days after issuance, there may be instituted in the name of the people of the state a proceeding to compel compliance with these sections.

§ 728-a. Limitation of prosecutions under this article. A prosecution for a misdemeanor consisting of a violation of any provision of article twenty-A of the labor law must be commenced within two years after the facts constituting the crime have been or, in the exercise of reasonable diligence, should have been discovered by the industrial commissioner or by an officer or employee in the department of labor charged with the responsibility of investigating matters reported or required to be reported to the industrial commissioner pursuant to such article.

§ 729. Rules and regulations; extensions of time. 1. The industrial

commissioner may, from time to time, promulgate, amend and rescind appropriate rules and regulations designed to carry out the express provisions and purposes of this article.

§ 731. Construction and saving clause. 1. Nothing contained in this article shall be construed to relieve any labor organization, employer organization, or any of its officers, agents, employees, representatives or members, or any employer or labor relations consultant from compliance with any other provision of this chapter or any other applicable law of this state.

2. Nothing contained in this article shall be construed to limit the responsibilities or duties of any officer or agent of a labor organization or employer organization under the common law or any law of this state, and nothing contained in this article shall be construed to take away or limit any right or remedy to which members of a labor organization or employer organization are entitled under the common law or any law of this state.

3. Nothing contained in this article shall be construed to limit or otherwise affect the right of any person under any statute or rule of law to organize or join labor organizations, to bargain collectively, to picket, strike, or engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, or the right of any labor organization under any statute or rule of law to carry on such activities, nor to enlarge or otherwise affect the power of courts to issue injunctions under section eight hundred seven of this chapter.

§ 732. Separability. If any provision of this article or the application of such provision to any person or circumstance shall be held invalid, the remainder of this article and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

ARTICLE 20-B

PSYCHOLOGICAL STRESS EVALUATORS AND EMPLOYMENT

Section 733. Definitions.

734. Practitioner limitations.

735. Employer limitations.

736. Employee rights in related proceedings.

737. Supplemental provisions.

738. Actions for damages.

739. Applicability of article.

§ 733. Definitions. As used in this article:

1. "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, council or committee of the state government, public benefit corporation, public authority or political subdivision of the state, or other business entity, which employs or seeks to employ an individual or individuals. All provisions of this article pertaining to employers shall apply in equal force and effect to their agents and representatives.

2. "Employee" means an individual employed by an employer.

3. "Prospective employee" means an individual seeking or being sought for employment with an employer.

4. "Psychological stress evaluator" means any mechanical device or instrument which purports to determine the truth or falsity of statements made by an employee or prospective employee on the basis of vocal fluctuations or vocal stress.

5. "Psychological stress evaluator examination" means:

- (a) the questioning or interviewing of an employee or prospective employee for the purpose of subjecting the statements of such employee or prospective employee to analysis by a psychological stress evaluator;
- (b) the recording of statements made by an employee or prospective

employee for the purpose of subjecting such statements to analysis by a psychological stress evaluator; or

(c) analyzing, with a psychological stress evaluator, statements made by an employee or prospective employee for the purpose of determining the truth or falsity of such statements.

§ 734. Practitioner limitations. 1. It shall be unlawful for any individual to knowingly administer or participate in the administration of a psychological stress evaluator examination of an employee or prospective employee as defined in section seven hundred thirty-three of this chapter.

2. Any individual violating any of the provisions of this section shall be guilty of a class B misdemeanor upon the first conviction and upon any subsequent convictions shall be guilty of a class A misdemeanor.

§ 735. Employer limitations. 1. No employer or his agent shall require, request, suggest or knowingly permit any employee or prospective employee of such employer to submit to a psychological stress evaluator examination and no employer shall administer or utilize the results of such test within or without the state of New York for any reason whatsoever.

2. A violation of any of the provisions of this section shall be a class B misdemeanor upon the first conviction and upon any subsequent conviction a class A misdemeanor.

§ 736. Employee rights in related proceedings. No employee shall be discharged, disciplined or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of the provisions of this article. Any employee discriminated against in violation of the provisions of this section shall be compensated by his employer for double the amount of any loss of wages

and benefits arising out of such discrimination and shall be restored to his previous position of employment.

§ 737. Supplemental provisions. No individual shall administer or participate in the administration of a psychological stress evaluator examination within the state to any individual seeking employment outside the state of New York or for the purpose of continuing employment outside the state of New York. Any individual violating the provisions of this section shall be guilty of a class B misdemeanor upon first conviction and upon any subsequent convictions shall be guilty of a class A misdemeanor.

§ 738. Actions for damages. Any employee or prospective employee damaged as the result of a violation of any of the provisions of this article shall be entitled to file an action for damages in the supreme court of this state.

§ 739. Applicability of article. This article shall only apply to employee and prospective employee-employer relations.

ARTICLE 20-C

RETALIATORY ACTION BY EMPLOYERS

Section 740. Retaliatory action by employers; prohibition.

741. Prohibition; health care employer who penalizes employees because of complaints of employer violations.

§ 740. Retaliatory action by employers; prohibition. 1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) "Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as

independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.

(b) "Employer" means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) "Law, rule or regulation" includes: (i) any duly enacted federal, state or local statute or ordinance or executive order; (ii) any rule or regulation promulgated pursuant to such statute or ordinance or executive order; or (iii) any judicial or administrative decision, ruling or order.

(d) "Public body" includes the following:

(i) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer;

(v) any federal, state or local department of an executive branch of government; or

(vi) any division, board, bureau, office, committee, or commission of any of the public bodies described in subparagraphs (i) through (v) of this paragraph.

(e) "Retaliatory action" means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a

federal, state, or local agency.

(f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice.

3. Application. The protection against retaliatory action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes

that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

4. Violation; remedy. (a) An employee who has been the subject of a retaliatory action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business. In any such action, the parties shall be entitled to a jury trial.

(c) It shall be a defense to any action brought pursuant to this section that the retaliatory action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration;

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees;

(f) a civil penalty of an amount not to exceed ten thousand dollars; and/or

(g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.

8. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

§ 741. Prohibition; health care employer who penalizes employees because of complaints of employer violations. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Employee" means any person who performs health care services for and under the control and direction of any public or private employer which provides health care services for wages or other remuneration.

(b) "Employer" means any partnership, association, corporation, the state, or any political subdivision of the state which: (i) provides health care services in a facility licensed pursuant to article twenty-eight or thirty-six of the public health law; (ii) provides health care services within a primary or secondary public or private school or public or private university setting; (iii) operates and provides health care services under the mental hygiene law or the correction law; or (iv) is registered with the department of education pursuant to section sixty-eight hundred eight of the education law.

(c) "Agent" means any individual, partnership, association, corporation, or group of persons acting on behalf of an employer.

(d) "Improper quality of patient care" means, with respect to patient care, any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient.

(e) "Improper quality of workplace safety" means, with respect to employees, any practice, procedure, action or failure to act of an

employer which violates any law, rule, regulation, or declaratory ruling adopted pursuant to law where such violation relates to matters which may present an unsafe workplace environment or risk of employee safety or a significant threat to the health of a specific employee.

(f) "Public body" means:

(1) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;

(2) any federal, state or local court, or any member or employee thereof, any grand or petit jury;

(3) any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof;

(4) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer;

(5) any federal, state or local department of an executive branch of government; or

(6) any division, board, bureau, office, committee or commission of any of the public bodies described in subparagraph one, two, three, four or five of this paragraph.

(g) "Retaliatory action" means the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(h) "Supervisor" means any person within an employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits a complaint.

2. Retaliatory action prohibited. Notwithstanding any other provision of law, no employer shall take retaliatory action against any employee because the employee does any of the following:

(a) discloses or threatens to disclose to a supervisor, to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or

(b) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

3. Application. The protection against retaliatory personnel action provided by subdivision two of this section shall not apply unless the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. This subdivision shall not apply to an action or failure to act described in paragraph (a) of subdivision two of this section where the improper quality of patient care or improper quality of workplace safety described therein presents an imminent threat to public health or safety or to the health of a specific patient or specific health care employee and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

4. Enforcement. A health care employee may seek enforcement of this section pursuant to subdivisions four and five of section seven hundred forty of this article.

5. Relief. In any court action brought pursuant to this section it shall be a defense that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

6. Publication. Every employer shall inform employees of their protections, rights and obligations under this section by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

ARTICLE 21

NEW YORK CALL CENTER JOBS ACT

Section 770. Definitions.

- 771. List of relocated call centers.
- 772. Grants, guaranteed loans and tax benefits.
- 773. Procurement contracts.
- 774. State benefits for workers.
- 775. No private right of action.
- 776. Regulations.

§ 770. Definitions. As used in this article:

1. The term "call center" means a facility or other operation whereby employees receive phone calls or other electronic communication for the purpose of providing customer assistance.

2. (a) The term "call center employer" means any business entity that employs fifty or more employees, excluding part-time employees; or fifty or more employees that in the aggregate work at least fifteen hundred hours per week, excluding overtime hours, for the purpose of staffing a call center.

(b) The term "part-time employee" means an employee who is employed for an average of fewer than twenty hours per week or who has been employed for fewer than six of the twelve months preceding the date on which notice is required under this article.

(c) The term "tax credit" means any of the following tax credits allowed under the tax law: recovery tax credit, tax-free New York area tax elimination credit, minimum wage reimbursement credit, empire state jobs retention program credit, economic transformation and facility redevelopment program tax credit, excelsior jobs program credit, employee training incentive program tax credit, empire state apprenticeship program tax credit, and employment incentive tax credit.

§ 771. List of relocated call centers. 1. A call center employer that intends to relocate a call center or more than thirty percent of a call center's employees measured as the employment level of the previous calendar month compared to the average employment level at such site

over the previous twelve months, from New York state to a foreign country shall notify the commissioner at least ninety days before such relocation.

2. A call center employer that violates subdivision one of this section shall be subject to a civil penalty not to exceed ten thousand dollars for each day of such violation, except that the commissioner may reduce such amount for just cause shown.

3. The commissioner shall compile an annual list of all call center employers that relocate pursuant to subdivision one of this section, and such list shall be made available to the public and shall prominently display a link to the list on the department's website. The commissioner shall provide a copy of such list to the commissioner of taxation and finance.

§ 772. Grants, guaranteed loans and tax benefits. 1. Except as provided in subdivision four of this section and notwithstanding any other provision of law, a call center employer that appears on the list described in section seven hundred seventy-one of this article shall be ineligible to enter into any agreements for any state grants or state guaranteed loans for a period of five years from the date such list is published.

2. Except as provided in subdivision four of this section and notwithstanding any other provision of law, a call center employer that appears on the list described in section seven hundred seventy-one of this article shall remit the unamortized value of any state grant or state guaranteed loans it has previously received for the call center appearing on the list, if the agreement for such grants and loans was entered into after the effective date of this article. Nothing in this subdivision shall be deemed to prevent the call center employer from receiving any grant to provide training or other employment assistance to individuals who are selected as being in particular need of training or other employment assistance due to the transfer or relocation of the call center employer's facility or operating units.

3. Except as provided in subdivision four of this section and notwithstanding any other provision of law, a call center employer that appears on the list described in section seven hundred seventy-one of this article shall not be allowed any tax credit described in subdivision (c) of section seven hundred seventy of this article for the five taxable years, excluding short taxable years, immediately succeeding the taxable year in which the call center first appears on such list, if the agreement for such tax credit was entered into after the effective date of this article.

4. The commissioner, in consultation with the appropriate agency providing a loan, grant or tax credit may waive the requirement provided under subdivision one, two or three of this section if the call center employer demonstrates that such requirement would:

- (a) threaten state or national security;
- (b) result in substantial actual or potential job loss in the state of New York; or
- (c) harm the environment.

If the commissioner waives such requirement, such commissioner shall promptly notify the commissioner of taxation and finance of such waiver.

§ 773. Procurement contracts. The head of each state agency shall use reasonable best efforts to ensure that all state-business-related contracts for call center and customer service work be performed by state contractors or other agents or subcontractors entirely within the state of New York. Presence on the list described in section seven hundred seventy-one of this article shall be considered a negative indication of ability to maintain jobs in the state as part of any vendor responsibility analysis.

§ 774. State benefits for workers. No provision of this article shall be construed to permit withholding or denial of payments, compensation, or benefits under any other state law, including but not limited to

state unemployment compensation, disability payments or worker retraining or readjustment funds, to workers employed by call center employers that relocate to a foreign country.

§ 775. No private right of action. Nothing set forth in this article shall be construed as creating, establishing, or authorizing a private cause of action by an aggrieved person against a call center employer who has violated, or is alleged to have violated, any provision of this article.

§ 776. Regulations. The commissioner shall promulgate such rules and regulations as shall be necessary and proper to effectuate the purposes and provisions of this article.

ARTICLE 21-A

WAREHOUSE WORKER PROTECTION ACT

Section 780. Definitions.

- 781. Quotas.
- 782. Protection from quotas.
- 783. Time on task.
- 784. Recordkeeping.
- 785. Right to request.
- 786. Unlawful retaliation.
- 787. Enforcement.
- 788. Other powers.
- 789. Injury reduction program.

§ 780. Definitions. As used in this article:

1. "Defined time period" means any unit of time measurement equal to or less than the duration of an employee's shift, and includes hours, minutes, and seconds and any fraction thereof.

2. "Employee" means an employee who is not exempt from the minimum wage and any overtime compensation provisions of this chapter and any applicable minimum wage orders and who works at a warehouse distribution center and is subject to a quota as defined in this section; provided, however, that "employee" does not include a driver or courier to or from a warehouse distribution center.

3. (a) "Employee work speed data" means information an employer collects, stores, analyzes, or interprets relating to an individual employee's performance of a quota, including, but not limited to, quantities of tasks performed, quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks.

(b) "Aggregated work speed data" means a compilation of employee work speed data for multiple employees, in summary form, assembled in full or in another form such that the data cannot be identified with any individual.

4. "Employer" means a person who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary services, or staffing agency, independent contractor, or any similar entity, employs or exercises control over the wages, hours, or working conditions of one hundred or more employees at a single warehouse distribution center or one thousand or more employees at one or more warehouse distribution centers in the state.

For the purposes of this definition, all employees of a controlled group of corporations shall be counted in determining the number of employees employed at a single warehouse distribution center or at one or more warehouse distribution centers in the state.

5. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether

domestic or foreign.

6. "Quota" means a work standard which:

(a) an employee is assigned or required to perform: at a specified productivity speed; or a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period; or under which the employee may suffer an adverse employment action if they fail to complete the performance standard.

(b) an employee's actions are categorized between time performing tasks and not performing tasks, and the employee's failure to complete a task performance standard or recommendation may have an adverse impact on the employee's continued employment or the conditions of such employment.

7. "Warehouse distribution center" means an establishment as defined by any of the following North American industry classification system ("NAICS") codes, however such establishment is denominated:

(a) four hundred ninety-three for warehousing and storage but does not include four hundred ninety-three thousand one hundred thirty for farm product warehousing and storage;

(b) four hundred twenty-three for merchant wholesalers, durable goods;

(c) four hundred twenty-four for merchant wholesalers, nondurable goods;

(d) four hundred fifty-four thousand one hundred ten for electronic shopping and mail-order houses; or

(e) four hundred ninety-two thousand one hundred ten for couriers and express delivery services.

8. "Work-related musculoskeletal disorders" means work-related conditions (injuries, illness or disorders) of the muscles, nerves, tendons, ligaments, joints, cartilage of the body's musculoskeletal system including the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs of the upper and lower limbs, neck, shoulders, and back that: (a) are the result of an exposure in the work environment during the performance of work that either causes or contributes significantly to the resulting condition or makes worse or longer-lasting a pre-existing condition; (b) are caused by ergonomic

risk factors that include, but are not limited to, rapid pace, forceful exertions, extreme or static postures, repetitive motions, direct pressure, contact stress, vibration or cold temperatures; or (c) are not the result of any instantaneous non-exertion event, such as slips, trips, or falls.

9. "Competent person" shall mean one capable of performing a job hazard assessment to identify and assess existing and predictable ergonomic risk factors in work activities that are a core element of an employee's job or a significant part of the workday that are harmful to employees and reasonably likely to cause or contribute to musculoskeletal disorders. A competent person shall include ergonomists, industrial hygienists, certified safety professionals, or other health and safety professionals who, by possession of a recognized advanced academic degree, certificate, or professional standing or who by extensive knowledge, training, and experience has successfully demonstrated the ability to manage workplace injury risk.

§ 781. Quotas. Each employer shall provide to each employee, upon hire, or within thirty days of the effective date of this article, a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet the quota. Each time the quota changes thereafter, the employer shall provide an updated written description of each quota to which the employee is subject within two business days of such quota change. Each time an employer takes an adverse employment action against an employee, the employer shall provide that employee with the applicable quota for the employee. The employer must provide the written description of any quota pursuant to this section in English and in the language identified by each employee as the primary language of such employee.

§ 782. Protection from quotas. An employee shall not be required to meet a quota that prevents compliance with meal or rest periods or use

of bathroom facilities, including reasonable travel time to and from bathroom facilities. An employer shall not take adverse employment action against an employee for failure to meet a quota that does not allow a worker to comply with meal and rest periods or for failure to meet a quota that has not been disclosed to the employee pursuant to section seven hundred eighty-one of this article.

§ 783. Time on task. Consistent with existing law, paid and unpaid breaks shall not be considered productive time for the purpose of any quota or monitoring system unless the employee is required to remain on call.

§ 784. Recordkeeping. 1. Each employer shall establish, maintain, and preserve for three years contemporaneous, true, and accurate records to ensure compliance with employee or commissioner requests for data.

§ 785. Right to request. 1. A current employee has the right to request a written description of each quota to which the employee is subject. If a current or former employee believes that they have been disciplined as the result of failing to meet a quota, or that meeting a quota caused a violation of their right to a meal or rest period or use of bathroom facilities, including reasonable travel time to and from bathroom facilities, they have the right to request, and the employer shall provide, a written description of each quota to which the employee is subject, a copy of the most recent ninety days of the employee's own personal work speed data, and a copy of the aggregate work speed data for similar employees at the same establishment for the same time period.

2. Such requested records pursuant to this section shall be provided at no cost to the current or former employee. A former employee is limited to one request pursuant to this section.

3. An employer that receives a written or oral request for information

pursuant to this section shall comply with the request as soon as practicable, but no later than fourteen calendar days from the date of the request.

4. Nothing in this section shall require an employer to use quotas as defined in this article or monitor work speed data. An employer that does not monitor this data has no obligation to provide it.

5. The employer must provide the requested written description of any quota and personal work speed data pursuant to this section in English and in the language identified by each employee as the primary language of such employee.

§ 786. Unlawful retaliation. For purposes of this article, there shall be a rebuttable presumption of unlawful retaliation if an employer in any manner discriminates, retaliates, or takes any adverse action against any employee within ninety days of the employee doing either of the following:

1. Initiating the employee's first request in a calendar year for information about a quota or personal work speed data pursuant to subdivisions one through three of section seven hundred eighty-five of this article.

2. Making a complaint related to a quota alleging any violation of sections seven hundred eighty-one to seven hundred eighty-five of this article, inclusive, to the commissioner, the department, other local or state governmental agency, or the employer.

3. Making a complaint related to section seven hundred eighty-nine of this article.

§ 787. Enforcement. The commissioner may adopt rules and regulations implementing the provisions of this article. The commissioner shall be authorized to enforce the provisions of this article and to assess civil

penalties as provided in sections two hundred fifteen and two hundred eighteen of this chapter. The civil penalties provided for in this section shall be in addition to and may be imposed concurrently with any other remedy or penalty provided for in this chapter.

§ 788. Other powers. The attorney general, either upon his or her own complaint or the complaint of any person acting for themselves or the general public, has the authority to prosecute actions, either civil or criminal, for violations of this article, or to enforce the provisions thereof independently and without specific direction of the commissioner.

§ 789. Injury reduction program. 1. Every employer subject to this section shall establish and implement an injury reduction program designed to identify and minimize the risks of work-related musculoskeletal disorders among workers involved in performing manual materials handling tasks. The program shall include: worksite evaluation; control of exposures, including ergonomic risk factors such as pace, which have caused or have the potential to cause work-related musculoskeletal disorders; employee training; on-site medical and first aid practices; and employee involvement.

2. The employer shall ensure that each job, process, shift or operation of work activity covered by this section or a representative number of such jobs, processes, shifts or operations of identical work activities shall be addressed by its injury reduction program. Unless otherwise exempted under this act, the employer shall have a written work site evaluation by a competent person for risk factors which have or are likely to cause work-related musculoskeletal disorders. Such risk factors shall include, but are not limited to, rapid pace, forceful exertions, extreme or static postures, repetitive motions, direct pressure, contact stress, vibration, or cold temperatures that had caused or are likely to cause work-related musculoskeletal disorders.

(a) Any worksite evaluations shall also determine whether any employees exposed to such risk factors are subject to either personnel

action with the potential for adverse action, or adverse action or termination themselves, arising in whole or in part from an employer's use of quotas to determine employee assignments.

(b) All such worksite evaluations shall incorporate input from workers who regularly perform those jobs, either directly or through an employee-led workplace safety committee, on the possible risk factors and any workplace changes that can reduce such risk factors.

(c) Copies of such worksite evaluations shall be made available to workers and their representatives upon request, at no cost, within one business day of such request. Workers and their representatives shall be notified in writing of the results of the worksite evaluation. Employers shall maintain accessible copies of such evaluations at locations within the warehouse and shall make such copies readily available to workers.

(d) An initial worksite evaluation shall be conducted. Worksite evaluations shall be reviewed and updated at least annually. A new analysis of risk factors shall be conducted in accordance with the provisions of subdivision one of this section whenever a new job, process, or operation is introduced which could increase the risk factors for work-related musculoskeletal disorders. Such new analysis shall be conducted within thirty days of the creation or change of a job, process or operation.

(e) A worksite evaluation must be reviewed by a board certified ergonomist when an employee-led workplace safety committee makes a written request to the employer based upon a material concern related to the findings of a competent person. Where there is no active employee-led workplace safety committee, a worksite evaluation must be reviewed by a board certified ergonomist when any employee-led committee makes a formal recommendation based upon a material concern related to the findings of a competent person.

3. The employer shall correct in a timely manner any risk factors identified as having caused or being likely to cause work-related musculoskeletal disorders. For any corrections which require more than thirty days to complete, the employer shall revise, as needed, and provide a schedule for such proposed corrections. Such schedule shall be included in the evaluations provided to workers and their representatives.

(a) Where the employer demonstrates that it is unable to eliminate identified risk factors, the employer shall minimize the exposures to the extent feasible.

(b) In reducing risk factors, the employer shall consider:

(i) engineering controls and redesigning work stations to change shelving heights, provide adjustable fixtures or tool redesign; and

(ii) administrative controls, such as job rotation which reduces the exposure to risk factors, reduced work pacing or additional work breaks.

(c) Employers shall maintain records of steps taken to eliminate or reduce risk factors and shall make copies available to workers and their representatives upon request.

4. All employers covered by this section shall provide injury reduction training to all employees involved in performing manual materials handling jobs and tasks at the warehouse during normal work hours and without suffering a loss of pay. Such training shall be provided in a language and vocabulary that the workers understand and shall be repeated annually. The training shall also be provided to the workers' supervisors. Such training shall be in addition to any training received in accordance with section twenty-seven-d of this chapter and shall include:

(a) The early symptoms of work-related musculoskeletal disorders and the importance of early detection;

(b) Musculoskeletal disorder ergonomic risk factors and exposures at work, including the hazards posed by excessive rates of work;

(c) Methods to reduce risk factors for musculoskeletal disorders, including both engineering controls and administrative controls, such as limitations on work pace and increased scheduled and unscheduled breaks;

(d) The employer's program to identify risk factors as required under this section and prevent work-related musculoskeletal disorders, including the summary protocols for medical treatment approved by the employer's medical consultant;

(e) The rights and function of workplace safety committees established under section twenty-seven-d of this chapter and the rights of employees to report any risk factors, other hazards, injuries or health and safety concerns; and

(f) Training on the unlawful retaliation of any provision in this

section, including a reference to the employer's policy requiring disciplinary actions when supervisors or managers violate the law or policy, as well as the employer's policy prohibiting any workplace discrimination.

5. Any on-site location that staffs a medical professional to treat workers in warehouses covered by this section for symptoms of work-related musculoskeletal disorders shall be staffed with medical professionals operating within their legal scope of practice. Nothing in this section shall infringe on the rights of workers under the opening paragraph of subdivision (a) of section thirteen of the workers' compensation law to either select an authorized physician to treat employees and render medical care or to select the continuance of any medical treatment or care by an authorized physician selected by the employee. All examinations and treatments by any medical personnel employed or selected by the employer under section seven hundred eighty-one of this article shall be performed for the purposes of the injury reduction program and shall not interfere with the rights of employees to receive any medical treatment or any other benefits under the workers' compensation law.

(a) Employers shall ensure that staffing and the practice of any first aid or medical station meets state requirements for physician supervision of nurses, emergency medical technicians or other non-physician personnel.

(b) In all warehouses with on-site medical or first aid providers for the treatment of work-related musculoskeletal disorders, the employer shall consult with a medical consultant who is licensed by New York state and board certified in occupational medicine.

(i) The employer shall obtain from the medical consultant a written evaluation of the on-site medical or first aid provider program and protocols followed in the warehouse for identification and treatment of work-related musculoskeletal disorders and shall include recommendations to ensure compliance with accepted medical practice of the staffing, supervision and documentation of medical treatment protocols.

(ii) The employer shall obtain from the medical consultant a summary of treatment protocols suitable for worker patients covering all aspects of the on-site medical and first aid practices, from early detection of

work-related musculoskeletal disorders through evaluation by a qualified physician and physician provision of appropriate work restrictions in languages understood by the employees.

(iii) The employer shall ensure that the medical consultant reviews the previous medical consultant evaluation, related materials and protocols on an annual basis, and recommends changes as appropriate.

(iv) The employer shall ensure that all designated medical and first aid providers have observed, in person, the jobs involving manual materials handling within the warehouse and all risk factors identified in the evaluation conducted under the medical consultant evaluation.

(c) There shall be no delays in the provision of adequate medical care to workers who report injuries to the on-site medical services.

(d) Each employer shall ensure that no supervisory or managerial employee or other person discriminates or retaliates against any current, former, or prospective employee or other person for reporting a work-related injury or illness, or health and safety concern.

6. Employers shall ensure that employees and their designated representatives are consulted both before and during the development and implementation of all aspects of the program. Where employees have established a workplace safety committee in compliance with section twenty-seven-d of this chapter, the employer shall ensure that the committee is consulted regarding the development and implementation of all aspects of the injury reduction program. Any record created by the employer according to this section shall be provided to the workplace safety committee prior to consultation. All ergonomic safety documents provided to employees shall be provided in writing in English and in the language identified by each employee as the primary language of such employee. If, prior to the effective date of this section, an employer has formed workplace safety committees in the State of New York through collective bargaining that is currently active, and continuously maintains such safety committees in conjunction with an injury prevention program that fully complies with the federal Occupational Safety and Health Act, then such employer may instead allow an employee-led workplace safety committee to review or conduct any worksite evaluations performed by a competent person. Such injury prevention program must be reviewed by a board certified ergonomist

where an employee-led workplace safety committee makes a written request to the employer based upon a material concern related to the findings of a competent person. Where there is no active employee-led workplace safety committee, a worksite evaluation must be reviewed by a board certified ergonomist when any employee-led committee makes a written request to the employer based upon a material concern related to the findings of a competent person. Such review must be commenced within thirty days of receipt of such written request. Copies of revised or new worksite evaluations shall be made available to workers and their representatives, at no cost, upon request upon completion of such worksite evaluation.

ARTICLE 21-B

PROTECTION OF CALL CENTER WORKERS FROM DISPLACEMENT

Section 790. Definitions.

791. Terminated call center contract.

792. Entering into a call center contract.

793. No conflict with collective bargaining agreements.

§ 790. Definitions. As used in this article:

1. The term "call center" means a facility or other operation in which employees receive phone calls or other communications, including electronic communications for the purpose of providing customer assistance or for related services supportive of business processes.

2. The term "call center contract" means a contract with a governmental body, or a subcontract with an entity that has a contract with a governmental body, pursuant to which the contractor furnishes call center services for the benefit of the governmental body.

3. The term "governmental body" means the state of New York and any public authority or public benefit corporation in the state of New York.

4. The term "call center employee" means any person employed to

perform call center services who has been regularly assigned to such work for a call center contractor on a full or part-time basis for at least ninety days, except for (a) persons whose work for a call center is managerial or supervisory; and (b) persons regularly scheduled to work fewer than four hours per week for the call center.

5. The term "entity" means a person, partnership, proprietorship, association, limited liability company, trust, corporation, firm, joint venture or enterprise of any kind.

6. The term "call center contractor" means an entity (a) that is a party to a call center contract, and (b) provides call center services for the benefit of a governmental body, and (c) employs call center employees or engages a subcontractor or other entity to perform such call center services and that entity employs call center employees.

7. The term "terminating call center contractor" means an entity that has provided services as a call center contractor pursuant to a call center contract which is being terminated.

8. The term "former call center contractor" means an entity that provided services as a call center contractor pursuant to a call center contract which has been terminated, and after termination of that contractor, a successor call center contractor has performed some or all of the same services pursuant to a call center contract.

9. The term "successor call center contractor" means an entity that, pursuant to a call center service contract, succeeds to the performance of call center services previously performed by a terminating call center contractor.

§ 791. Terminated call center contract. 1. Before termination of a call center contract in circumstances where a successor call center contractor will undertake to provide services that were the subject of the terminating contract, the terminating call center contractor shall provide to the successor call center contractor, upon the request of a

successor contractor, a full and accurate list containing the name, address, date of hire and employment classification of each call center employee whose work includes providing call center services that were the subject of the terminating contract.

2. Upon termination of a call service contract in circumstances in which services provided under that contract will be performed by a successor call center contractor, the successor call center contractor may retain those call center employees who performed such services for the former call center contractor immediately prior to termination of that contract. It may be considered a material term of the call center contract that such employees shall be retained for a ninety-day transition employment period.

3. If the successor call center contractor determines that fewer call center employees are required to perform the services that are the subject of the contract than had been required to perform such services by the former call center contractor, the successor call center contractor may fill the positions that it determines are needed with the call center employees with the greatest seniority within job classification; provided, that during the ninety-day transition period, the successor call center contractor may maintain a preferential hiring list of those call center employees not retained, and those on the preferential hiring list may be given a right of first refusal to any jobs within their classifications that become available during that period.

4. Except as provided in subdivision three of this section, during the ninety-day transition period, the successor call center contractor shall not discharge without cause a call center employee retained pursuant to this article.

5. At the end of the ninety-day transition period, the successor call center contractor shall perform a performance evaluation for each call center employee retained pursuant to this article. If such employee's performance during the ninety-day transition period is satisfactory, the successor call center contractor shall offer such employee continued

employment.

6. If the successor call center contractor engages a subcontractor or other entity to perform call center services provided for in a successor call center contract, that successor call center contractor shall require the subcontractor or other entity to adhere to all of the obligations of this article.

§ 792. Entering into a call center contract. 1. Whenever a governmental body shall undertake to procure call center services using a call center contractor, the governmental body may require that the call center contract with such entity includes the obligation pursuant to this article to retain call center employees of the former call center contractor.

2. A governmental body intending to enter into a call center service contract, in circumstances in which such services had theretofore been performed by call center employees pursuant to a call center contract, may require any entity seeking to enter into such contract to demonstrate that it will establish the worksite for its performance in a location which is reasonably accessible to the employees who have been performing such services prior to the solicitation of bids for a successor call center contract. For the purposes of this section, a worksite shall be considered reasonably accessible if it is 10 miles or less from the location of the affected employees' worksite where such employees performed work-related duties in the course of their employment for the former call center contractor, provided that any worksite shall not include an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of their employment. The requirements of this subdivision shall not apply to successor call center contractors that intend for the work-related duties of the affected call center employees previously employed by the former call center contractor to be performed remotely.

§ 793. No conflict with collective bargaining agreements. The

provisions of this article shall not apply to any:

1. Successor call center contractor that, on or before the effective date of a termination of a call center contract, agrees to assume, or to be bound by, the collective bargaining agreement of the former call center contractor, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees that are at least as protective of employee rights as those pursuant to this article; and

2. Successor call center contractor whose call center employees will be accreted to a bargaining unit with a pre-existing collective bargaining agreement, provided that the collective bargaining agreement provides terms and conditions for the discharge or laying off of employees that are at least as protective of employee rights as those pursuant to this article; and

3. Former call center contractor that obtains a written commitment from a successor call center contractor that the successor call center contractor's call center employees will be covered by a collective bargaining agreement that provides terms and conditions for the discharge or laying off of employees that are at least as protective of employee rights as those pursuant to this article.

ARTICLE XXII
**BOARDS OF INQUIRY IN
LABOR DISPUTES**

Section 800. Boards of inquiry in labor disputes.

801. Appointment; qualification.

802. Rules.

803. Witnesses; production of documents; subpoenas and commissions.

804. Reports; confidential information.

805. Personnel; compensation.

§ 800. Boards of inquiry in labor disputes. Where any strike, lockout, or other labor dispute exists or is apprehended, the commissioner, for the purpose of inquiring into the causes and circumstances of the dispute may, if he thinks fit, refer any matters appearing to him to be connected with or relevant to the dispute to a board of inquiry appointed by him for the purpose of such reference; and the board shall, either in public or in private, at its discretion, and at any place within the state, inquire into the matters referred to it and report thereon to the commissioner. Provided, however, that no such reference shall be made unless and until there shall have been filed with the commissioner a certificate of the state board of mediation stating that in its opinion efforts to effect a voluntary settlement of the dispute have been unsuccessful.

§ 801. Appointment; qualification. A board of inquiry for the purposes of this article shall consist of a chairman and such other persons as the commissioner shall from time to time appoint, The chairman and each appointive member of the board shall be exempt from civil service examination and the provisions of the civil service law and rules.

§ 802. Rules. The commissioner may make rules regulating the procedure of any board of inquiry, including rules relating to the attendance of witnesses, and the production of books, contracts, papers, documents and other evidence which the board may determine to be relevant to the subject matter of the inquiry.

§ 803. Witnesses; production of documents; subpoenas and commissions. A board of inquiry shall have power, if and to such extent as may be authorized by rules made under this article, to require any person who appears to the board to have any knowledge of the subject matter of the inquiry to furnish in writing or otherwise such particulars in relation thereto as the board may require, to issue subpoenas for and compel the attendance of witnesses and the production of books, contracts, papers,

documents and other evidence, and to administer oaths and take testimony and take or cause to be taken depositions of witnesses residing within or without this state. A subpoena issued under this section shall be regulated by the civil practice law and rules. Subpoenas and commissions to take testimony shall be issued under the seal of the department.

§ 804. Reports; confidential information. A board of inquiry shall, after investigation, make a final report to the commissioner as to the matters referred to it and may make interim reports. Unless the strike, lock-out or other industrial dispute is terminated or adjusted prior thereto, or is re-submitted by all parties to the dispute for voluntary settlement to the state board of mediation, any final report of a board of inquiry shall be made public by the commissioner. The commissioner may make public any interim report of a board of inquiry or any part thereof, in such manner as he deems proper. Provided, however, that there shall be excluded from any report or publication authorized by the board or the commissioner, any information, other than information having a direct bearing on the dispute, obtained by the board in the course of its inquiry as to any labor union or as to any individual business (whether carried on by person, firm or corporation) if at the time such information is supplied to the board the person who supplies it represents to the board that it is confidential information and the board is satisfied that it is information which is not available otherwise than through evidence given at the inquiry, unless with respect to such evidence so presented as confidential and found to be not otherwise available the board procures from the labor union or the person, firm or corporation the consent to publication; nor shall any individual member of the board or any person concerned in the inquiry, without such consent, disclose any such information.

§ 805. Personnel; compensation. 1. The commissioner by official order may assign to the work of the board, or any part thereof, any officer or employee of the department, who shall perform such services under this article as the commissioner may direct. The persons so appointed shall not receive any additional compensation for services performed, but

shall be allowed their actual and necessary expenses incurred in the performance of their duties under this article.

2. Each appointive member of the board shall be entitled to be reimbursed for his traveling and other expenses actually and necessarily incurred by him in the performances of his duties and, in addition, shall receive a compensation to be fixed by the commissioner within the amount available by appropriation.

ARTICLE 22-A

INJUNCTIONS IN LABOR DISPUTES

Section 807. Injunctions issued in labor disputes.

808. Contempt of injunction order to be tried by jury.

§ 807. Injunctions issued in labor disputes. 1. No court nor any judge or judges thereof shall have jurisdiction to issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, as hereinafter defined, except after a hearing, and except after findings of all the following facts by the court or judge or judges thereof to be filed in the record of the case:

(a) That unlawful acts have or a breach of any contract not contrary to public policy has been threatened or committed and that such acts or breach will be executed or continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;

(d) That complainant has no adequate remedy at law;

(e) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection; and

(f) That no item of relief granted prohibits directly or indirectly any person or persons from doing, whether singly or in concert, any of the following acts:

(1) Ceasing or refusing to perform any work or to remain in any relation of employment;

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any agreement, undertaking or promise;

(3) Paying or giving to, or withholding from, any person any strike or unemployment benefits or insurance or other moneys or things of value;

(4) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any state;

(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, picketing, patrolling any public street or any place where any person or persons may lawfully be, or by any other method not involving fraud, violence or breach of the peace;

(6) Ceasing to patronize or to employ any person or persons;

(7) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(8) Advising or notifying any person or persons of any intention to do any of the acts heretofore specified;

(9) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(10) Advising, urging or inducing without fraud, violence or threat thereof, others to do the acts heretofore specified;

(11) Doing in concert of any or all of the acts heretofore specified on the ground that the persons engaged therein constitute an unlawful combination or conspiracy or on any other grounds whatsoever.

2. Such hearings shall be held only after a verified complaint specifying in detail the time, place and the nature of the acts complained of and the names of the persons alleged to have committed the same or participated therein have been served and after due and personal notice, in such manner as the court shall direct, has been given to all known persons against whom relief is sought and also to the public officers charged with the duty to protect the complainant's property. The hearing shall consist of the taking of testimony in open court with opportunity for cross-examination and testimony in opposition thereto,

if offered, and no affidavits shall be received in support of any of the allegations of the complaint.

Provided, however, that a court or a judge thereof may issue a restraining order without requiring a verified bill of particulars and only upon such notice as to the court or judge appears adequate to afford an opportunity to those who are to be affected by such restraining order to appear in opposition to the application therefor, if each of the following conditions is met:

(a) There is a labor dispute which directly and immediately involves:

(i) The production on a farm of milk, fruits, berries, vegetables or other farm produce; or

(ii) The shipment of any such product from the farm where it was produced; or

(iii) The first storage of any such product after shipment from the farm where it was produced; or

(iv) The first processing by canning or freezing of fruits, berries or vegetables; and

(b) The plaintiff is a producer of such product; and

(c) Such product is in a perishable condition; and

(d) The verified complaint and other testimony submitted by the plaintiff, under oath, if sustained, would be sufficient not only to justify the court in issuing a temporary injunction upon a hearing after notice in accordance with the provisions of this section, but also to show that the plaintiff will be irreparably damaged unless a restraining order is issued; and

(e) The court or judge, before issuing the restraining order, makes a decision to be filed in the record of the case in which he finds specifically that each of the facts called for by subdivision one above of this section has been established prima facie by the weight of the evidence submitted in support of the application for the restraining order and in opposition thereto.

Any such restraining order shall be effective for no longer than five days and shall become void and not be subject to renewal at the expiration of said five days.

3. No temporary injunction or restraining order shall be issued except on condition that plaintiff shall first file a minimum undertaking of one thousand dollars. Where an injunction or restraining order is sought against more than a single individual, the court on the hearing shall make a finding of the number of individuals sought to be enjoined and the undertaking shall be increased by the sum of twenty dollars for each additional member of a local or national body sought to be enjoined. The maximum undertaking which may be required shall not exceed ten thousand dollars. The undertaking shall be sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or improper issuance of such injunction, including all reasonable costs (together with reasonable attorney's fees), and expense against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court. The undertaking herein mentioned shall constitute an agreement on the part of the plaintiff and the surety upon which a judgment may be entered in the same action or proceeding against said plaintiff and surety. The filing of the undertaking shall be deemed an appearance by the surety for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

4. No injunctive relief shall be granted to any plaintiff who has failed to plead and prove compliance with all obligations imposed by law which are involved in the labor dispute in question, or who has failed to allege and prove that he has made every reasonable effort to settle such dispute either by negotiation or with the aid of any machinery of mediation or voluntary arbitration, provided for by law or contract between the parties.

5. No injunctive relief shall be granted except to prohibit such specific act or acts as may be expressly complained of in the complaint and the bill of particulars filed in such case and expressly included in the findings of fact made and filed by the court. Such injunctive relief shall be binding only upon the parties to the suit, their agents, servants, employees, or those in active concert or participation with them and who shall by personal service or otherwise have received actual

notice of the same.

6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute (as these terms are herein defined) shall be held responsible or liable in any civil action at law or suit in equity, or in any criminal prosecution, for the unlawful acts of individual officers, members, or agents, except upon proof by the weight of evidence and without the aid of any presumptions of law or fact, of (a) the doing of such acts by persons who are officers, members or agents of any such association or organization, and (b) actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof by such association or organization.

7. Every temporary injunction and restraining order shall by its terms expire within such time after entry as the court or judge may fix, not to exceed ten days, unless the plaintiff is ready by the expiration of that period to proceed to trial and shall pay the necessary calendar and trial fees.

8. No permanent injunction shall remain in force for more than six months from the date on which the judgment is signed, provided, however, that the duration of the injunction may be extended for another six months, if after a further hearing initiated and conducted in the same manner as the original hearing the court shall determine that the injunction shall be continued or modified in accordance with the findings of facts on the subsequent hearing.

9. Whenever any court or judge or judges thereof shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute the stenographer shall furnish to the clerk within ten days the original transcript of the minutes after fees therefor have been paid. Immediately upon receiving such minutes the clerk shall cause notice of that fact to be sent to the attorney for the appellant, or to the appellant if he has not appeared by attorney. The appellant or his attorney shall then procure the case to be settled on written notice of at least three days to the clerk and to the attorney for the respondent

or to the respondent if he has not appeared by attorney, returnable before the justice who tried the case. The clerk must thereupon make a return to the appellate court, which must contain the summons, pleadings, evidence and judgment or final order and all other necessary papers and proceedings and have annexed thereto the opinion of the court, if any, and the notice of appeal. The justice before whom the case was tried shall within five days from the date of the submission to him of the case on appeal, settle the case and endorse his settlement on the return. The clerk must thereupon cause the return to be filed with the clerk of the appellate court. After a justice is out of office he may settle the case in any action or proceeding tried before him and may be compelled by the appellate court to do so. Upon the filing of such record in the appropriate appellate court the appeal shall be heard with the greatest possible expedition, giving the proceeding precedence over all other matters except older matters of the same character.

10. When used in this section, and for the purpose of this section:

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation, or who are employees of one employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is between one or more employers or associations of employers and one or more employees or associations of employees; between one or more employers or associations of employers and one or more employers or associations of employers; or between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and if he or it is engaged in the industry, trade, craft or occupation in which such dispute occurs, or is a member, officer or agent of any association of employers or employees engaged in such industry, trade, craft or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or

representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee.

§ 808. Contempt of injunction order to be tried by jury. 1.

Notwithstanding any other provision of law, no person shall be punished either by fine or imprisonment for any alleged contempt arising out of any failure or refusal to obey any mandate of the court contained in or incidental to an injunction order granted by said court in any case involving or growing out of a labor dispute except after a trial by jury to which the defendant shall be entitled as a matter of right; provided, however, that this section shall not apply to any alleged contempt of such an injunction order committed in the presence of the court.

2. As used in subdivision one of this section:

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or who are employees of one employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is between one or more employers or associations of employers and one or more employees or associations of employees; between one or more employers or associations of employers and one or more employers or associations of employers; or between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined);

(b) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee;

(c) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and if he or it is engaged in the industry, trade, craft, or occupation in which such dispute occurs, or is a member, officer or agent of any association of employers or employees engaged in such industry, trade, craft, or occupation.

ARTICLE 23

APPRENTICESHIP TRAINING

- Section 810. Statement of public policy.
- 811. Powers and duties of industrial commissioner; personnel.
 - 812. Related and supplemental instruction.
 - 813. State apprenticeship and training council.
 - 813-a. Annual reports by apprenticeship programs.
 - 814. Local, regional and state joint apprenticeship committees.
 - 815. Suggested standards for apprenticeship agreements.
 - 816. Apprenticeship agreements.
 - 816-a. Apprenticeship assistance in all political subdivisions of the state.
 - 816-b. Apprenticeship participation on certain governmental contracts.
 - 817. Limitation.
 - 818. Separability.
 - 819. Training of persons in the repair and reconditioning of slot machines.

§ 810. Statement of public policy. Skilled manpower constitutes a great resource in this state. Apprenticeship programs, through supervised training and education, develop skilled craftsmen and help meet the increasing needs for such workers in the state's labor force. The continuing development of skilled manpower is essential for individual self-realization and for an expanding industrial economy. To these ends, it is the declared public policy of the state of New York to develop sound apprenticeship training standards and to encourage

industry and labor to institute training programs.

§ 811. Powers and duties of industrial commissioner; personnel. 1. The industrial commissioner shall have the following powers and duties:

(a) to encourage and promote the making of apprenticeship agreements conforming to the standards established by or pursuant to this article;

(b) to establish suggested standards for apprenticeship agreements in conformity with the provisions of this article;

(c) to supervise the execution of apprenticeship agreements and maintenance of standards;

(d) to register approved apprenticeship agreements, and upon performance thereof, to issue certificates of completion of apprenticeship;

(e) to settle differences arising out of apprenticeship agreements, when such differences cannot be adjusted locally or in accordance with established trade procedure;

(f) to terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements;

(g) to encourage and promote the hiring by any trade or group of trades of persons who are on parole, in order to aid in the rehabilitation of such persons;

(h) to study and disseminate information on apprenticeship training, trends of employment opportunities in various trades, the impact of technological change on skill levels and requirements, the supply of and needs for skilled manpower, and related matters;

(i) to cooperate with the federal government, the state education department, the state department of commerce and other agencies, public and private, in the state;

(j) to cooperate with the director of the division of minority and women's business development pursuant to paragraph (k) of subdivision three of section three hundred eleven of the executive law to assist contractors in locating minority group members and women who are participating in apprenticeships agreements;

(k) to adopt such rules and regulations as may be necessary for the effective administration of the purposes and provisions of this article;

(l) to perform such other duties as may be necessary to give full

effect to the policies of the state and the provisions of this article.

2. The industrial commissioner shall appoint a person who shall be in charge of apprentice training in the department of labor, and who shall act as secretary of the state apprenticeship and training council and of state joint apprenticeship committees. The industrial commissioner is further authorized to appoint such clerical, technical, and professional assistants as shall be necessary to effectuate the purposes of this article. The personnel appointed under this article shall receive an annual compensation to be fixed by the industrial commissioner within the amount provided by appropriation.

§ 812. Related and supplemental instruction. Related and supplemental instruction for apprentices, coordination of instruction with job experience, and the selection of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for career education.

As provided by other statutes, the department of education shall be responsible for and provide related training as required by apprenticeship programs set up under this article.

§ 813. State apprenticeship and training council. 1. The governor shall appoint a state apprenticeship and training council, composed of three representatives from employer organizations and three from employee organizations and one representative of the general public, who shall be the chairman. The council by majority vote may designate one of its members, other than the chairman, as vice-chairman to act in the absence or inability of the chairman. Each member shall be appointed for a term of three years. Each member shall hold office until his or her successor is appointed and has qualified, and any vacancy shall be filled by appointment for the unexpired portion of the term. The present members of the council shall continue to hold office until the expiration of their present terms or their earlier terminations by resignation or inability to act. The commissioner of education, the

commissioner of labor and the commissioner of economic development shall ex officio be members of such council without vote. The members of the council shall not receive a salary or other compensation, but shall be reimbursed for transportation and other expenses actually and necessarily incurred in the performance of their duties under this article.

2. The council: (a) shall advise the commissioner of labor on apprentice training matters, including the matters of related and supplemental instruction; (b) may recommend suggested standards for apprenticeship agreements; (c) shall maintain a close and effective liaison with governmental and nongovernmental agencies which are concerned with skilled manpower development and problems; and (d) may recommend research projects on facts and trends relating to apprenticeship training and the supply of and needs for skilled manpower.

§ 813-a. Annual reports by apprenticeship programs. 1. On an annual basis, all apprenticeship programs covered under the provisions of this article shall report to the department on the participation of apprentices currently enrolled in such apprenticeship program. The data to be included in such report shall include, at a minimum: (a) the total number of apprentices in such apprenticeship program; (b) the demographic information of such apprentices to the extent such data is available, including, but not limited to, the age, gender, race, ethnicity, and national origin of such apprentices; (c) the rate of advancement and graduation of such apprentices; and (d) the rate of placement of such apprentices onto job sites as well as the demographic information of such apprentices to the extent such data is available, including, but not limited to the age, gender, race, ethnicity, and national origin of such apprentices.

2. The department shall make such data publicly available on its website by July first, two thousand twenty-two and on an annual basis, but no later than December thirty-first of each following year.

3. The commissioner may promulgate rules and regulations necessary for the implementation of this section.

§ 814. Local, regional and state joint apprenticeship committees.

Local and state joint apprenticeship committees may be approved, in any trade or group of trades, in cities, regions of the state or trade areas, by the industrial commissioner, whenever the apprentice training needs of such trade or group of trades or such regions justify such establishment. Such local, regional or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades; also such additional members representing local boards of education or other educational agencies as may be deemed advisable. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees respectively or a state joint apprenticeship committee may be approved as, or the state apprenticeship council may act itself as, the joint committee in such trade or group of trades. Subject to the review of the industrial commissioner and in accordance with the standards established by the industrial commissioner, such committees may devise standards for apprenticeship agreements and give such aid as may be necessary in their operation, in their respective trades and localities.

§ 815. Suggested standards for apprenticeship agreements. Suggested standards for apprenticeship agreements are as follows:

1. A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which shall be not less than four thousand hours of reasonably continuous employment.

2. A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

3. A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction which instruction shall be not less than one hundred forty-four hours per year when available, such availability to be determined by the commissioner of education.

4. A statement that apprentices shall be not less than sixteen years of age.

5. Provision that apprentices shall be selected on the basis of qualifications alone, as determined by objective criteria which permit review, and without any direct or indirect limitation, specification or discrimination as to race, creed, color, age, sex or national origin.

6. A statement of the progressively increasing scale of wages to be paid the apprentice.

7. Provision for a period of probation during which the industrial commissioner shall be directed to terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period the industrial commissioner shall be empowered to terminate the registration of an apprentice upon agreement of the parties.

8. Provision that the services of the industrial commissioner may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

9. Provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement he may transfer such obligation to another employer.

10. Such additional standards as may be prescribed in accordance with the provisions of this article.

§ 816. Apprenticeship agreements. For the purposes of this article an apprenticeship agreement is:

(1) An individual written agreement between an employer and an apprentice, or (2) a written agreement between an employer or an association of employers, and an organization of employees describing conditions of employment for apprentices or (3) a written statement describing conditions of employment for apprentices in a plant or plants where there is no bona fide employee organization.

§ 816-a. Apprenticeship assistance in all political subdivisions of the state. any political subdivision of the state may provide financial assistance, within the amounts appropriated therefor, for the purpose of promoting non-profit apprentice training programs within such political subdivision to train persons in those skills needed by the the political subdivision as an employer, administered by agencies representing municipal employees in particular title or classification or other phases of employment; provided such programs are approved by the department of education as to curriculum, instructors and scope and further provided that such programs are registered and approved pursuant to sections eight hundred fourteen and eight hundred fifteen of this chapter.

*** § 816-b. Apprenticeship participation on certain governmental contracts.** 1. For purposes of this section:

(a) "governmental entity" shall mean the state, any state agency, as that term is defined in section two-a of the state finance law, municipal corporation, commission appointed pursuant to law, school district, district corporation, board of education, board of cooperative educational services, soil conservation district, and public benefit corporation;

(b) "construction contract" shall mean any contract to which a governmental entity may be a direct or indirect party which involves the design, construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for

any building, facility or physical structure of any kind; and

(c) "city governmental entity" shall mean a governmental entity that is (i) a city with a population of one million or more inhabitants; or (ii) a city school district or public benefit corporation operating primarily within a city with a population of one million or more inhabitants.

2. Notwithstanding any other provision of this article, of section one hundred three of the general municipal law, of section one hundred thirty-five of the state finance law, of section one hundred fifty-one of the public housing law, or of any other general, special or local law or administrative code, in entering into any construction contract, a governmental entity, including any city governmental entity, that is to be a direct or indirect party to such contract may require that any contractors and subcontractors have, prior to entering into such contract, apprenticeship agreements appropriate for the type and scope of work to be performed, that have been registered with, and approved by, the commissioner pursuant to the requirements found in this article. A city governmental entity that is a direct or indirect party to a contract may establish in its specifications a requirement that, in performing the work, the contractor and its subcontractors utilize a minimum ratio of apprentices to journey-level workers, as established by the governmental entity but subject to any maximum ratio established by the department, for any classification appropriate for the type and scope of work to be performed, provided that no such minimum ratio shall be established for labor performed pursuant to a construction contract. Whenever utilizing these requirements, the governmental entity may, in addition to whatever considerations are required by law, consider the degree to which career opportunities in apprenticeship training programs approved by the commissioner may be provided.

* NB Effective until May 15, 2029

* § 816-b. Apprenticeship participation on construction contracts. 1. For purposes of this section:

(a) "governmental entity" shall mean the state, any state agency, as that term is defined in section two-a of the state finance law, municipal corporation, commission appointed pursuant to law, school district, district corporation, board of education, board of cooperative

educational services, soil conservation district, and public benefit corporation; and

(b) "construction contract" shall mean any contract to which a governmental entity may be a direct or indirect party which involves the design, construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for any building, facility or physical structure of any kind.

2. Notwithstanding any other provision of this article, of section one hundred three of the general municipal law, of section one hundred thirty-five of the state finance law, of section one hundred fifty-one of the public housing law, or of any other general, special or local law or administrative code, in entering into any construction contract, a governmental entity which is to be a direct or indirect party to such contract may require that any contractors and subcontractors have, prior to entering into such contract, apprenticeship agreements appropriate for the type and scope of work to be performed, that have been registered with, and approved by, the commissioner pursuant to the requirements found in this article. Whenever utilizing this requirement, the governmental entity may, in addition to whatever considerations are required by law, consider the degree to which career opportunities in apprenticeship training programs approved by the commissioner may be provided.

* NB Effective May 15, 2029

§ 817. Limitation. The provisions of this article shall apply to a person, firm, corporation or craft only after such person, firm, corporation or craft has voluntarily elected to conform with its provisions.

§ 818. Separability. If any provision of this article or the application thereof to any person or circumstances, is held invalid, the remainder of the article, and the application of such provision to other persons and circumstances, shall not be affected thereby.

§ 819. Training of persons in the repair and reconditioning of slot machines. Possession of a slot machine shall be permitted where such possession is necessary to facilitate the training of persons in the repair and reconditioning of such machines by entities not subject to tribal-state compacts, provided all of the following conditions are met:

1. The entity is registered with the commissioner pursuant to this article;

2. The entity has an approved apprenticeship program in the electrical trades pursuant to title 12, volume C-1, part 601 of the New York state codes, rules and regulations;

3. The entity has submitted to, and received approval from, the superintendent of state police of a security plan with regard to the movement, location and storage of such machines at all times, including but not limited to, a log of all persons having access to such machines, and a video surveillance of such machines;

4. (a) Written notification, made to the commissioner, shall be made for each machine to be received by an approved apprenticeship program. Such notification shall include the manufacturer, model and serial number for each machine and identification number of each program storage device such as EPROM, ROM, flash ROM, DVD or CD-ROM. Such identical information shall be maintained by each approved apprenticeship program in a format required by the commissioner.

(b) Each approved apprenticeship program shall promptly notify the commissioner, in writing, of the return, removal or destruction of a machine or program storage device or of additional program storage devices to be received;

5. The entity possesses a tag issued by the department with an identification number affixed and identifying each machine.

NEW YORK STATE MANPOWER TRAINING ACT

Section 820. Statement of public policy.

821. State training courses.

822. Authorization and standards for allowances.

823. Applicability of other provisions.

§ 820. Statement of public policy. There are persons who lack the academic and career education and training necessary to obtain and hold employment in the contemporary economy because of dislocations arising from automation and other technological developments, foreign competition, relocation of industry, shifts in market demands, and other changes in the economy. The skills of many other persons who are currently employed are being rendered obsolete by such dislocations in the economy. Unless such persons are given appropriate career and related education and training, many of them and their families are doomed to lifelong unemployment or underemployment and dependency on the aid, care and support of the welfare agencies of the state and its political subdivisions; with appropriate career and related education and training; many of them would become qualified for occupational categories which remain unfilled because of shortages of qualified personnel.

Accordingly, it is the purpose of this act to authorize the state government to develop programs of career and related education and training which will permit persons who face the hazards of unemployment and underemployment to develop skills which are useful in the contemporary economy and to assist such persons to participate in such programs.

§ 821. State training courses. The commissioner may provide for career and related, institutional and on-the-job training courses as described in section five hundred ninety-nine of this chapter and for the administration of public work projects for recipients of public assistance, and may contract for these purposes with public and private agencies including public and private institutions of learning,

employers or other appropriate organizations. He shall select for and refer to such training courses unemployed and under-employed persons who would meet the conditions for approval as specified in section five hundred ninety-nine of this chapter. He shall select and refer to public work projects all public assistance recipients registered at employment offices of the department who are neither referred thereby for employment in the regular economy or for career training, nor assigned to public works projects by social welfare officials. The commissioner may provide for such payments, either in advance or by way of reimbursement, from funds made available to carry out the purposes of this article, as he deems necessary.

§ 822. Authorization and standards for allowances. The commissioner, in accordance with standards established by him, may pay to a person enrolled in such courses, training, subsistence, and transportation allowances. In setting standards for:

1. training allowances, the commissioner shall consider the relative needs of the trainees, wages earned by them, and benefits payable to them under the general provisions of article eighteen of this chapter, provided, however, that no training allowance shall exceed by more than ten dollars the average statewide gross benefit rate under such article for a week of total unemployment during the most recent four-calendar-quarter period for which such data are available, augmented by five dollars a week for each dependent over two up to a maximum of four additional dependents.

2. subsistence allowances, the commissioner shall consider the cost to the trainees of living away from their normal residences where this is necessitated by the location and nature of the training facilities, provided, however, that no such allowance shall exceed five dollars a day.

3. transportation allowances, the commissioner shall consider the cost to the trainees of commuting and long-distance travel necessitated by the nature and location of the training facilities.

§ 823. Applicability of other provisions. The provisions of section five hundred ninety-seven and of title eight of article eighteen of this chapter shall, insofar as appropriate, apply to payments authorized by this article.

ARTICLE 23-B

DISPLACED HOMEMAKERS ACT

Section 825. Multipurpose service centers.

826. Definitions.

827. Study of federal programs.

828. Selection and administration of centers.

829. Evaluation.

830. Contributions.

831. Nondiscrimination.

§ 825. Multipurpose service centers. 1. Upon receipt of federal funding designated to assist displaced homemakers, the commissioner shall establish multipurpose service centers for displaced homemakers which shall provide the following:

(a) job counseling services which shall:

(i) be specifically designed for a person entering the job market after a number of years as a homemaker;

(ii) operate to counsel displaced homemakers with respect to appropriate job opportunities;

(b) job training and job placement services which shall:

(i) develop, by working with state and local government agencies and private employers, training and placement programs for jobs in the public and private sectors;

(ii) assist displaced homemakers in gaining admission to existing public and private job training programs and opportunities;

(iii) assist in identifying community needs and creating new jobs in the public and private sectors;

(c) health education and counseling services with respect to:

- (i) general principles of preventative health care;
- (ii) health care consumer education, directed particularly to selection of physicians, dentists and health care services and health insurance;
- (iii) family health care and nutrition;
- (iv) alcohol and drug addictions; and
- (v) other related health care matters;
- (d) financial management services which provide information and assistance with respect to insurance, taxes, estate and probate problems, mortgages, loans, and other related financial matters;
- (e) educational services, including:
 - (i) courses offering information about credit through secondary or post secondary education programs including bilingual programs when appropriate;
 - (ii) such other courses as the commissioner determines would be of interest and benefit to displaced homemakers; and
- (f) outreach and information services with respect to federal and state employment, education, health, and unemployment assistance programs which the commissioner determines would be of interest and benefit to displaced homemakers.

2. The commissioner may enter into contracts with and make grants to public and nonprofit private entities for purposes of establishing multipurpose service centers under this article.

3. The commissioner shall consult and cooperate with the secretary of health, education and welfare, the secretary of labor, the commissioner of the social security administration, the commissioner of the administration on aging, and such other persons in the executive branch of the federal and state governments as the commissioner considers appropriate to facilitate the coordination of multipurpose service centers established under this article with existing federal and state programs of a similar nature.

4. Supervisory, technical, and administrative positions relating to multipurpose service centers established under this article shall, to the maximum extent feasible, be filled by displaced homemakers.

5. Trainees in a program established under this article, who have demonstrated a financial need to the satisfaction of the commissioner, shall be paid a stipend not less than the federal minimum wage while engaged in such program.

§ 826. Definitions. For purposes of this article:

1. The term "displaced homemaker" means an individual who:

- (a) has worked in the home, providing unpaid household services for family members;
- (b) is not gainfully employed;
- (c) has had, or would have difficulty in securing employment; and
- (d) has been dependent on the income of another family member but is no longer supported by such income, or has been dependent on federal assistance but is no longer eligible for such assistance, or is supported as the parent of minor children by government assistance or spousal support.

2. The term "commissioner" means the industrial commissioner of the state of New York.

§ 827. Study of federal programs. The commissioner shall:

1. In consultation with appropriate heads of agencies, prepare and furnish a study to determine the feasibility of and appropriate procedures for allowing displaced homemakers to participate in:

- (a) programs established under the Comprehensive Employment and Training Act of 1973 (29 U.S.C. 801 et seq.);
- (b) work incentive programs established under section 432 (b) (1) of the Social Security Act;
- (c) related federal and state employment, education, and health assistance programs; and
- (d) programs established or benefits provided under federal and state unemployment compensation laws by consideration of full-time homemakers

as workers eligible for such benefits or programs.

2. Through coordination with the department of labor, conduct a study to determine the feasibility of and appropriate procedures for allowing displaced homemakers to participate in programs established or benefits provided under;

(a) the Federal-State Extended Unemployment Compensation Act of 1970 (Public Law 91-373; 87 Stat. 708);

(b) title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Public Law 93-567; 88 Stat. 1850);

(c) the Emergency Unemployment Compensation Act of 1974 (Public Law 93-572; 88 Stat. 1869); and

(d) related federal and state unemployment, employment, health and education assistance programs.

§ 828. Selection and administration of centers. 1. In selecting sites for the centers established under this article, the commissioner shall consider:

(a) the location of any existing facilities for displaced homemakers and of any existing services which might be incorporated into a center.

(b) the needs of both urban and rural communities of the state for such centers.

2. As soon as possible after the selection of a particular site for a center, and in any case not later than two years after the effective date of this article, the commissioner shall select a public or nonprofit private organization to administer each center. The selection of such an organization shall be made after consultation with local government agencies, and shall take into consideration the experience and capability of such organizations in administering the services to be provided by the center.

3. As soon as possible and in any case not later than six months after the effective date of this article, the commissioner shall issue regulations prescribing the standards which shall be met by each center in accordance with the policies set forth in this article. Continuing

grants for the maintenance of each center shall be contingent upon the determination by the commissioner, based upon evaluations under section eight hundred twenty-nine of this article, that the center is in compliance with the regulations prescribed by the commissioner.

§ 829. Evaluation. The commissioner, in consultation with appropriate heads of departments, shall prepare and furnish to the legislature a report, not later than one year after the effective date of this article, on the centers established under this article, including:

1. A thorough assessment of each center;
2. Recommendations concerning the administration and expansion of such centers;
3. A detailed statement of the findings and conclusions of the studies conducted under section eight hundred twenty-seven of this article; and
4. Such recommendations for legislative or other action as the commissioner may consider appropriate.

§ 830. Contributions. The commissioner may, in carrying out the provisions of this article, accept, use, and dispose of contributions of money, services, and property.

§ 831. Nondiscrimination. No person shall on the ground of sex, age, race, color, religion, or national origin be excluded from participating in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this article.

Section 835. Definitions.

- 836. Administration.
- 837. State plan.
- 838. Substate grantees.
- 839. Substate plans.
- 840. State level activities, rapid response.
- 841. Regional and demonstration projects.
- 842. Monitoring.
- 843. Employer specific skills training.
- 844. Feasibility studies.
- 845. Coordination.
- 846. Substate level activities.
- 847. Limitations on uses of funds.
- 848. Apportionment of funds.
- 849. Reporting and evaluation.

§ 835. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Additional dislocated workers" means a displaced homemaker who is an individual who:

- (a) was a full-time homemaker for a substantial number of years; and
- (b) derived the substantial share of his or her support from:
 - (i) a spouse and no longer receives such support due to the death, divorce, permanent separation from the spouse, or
 - (ii) public assistance on account of dependents in the home and no longer receives such support.

2. "Administrative entity" means the entity designated to administer a job training plan pursuant to section one hundred three (b) (1) (B) of the federal Job Training Partnership Act (P.L. 97-300).

3. "Basic readjustment services" means services including, but not limited to:

- (a) development of individual readjustment plans for participants in programs under this article;

- (b) outreach and intake;
- (c) early readjustment assistance;
- (d) job or career counseling;
- (e) testing;
- (f) orientation;
- (g) assessment, including evaluation of educational attainment and participant interests and aptitudes;
- (h) determination of occupational skills;
- (i) provision of future world-of-work and occupational information;
- (j) job placement assistance;
- (k) labor market information;
- (l) job clubs;
- (m) job search;
- (n) job development;
- (o) supportive services, including child care, commuting assistance, and financial and personal counseling which shall terminate not later than the ninetieth day after the participant has completed other services under this subdivision, except that counseling necessary to assist participants to retain employment shall terminate not later than six months following the completion of training;
- (p) prelayoff assistance;
- (q) relocation assistance; and
- (r) programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

4. "Dislocated workers" means individuals who:

- (a) have been terminated or laid off or who have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation;

- (b) have been terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility, or enterprise;

- (c) are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including older individuals who

may have substantial barriers to employment by reason of age; or

(d) were self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters, subject to regulations prescribed by the federal Secretary of Labor.

5. "Employer specific skill training" shall mean programs administered by the state education department designed to support, supplement and contribute to the economic development activities of the department of economic development and regional and local efforts to maintain the economy of the state by providing skills training programs for companies which want to locate or expand in the state, including support to small business and cottage industries, special training for new and expanding industries in urban and rural areas and other training programs to meet the needs of dislocated workers and the state's business and industry.

6. "Grant recipient" means the entity chosen within a service delivery area to receive funds from the state pursuant to section one hundred four (b) (2) of the federal Job Training Partnership Act (P.L. 97-300).

7. "Labor-management committees" means committees voluntarily established to respond to actual or prospective worker dislocation, which ordinarily include, but are not limited to, the following:

(a) shared and equal participation by workers and management;

(b) shared financial participation between the company and the state, using funds provided under this article, in paying for the operating expenses of the committee;

(c) a chairperson, to oversee and guide the activities of the committee, (i) who shall be jointly selected by the labor and management members of the committee, (ii) who is not employed by or under contract with labor or management at the site, and (iii) who shall provide advice and leadership to the committee and prepare a report on its activities;

(d) the ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

(e) a formal agreement, terminable at will by the workers or the

company management, and terminable for cause by the governor; and

(f) local job identification activities by the chairperson and members of the committee on behalf of the affected workers.

8. "Local elected official" means the chief elected executive officer of a unit of general local government in a substate area.

9. "On-the-job training" means training which is specified in an agreement between the grantee and the employer and includes both work experience and training, formalized in an outline defining each training component and outcomes of the training process.

10. "Plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at a single site of employment during any thirty day period for twenty-five or more employees excluding any part-time employees. In addition, should the shutdown directly cause an employment loss at any additional site, all such employees at the additional site or sites shall be counted toward the twenty-five required to meet this definition.

11. "Private industry council" means local private industry council as defined in section one hundred two of the federal Job Training Partnership Act (P.L. 97-300).

12. "Region" means the economic development regions as defined by the department of economic development.

13. "Retraining services" means services which may include, but are not limited to:

- (a) classroom training;
- (b) occupational skill training;
- (c) on-the-job training;
- (d) out-of-area job search;
- (e) relocation;
- (f) basic and remedial education;

- (g) literacy and English for non-English-speaker training;
- (h) entrepreneurial training; and
- (i) other appropriate training activities directly related to appropriate employment opportunities within the substate area.

14. "Service delivery area" means a local service delivery area as defined in section one hundred one of the federal Job Training Partnership Act (P.L. 97-300).

15. "Service provider" means a public agency, private nonprofit organization, or private for-profit entity that delivers educational, training, or employment services.

16. "Substantial layoff" means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any thirty day period for:

- (a) (i) at least thirty-three percent of the employees (excluding employees regularly working less than twenty hours per week); and
- (ii) at least fifty employees (excluding employees regularly working less than twenty hours per week); or
- (b) at least five hundred employees (excluding employees regularly working less than twenty hours per week).

17. "Substate areas" means that geographic area in a state established by the governor pursuant to section three hundred twelve (a) of the federal Economic Dislocation and Worker Adjustment Assistance Act (P.L. 100-418), provided that the governor shall notify in writing the president pro tempore of the senate, speaker of the assembly, minority leader of the senate and minority leader of the assembly not less than sixty days prior to any change in the designation of such area.

18. "Substate grantees" means that agency or organization selected to administer programs pursuant to section three hundred twelve (b) of the federal Economic Dislocation and Worker Adjustment Assistance Act (P.L. 100-418) and section eight hundred thirty-six of this article.

§ 836. Administration. Except as is otherwise provided herein, the administration of the worker adjustment program shall be carried out by the department in consultation with the department of economic development, state education department, state university of New York, city university of New York, and the state job training coordinating council, hereinafter referred to as the "council", in a manner consistent with the federal Economic Dislocation and Worker Adjustment Assistance Act (P.L. 100-418), hereinafter referred to as "the act".

§ 837. State plan. 1. The governor shall be responsible for preparation and submission of a biennial plan. The plan shall be prepared with input from the department, the department of economic development, state education department, state university of New York and the state job training coordinating council. The plan shall include, but not be limited to:

- (a) a description of services to be provided to dislocated workers and additional dislocated workers as defined in section eight hundred thirty-five of this article;

- (b) the identification of the state dislocated worker unit within the department, and the activities such unit will carry out;

- (c) a description of coordination between such unit; and

- (i) the department of economic development for the purposes of developing strategies to avert plant closings or substantial layoffs which would include the participation of the department of economic development in the establishment of labor-management committees, the provision of resources and technical assistance for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation, and the provision of appropriate financial and technical advice to assist in efforts to avert worker dislocation;

- (ii) the state education department for the purposes of identifying and approving training/retraining activities that meet standards of instructional quality pursuant to subparagraph (ii) of paragraph (b) of subdivision four of section eight hundred forty-six of this article;

- (d) an explanation of the extent to which additional dislocated

workers will be served under this plan and, if such workers will not be served, a statement of justification for their exclusion; and (e) a detailed description of reporting and evaluation activity relating to outcomes achieved.

2. The biennial plan developed pursuant to subdivision one of this section shall be submitted to the council for review and comment and to the governor for approval. Copies shall also be submitted to the president pro-tempore of the senate and the speaker of the assembly simultaneous to its submission to the council.

3. The state plan submitted under this section may be modified to describe changes in or additions to programs and activities set forth in the plan and shall be reviewed and approved in the same manner as the state plan originally submitted.

§ 838. Substate grantees. 1. Substate grantees shall be designated on a biennial basis through agreement between the governor, local elected officials and private industry councils pursuant to the act.

(a) preference for selection shall be given to those entities which have demonstrated fiscal and administrative capability to directly administer basic readjustment and retraining services and provide support services or have demonstrated the administrative capacity to contract out for such services.

(b) entities eligible for selection as substate grantees must demonstrate the capacity to administer the required services either directly or by contract continuously through the period covered by the substate plan, and include:

- (i) private industry councils in the substate area;
- (ii) service delivery area grant recipients or administrative entities;
- (iii) private nonprofit organizations;
- (iv) units of general local government in the substate area or agencies thereof;
- (v) local offices of state agencies; and
- (vi) other public agencies, such as community colleges and area

vocational schools.

2. Substate grantees shall administer substate activities as defined in subdivision two of section eight hundred thirty-nine of this article.

3. The state shall establish procedures to review the designation of substate grantees on a biennial basis. Such procedures shall include the use of evaluation data defined in section eight hundred forty-nine of this article.

§ 839. Substate plans. 1. Substate grantees are required to submit a substate plan for review and comment to the local elected officials and the private industry council and to the governor for approval. Upon approval of the plan, grantees shall implement all procedures described pursuant to the requirements of this section.

2. The substate plan shall include statements describing:

(a) basic readjustment, retraining and supportive services and the method for providing such services;

(b) outreach and intake procedures and the method used to verify program participant eligibility;

(c) means for coordinating services with the unemployment compensation system;

(d) means for involving labor organizations representing individuals affected by dislocation within the substate area in the development and implementation of services;

(e) performance goals;

(f) procedures for selecting service providers consistent with section one hundred seven of the federal Job Training Partnership Act (P.L. 97-300);

(g) procedures for responding expeditiously to worker dislocation where the rapid response assistance required by section eight hundred forty of this article is inappropriate, of which methods may include but are not limited to:

(i) development and delivery of widespread outreach mechanisms;

(ii) provision of financial evaluation and counseling (where

appropriate) to assist in determining eligibility for services and the type of services needed;

(iii) initial assessment and referral for further basic readjustment and retraining services; and

(iv) establishment of centers within each substate area for the purpose of providing such outreach, assessment and early readjustment assistance.

(h) the involvement of the governor, local elected officials and private industry council in the activities of the substate grantee;

(i) the training services to be provided including:

(i) assessment of participants' skill levels and occupational abilities;

(ii) assessment of participants' needs including educational, training, employment and supportive services;

(iii) methods for allocating resources to provide the services recommended by rapid response teams; and

(iv) a description of services and activities to be provided in the substate area;

(j) the means to achieve coordination with other appropriate programs, services and systems for the purpose of avoiding duplicating services available through existing services;

(k) a detailed budget; and

(l) an evaluation design consistent with criteria set forth in regulations by the commissioner.

3. The governor shall approve the plan submitted by a substate grantee, or the modification thereof, unless he finds that:

(a) corrective measures for deficiencies found in audits or in meeting performance standards from previous years have not been taken or are not acceptably underway;

(b) the entity proposed to administer the program does not have the capacity to administer the funds;

(c) there are inadequate safeguards for the protection of funds received;

(d) the plan or modification does not comply with a particular provision of the federal job training partnership act (P.L. 97-300) or of regulations of the United States secretary of labor; or

(e) the plan or modification does not comply with the requirements of this article.

4. The governor shall approve or disapprove a plan submitted by a substate grantee or modification thereof within thirty days after the date that the plan or modification is submitted, except that if a petition is filed under subdivision five of this section, such period shall be extended to forty-five days. Any disapproval by the governor may be appealed to the United States secretary of labor.

5. Interested parties may petition the governor within fifteen days of the date of submission for disapproval of the plan or modification thereof if:

(a) the party can demonstrate that it represents a substantial client interest;

(b) the party took appropriate steps to present its views and seek resolution of disputed issues prior to submission of the plan to the governor; and

(c) the request for disapproval is based on a violation of statutory requirements.

6. If a substate grantee fails to submit a plan, or submits a plan that is not approved by the governor, the governor may direct the expenditure of funds allocated to the substate area until such time as a plan is submitted and approved or a new substate grantee is designated under this article.

7. If a substate grantee fails to expend funds allocated to it in accordance with its plan, the governor may, subject to appropriate notice and opportunity for comment in the manner required for approval of the substate plan, direct the expenditure of funds in accordance with the substate plan until the substate grantee corrects the failure, the substate grantee submits an acceptable modification to its plan, or a new substate grantee is designated in accordance with the provisions of paragraph (a) of subdivision one of section eight hundred thirty-eight of this article.

§ 840. State level activities, rapid response. 1. The state shall be responsible for rapid response activities pursuant to section 312.1 of the federal Job Training Partnership Act (P.L. 97-300), coordination of title III activity and the state unemployment insurance program, state and regional projects and demonstrations, and the discretionary allocation of additional funds to substate areas based on determination of need.

2. The state's designated dislocated worker unit shall have the capability to provide rapid response services to dislocated workers affected by a substantial layoff or a plant closing. Such services shall include:

(a) on site intervention within forty-eight hours of notification of either a plant closing or a substantial layoff;

(b) provision of emergency basic readjustment services as needed;

(c) promotion of labor-management cooperation through the initiation, with the department of economic development, where appropriate, of labor-management committees;

(d) development, with the department of economic development, of an early warning system;

(e) dissemination of information on dislocated worker services available under title III of the federal Job Training Partnership Act (P.L. 97-300) and other appropriate services funded by the federal, state, and local governments;

(f) provision of technical assistance to substate grantees;

(g) receipt of notifications of layoffs and closings and provision to substate grantees of such information as soon as possible to assure the maximum local response;

(h) coordination between rapid response activities and the unemployment insurance system and the job training partnership system, state and local economic development activities and the regional education centers of the state education department; and

(i) notification of appropriate state agency staff and coordination with the activities of central, local or regional staff of the departments of labor, economic development and education to facilitate additional on-site contact with employer and employee representatives

within a short period of time, preferably forty-eight hours, after becoming aware of a current or projected permanent closure or substantial layoff in order to provide information on and facilitate access to available public programs and services.

3. The commissioner may, under exceptional circumstances, authorize the designated dislocated worker unit to provide rapid response services when the employment loss is for less than twenty-five employees, is not at a single site of employment or does not take place during a single thirty day period. For purposes of this subdivision, exceptional circumstances include those situations which would have a major impact on the community or communities in which they occur.

§ 841. Regional and demonstration projects. 1. Demonstration projects. (a) The state unit shall conduct statewide projects and demonstration programs to address the needs of distressed industries and to provide for projects that would lead to the development of innovative strategies to meet the needs of dislocated workers.

(b) Such projects shall emphasize retraining, and include counseling and assessment components.

(c) Funding for such projects shall be allocated through a contract process subject to the state plan and in coordination with the substate grantees affected.

(d) Funding for projects and programs shall be made available in annual rounds, by December thirty-first of each fiscal year beginning in nineteen hundred eighty-nine. The department shall, by rule, establish a solicitation and award evaluation process for funds made available for this purpose. Such rules shall specify the criteria by which the department shall evaluate proposals and determine which shall receive funding. The evaluation process shall consider the ability of the provider to accomplish the proposal based on past performance, administrative capability and fiscal responsibility, the innovativeness of the proposal, the expected improvement in the delivery of services within the area served by the substate grantee, the extent to which elements of the proposal may be replicated in other service areas within the state, and such other factors as the commissioner shall, by rule,

prescribe.

2. Regional projects. The state unit shall provide extended retraining and basic readjustment services directly through the department, through awards to substate grantees or through awards by the department to service providers. Substate grantees shall have preference in receiving such grants. Such grants shall be made available from funds allocated to the state pursuant to paragraph (e) of subdivision four of section eight hundred forty-seven of this article and shall be subject to such requirements as are imposed by section eight hundred forty-seven of this article.

§ 842. Monitoring. The state unit will monitor the implementation of substate plans and, as needed, shall make additional funds available to the substate grantees, pursuant to subdivision two of section eight hundred forty-eight of this article, to assure that the substate plan is fully implemented regardless of economic changes in the substate area that could influence the number of dislocated workers to be served.

§ 843. Employer specific skills training. 1. The department shall enter into agreements with the commissioner of education to pay for the participation of dislocated workers in employer specific short-term skill training provided by the commissioner of education under the provisions of the federal Vocational Education Act of 1963.

2. Employers seeking assistance. Employers seeking assistance in locating the availability of employer specific skills training programs, or seeking to have such a program developed may apply for assistance by contacting a regional educational center for economic development. Such center shall survey existing programs offered by it or through appropriate substate grantees to identify any which may be suitable to meet the needs of the applicant. If none is available, the department of education shall contact local education agencies within the substate area, and adjacent substate areas, to promote the development of proposals for programs to be funded through the program.

3. Grant applications by training providers. Training providers may apply to the commissioner of education for grants to conduct employer specific skill training programs. Application for grants shall be in a manner consistent with the application process for business and industry specific training programs under the federal Vocational Education Act of 1963, and shall be in a form prescribed by the commissioner of education. Such application shall (a) describe the amount and purposes for which funding is requested; (b) describe the training services to be provided, including the duration of training and the estimated training cost per recipient; (c) show evidence that the proposed training program will provide appropriate assistance to recipients; (d) describe other funding sources which may be used for such training; (e) describe the steps the provider will take to avoid duplication of training available through existing resources; (f) describe the provider's coordination with programs and activities funded through the job training partnership act or other state resources; and (g) such other information as may be required by the commissioner of education. No grant shall exceed fifty percent of total program cost.

4. Evaluation of grant applications. The commissioner of education shall make grant awards based on evaluation of the following criteria, at a minimum: (a) The provider's past effectiveness in delivering training programs based on demonstrated performance; (b) ability to provide participants with the skills necessary to fill available jobs; (c) the administrative capability to operate such a training program; (d) cost of the proposed program; (e) where appropriate, evidence that the provider has made provisions for coordination with other services available from the department of economic development, the department of labor, such other state agencies as may be relevant, and local grantees; and (f) such other factors as the commissioner of education shall deem appropriate.

5. In the event of a plant closing or substantial layoff as defined in subdivisions ten and sixteen of section eight hundred thirty-five of this article, the state education department shall participate in rapid response activity and make available appropriate resources for training

interventions through the regional education centers for economic development.

6. In developing projects in response to training needs for dislocated workers or additional dislocated workers, the commissioner of education shall approve and fund from this article, only employer specific training projects that have been certified in writing by the substate grantee as consistent with the area's substate plan after formal consultation with the state education department.

7. Funds available under this paragraph shall be allocated to each region based on a formula which includes the relative number of unemployed individuals within each region and available plant closing and substantial layoff data published by the department under the permanent mass layoff and plant closing statistical series. However, after March first of each fiscal year, the commissioner of education, in a manner consistent with applicable federal law and regulations, shall reapportion any amount of any allocation otherwise due to a region if he or she determines that such amount cannot be obligated within such region. Such reapportionment shall be distributed in a manner consistent with the purposes of this article.

§ 844. Feasibility studies. The department of economic development shall conduct preliminary assessments of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation. Provided further, that rules and regulations established by the commissioner of economic development pursuant to section one hundred ninety-three of article seven of the omnibus economic development act of nineteen hundred eighty-seven regarding the selection and retention of experts to be used in undertaking assessments and the exemption of disclosure requirements shall apply to assessments conducted under this section.

§ 845. Coordination. State dislocated worker programs funded under

this section shall, to the fullest extent possible, coordinate with other federal, state and local programs before initiating activity and, where substantial numbers of union members are affected, consult with appropriate labor organizations.

§ 846. Substate level activities. 1. (a) Grantees shall use funds allotted to them pursuant to section eight hundred forty-eight of this article to provide to eligible dislocated workers the core functions of the worker adjustment program, which include intake, assessment and counseling, as well as basic readjustment and retraining services as defined in section eight hundred thirty-five of this article, directly or by contract. Provided, however, that such grantees shall not be required by the department to contract with any specific provider for the provision of such services.

(b) Each substate grantee shall provide intake, counseling and assessment directly or by contract on an ongoing basis at a site or sites designated by the substate grantee to which all dislocated workers in the area have access. In addition, the substate grantee may make such services available at the location of a plant closing or substantial layoff.

(c) Substate grantees shall require that all service providers selected by the substate grantee to receive funds allocated pursuant to section eight hundred forty-eight of this article, other than vouchers for training services given to program participants pursuant to subdivision four of this section, shall provide a written plan which includes: (i) the amount and purposes for which funding is requested; (ii) a description of the services to be provided, including the duration of service and the estimated service cost per recipient; (iii) procedures for identifying and selecting participants and for eligibility determination and verification; (iv) evidence that the proposed service program will provide appropriate assistance to recipients seeking available private sector employment; (v) a description of other funding sources which may be used for such programs; (vi) a description of steps the provider will take to avoid duplication of services available through existing resources; (vii) a description of the provider's coordination with programs and activities

funded through the job training partnership act or other state resources; (viii) procedures for advising the local private industry council of the provider's proposal, including ways in which the provider intends to cooperate with the local private industry council; and (ix) such other information as may be required by the grantee.

(d) The grantee shall select training providers and determine the amount of monies available for each program. Selection considerations shall include: the provider's past effectiveness in delivering employment or vocational training programs or other readjustment services based on demonstrated performance; for training providers, ability to provide participants with the skills necessary to fill available jobs in the private sector; cost of the proposed program; the administrative capability to operate such a program; fiscal responsibility; for training providers, a record of job placement for completers which meets standards of acceptability established by the commissioner for this purpose; the degree to which the provider has made provisions for coordination with other services available under the job training partnership act and other state and federal programs; and such other factors as the grantee may determine. Funds provided pursuant to this article shall not be used to duplicate facilities or services available to the substate area from other federal, state or local sources.

(e) Appropriate vocational and educational institutions in the substate area shall be accorded the initial opportunity to provide educational services unless the grantee determines that alternative entities would be more effective or would have greater potential to enhance participants' continued occupational and career growth.

(f) Funds shall be made available to service providers through direct contract between each such service provider and the grantee. The grantee shall notify the department of the award of each contract and shall certify that the requirements of this article have been met.

(g) After March first of each year, the department shall reapportion an amount of unexpended funds from each substate area's allocation that the department has determined cannot be expended as planned. The substate area shall be provided with no less than thirty days advance notice and an opportunity to appeal the reallocation. The department shall reallocate those funds to the substate areas in a manner

consistent with the purposes of this section and with applicable federal law and regulations. Funds shall be reallocated to substate areas that have demonstrated an ability to expend funds at a rate in keeping with or exceeding planned levels and where existing resources are insufficient to provide needed services, to be determined in consultation with interested parties. At any time after December thirty-first, a substate area may volunteer to deobligate funds. Such funds may be reallocated immediately by the department to the substate grantees consistent with the purposes of this article.

2. Opportunities may be offered for on-the-job training with the following conditions:

(a) preference will be given for jobs which exceed the minimum wage and which have the capacity for growth and advancement;

(b) the employer will be responsible for at least fifty percent of the wages and fringe benefits paid to a worker in training.

3. Needs-related payments may be provided under this section pursuant to subparagraph (e) of section three hundred fourteen of the act for eligible participants upon demonstration of need after considering all of the sources of income available to the participant or the participant's family. However, such payment shall not be made unless the participant's unemployment compensation, including any extended benefits, will expire prior to their completion of the program.

4. Alternative methods of providing retraining services may be approved such as:

(a) A substate grantee may defer the delivery of retraining services by providing the program participant with a certificate of continuing eligibility:

(i) such certificates may be effective for periods not to exceed one hundred four weeks;

(ii) certificates will not include references to any specific amounts of funds;

(iii) certificates shall state that they are subject to availability of funds at the time that the services are to be provided; and

(iv) acceptance of a certificate shall not be deemed as enrollment in

training.

(b) A substate grantee may provide the program participants with vouchers for training services whereby the participants may seek out and arrange their own retraining with the following limitations:

(i) service providers must be approved by the grantee pursuant to the provisions of subparagraph (ii) of this paragraph;

(ii) the commissioner of education shall prepare a list of programs approved for funding and shall submit such list to the commissioner by July first, nineteen hundred eighty-nine, and shall thereafter from time to time as he or she determines necessary update such list. The commissioner shall include on such list only non-degree programs which are at least three hundred twenty clock hours in length, and which provide skills for employment based on current requirements of business and industry in an occupational field for which favorable employment opportunities are anticipated in the state and which meet standards of instructional quality established in regulations by the commissioner of education. These standards shall include, but are not limited to, qualifications of administrative and instructional personnel, quality of the curricula, quality of facilities and equipment, record keeping, admission, grading, attendance and record of placement of completers which meets standards of acceptability as established by the commissioner of education in conjunction with the commissioner;

(iii) such services shall be conducted under a grant, contract or other arrangement between the grantee and the service provider; and

(iv) substate grantees shall provide vouchers to program participants only upon demonstration that such program participant has been accepted for and is proposing to undertake an occupational retraining program which has been approved by the commissioner of education pursuant to this section.

5. Substate grantees shall establish linkages with all involved state agencies, including local and regional offices of the department of labor, the department of education and the department of economic development.

§ 847. Limitations on uses of funds. 1. Not less than sixty percent of

the funds expended by substate grantees must be used for retraining services as defined in section eight hundred thirty-five of this article.

2. Not more than twenty-five percent of the funds expended by any substate grantee or the governor may be used to provide needs-related services pursuant to section eight hundred forty-six of this article and other supportive services as defined in this act.

3. Not more than twelve percent of the funds expended by substate grantees pursuant to paragraph three of section eight hundred forty-eight of this article shall be used for administrative expenses.

4. (a) Twelve percent of the funds allocated to the state for state level activities in each year shall be made available to the department for administrative expenses. Provided further that not more than twelve percent of such funds shall be expended by the department pursuant to subdivision one of section eight hundred forty-eight of this article for administrative expenses including technical assistance and fiscal and compliance auditing.

(b) Six hundred seventy-five thousand dollars of the funds allocated to the state for state level activities in subdivision one of section eight hundred forty-eight of this article in each year shall be made available for statewide projects and demonstration programs authorized pursuant to section eight hundred forty-one of this article.

(c) Sixteen percent, plus three hundred thousand dollars, of the funds allocated to the state for state level activities in each year shall be made available for rapid response activities authorized pursuant to section eight hundred forty of this article, including the funding of innovative programs for the delivery of rapid response services to dislocated workers. No single state agency, department, board or commission shall receive a suballocation from the department of more than twenty percent of the funds allocated by this paragraph. Any funds suballocated to the department of economic development shall be for feasibility studies as provided in section eight hundred forty-four of this article.

(d) Fifty percent of funds allocated to the state for state level

activities in each year remaining after funding is provided for the purposes described in paragraphs (a), (b) and (c) of this subdivision, which amount shall not exceed one million seventy-six thousand three hundred fifty dollars, shall be made available for the provision of employer specific skills training.

Not more than five percent of the funds expended pursuant to this paragraph shall be expended for administrative activities by the state education department. All remaining monies made available for the purpose described in section eight hundred forty-three of this article shall be suballocated to the state department of education.

(e) Fifty percent of funds allocated to the state for state level activities in each year remaining after funding is provided for the purposes described in paragraphs (a), (b) and (c) of this subdivision and any amount remaining after funding is provided for employer specific skills training pursuant to paragraph (d) of this subdivision, shall be made available for the purposes described in subdivision two of section eight hundred forty-one of this article. Such funding shall be made available to substate areas or to the department for the purpose of responding to plant closings and substantial layoffs including employment losses involving exceptional circumstances as defined in subdivision three of section eight hundred forty of this article as authorized by the commissioner which were unanticipated at the time of submission of the annual plan required by section eight hundred thirty-nine of this article. Substate grantees shall have precedence in receiving such funding. Notwithstanding the requirements of this paragraph, not more than one-third of such money may be made available to substate areas for the purpose of responding to significant layoffs which were unanticipated at the time of submission of the annual plan required by section eight hundred thirty-nine of this article. For the purpose of this paragraph significant layoffs shall mean any reduction in force which is not the result of a plant closing and which results in an employment loss at a single site of employment of at least thirty-three percent of the employees (excluding employees regularly working less than twenty hours per week). Not more than seven percent of expended funds shall be retained by the substate grantees for administrative expenses. Each substate grantee with a demand for

services which exceed those otherwise available under the substate plan shall be eligible for grants according to the following criteria:

(i) the substate grantee must demonstrate its need through submission of a written request which includes the amount of additional funding needed, number of dislocated workers or additional dislocated workers to be served, type of services to be provided, and a description of the substantial or significant layoff or plant closing which led to the request;

(ii) requests for additional funding which would provide added retraining services or regional or statewide services to identify dislocated workers or additional dislocated workers who are most in need of services and the types of services they need shall be considered before funds are released for added basic readjustment services; and

(iii) any funds undistributed at the end of the program year shall be included as part of the funding made available for activities under section eight hundred forty-six of this article in each succeeding program year and allocated pursuant to subdivision three of section eight hundred forty-eight of this article.

(f) The commissioner shall report to the chairs and ranking minority members of the senate and assembly labor, finance and ways and means committees, no later than March first of each year on (i) the amount of each suballocation or contract made from funds made available through paragraphs (b) and (c) of this subdivision, including any funds recaptured pursuant to subdivision four of section eight hundred forty-eight of this article, (ii) the entity receiving such suballocation or contract and (iii) the purpose of such suballocation or contract.

5. Not more than twelve percent of the funds expended pursuant to paragraph (a) of subdivision two of section eight hundred forty-eight of this article shall be retained by the substate grantees for administrative expenses.

§ 848. Apportionment of funds. 1. For activities included in section eight hundred forty of this article the department may retain no more than thirty-six percent of the funds allocated to the state pursuant to

this article.

2. (a) The governor shall reserve an additional ten percent of the funds allocated to the state pursuant to this article to be allocated among substate grantees as follows: (i) Each substate grantee which does not receive fifty thousand dollars from the allocation provided pursuant to subdivision three of this section shall be allocated from the funds provided pursuant to this subdivision, the difference between fifty thousand dollars and the amount provided pursuant to subdivision three of this section. (ii) The remainder of the allocation made available pursuant to this subdivision shall be made available to grantees on the basis of need defined as demand for retraining and basic readjustment services which exceeds the resources available in the approved substate plan when such demand is not the result of a plant closing as defined in subdivision ten of section eight hundred thirty-five of this article or a substantial layoff as defined in subdivision sixteen of section eight hundred thirty-five of this article.

(b) Each substate grantee with a demand for services which exceeds those otherwise available under the substate plan shall be eligible for funds according to the following criteria:

(i) the substate grantee must demonstrate its need through a plan modification which includes the amount of additional funding requested, number of dislocated workers or additional dislocated workers to be served, type of services to be provided, and a description of the change in economic conditions which led to the plan modification;

(ii) requests for additional funding which would provide added retraining services shall be considered before funds are released for added basic readjustment services;

(iii) any funds provided to substate grantees pursuant to this subdivision shall be distributed not later than nine months after the beginning of the program year for which the allotment was made; and

(iv) any funds undistributed at the end of the program year shall be included as part of the funding made available for activities under section eight hundred forty-six of this article in each succeeding program year and allocated pursuant to subdivision three of this section.

3. For activities included in section eight hundred forty-six of this article, substate grantees shall receive any remaining funds allocated to the state, other than those allocated pursuant to subdivisions one and two of this section.

Funds shall be distributed to substate grantees according to the following formula:

(a) Ninety-two percent of available funds shall be allocated on the basis of the total of the number of unemployed persons collecting benefits under the unemployment insurance program during the most recent year for which data are available in a substate area added to the number of residents who were unemployed for fifteen weeks or longer as determined by the department using data from the current population survey provided by the federal bureau of labor statistics, the most recent census, local area unemployment statistics program and other most recent reliable data measuring such population in a substate area divided by the total number of such unemployed persons in all substate areas;

(b) Two percent of available funds shall be allocated on the basis of the number of unemployed persons residing in areas which have an average unemployment rate of at least six and one-half percent for the most recent twelve months as determined by the department using data from the local area unemployment statistics program in each substate area divided by the total number of unemployed persons in areas of substantial unemployment in all substate areas;

(c) Two percent on the basis of the number of unemployment insurance beneficiaries with no anticipated recall date identified for the most recent twenty-four month period under the permanent mass layoff and plant closing statistical series established by the department for a substate area divided by the total number of such beneficiaries in all substate areas;

(d) Two percent on the basis of the number of jobs lost during the most recent five-year period in industries that have declined as determined by employment reports of employers as filed with the department under the unemployment insurance program in each substate area divided by the total number of jobs lost in all substate areas; and

(e) Two percent on the basis of the total number of farms with a

debt/asset ratio of forty percent or more for the most recent year in a substate area divided by the number of such farms in all substate areas.

4. After March thirty-first of each program year for which funds are available for the purposes provided in this article, the department is authorized to reapportion any amount of an allocation otherwise due to a grantee, the state dislocated worker unit, the state education department, or any other provider if the department determines that it cannot obligate such amount for programs pursuant to this article. Such reapportionment will be redistributed in a manner consistent with the state plan and applicable federal law and regulations.

§ 849. Reporting and evaluation. Reporting and evaluation requirements prescribed by this article shall conform with those stipulated in article forty-nine of the executive law, the workforce preparation evaluation act.

* ARTICLE 24*

**COMPREHENSIVE EMPLOYMENT AND TRAINING ACT
ALLOCATION REVIEW BOARD**

Section 850. Legislative findings and objectives.

851. Comprehensive employment and training act allocation review board.

852. Powers and duties of the board.

* NB Expired March 31, 1979

*** § 850*. Legislative findings and objectives.** The legislature finds that due to the harmful impact upon the people of the state and upon the economic stability of the state as the result of high cyclical and structural unemployment it is necessary and appropriate to most effectively allocate any and all economic resources available to the state of New York such as the federal funds allocated to New York for the creation of public service jobs according to the provisions of Public Law 93-203 (as amended) and it is therefore in the public

interest of the state of New York to create a mechanism to effectively review and monitor the allocation of such public law funds by applicants for such funds within the state of New York and recommend to all applicants for such funds that the allocation of public service job opportunities within the communities served by the applicants maximize the value of such public law funds to reduce the unemployment rate by employing persons whose employment will most contribute to a general improvement of the economy of the state, as well as a restoration of a balance between the private and public sectors of the state's economy, and, furthermore, recommend to all applicants for such funds that such allocations of public service jobs be in compliance with all such public law rules and regulations, especially section 99.1 (c) which specifies that at least fifty percent of persons hired for such public law public service jobs be persons who are long-term unemployed and recipients of aid to families with dependent children.

* NB Expired March 31, 1979

*** § 851 . Comprehensive employment and training act allocation review board.** There is hereby created a state comprehensive employment and training act allocation review board, hereafter referred to in this article as the board, which shall consist of the commissioners of labor, social services, commerce, three appointees of the governor, one of whom shall be designated by the governor as chairman of the board, two representatives appointed by the speaker of the assembly, two representatives appointed by the temporary president of the state senate, one representative appointed by the minority leader of the state senate, one representative appointed by the minority leader of the assembly, nine representatives of comprehensive employment and training act prime sponsors who have been selected by the chief executive officers of all twenty-eight prime sponsors in the state of New York. Members of the board shall receive no compensation for their services but shall be reimbursed for all expenses actually and necessarily incurred by them in the performance of their duties as herein set forth within the amount made available by appropriation therefor.

* NB Expired March 31, 1979

*** § 852 . Powers and duties of the board.** The board may create and organize any operational units under the board as it may determine to be necessary for efficient and effective operation. The board shall assign appropriate functions to any such unit and may appoint such staff, agents and consultants as it may deem necessary and prescribe their duties and fix their compensation within the appropriation.

The board shall have the power and duty to:

1. review the allocation of Public Law 93-203 (as amended) public service jobs by each prime sponsor of such jobs, and make recommendations to such prime sponsors for a more effective and equitable allocation of available public service jobs within the community served by the prime sponsor when, in the opinion of the board, the allocation of such jobs is not equitable and/or does not contribute to the general improvement of the economy of the state, nor to a restoration of a balance between the private and public sectors of the state's economy and/or does not comply with all such public law, rules and regulations, especially section 99.1 (c) which specifies that at least fifty percent of persons hired for such public law public service jobs be persons who are long-term unemployed and recipients of aid to families with dependent children; and

2. continuously monitor the allocation of such public law public service jobs by each prime sponsor in the state of New York, and make recommendations to the prime sponsors with respect to ways to improve the effectiveness and equity of allocations; and

3. conduct inquiries and investigations into the operation of comprehensive employment and training act programs of prime sponsors in the state of New York and forward its conclusions and recommendations to the state manpower services council and the United States secretary of labor; and

4. receive and investigate allegations of failures by prime sponsors or any officers, directors, agents or employees of prime sponsors to

comply with such public law and its several rules and regulations and to report such allegations and any findings or opinions of the board thereon to the state manpower services council and to the United States secretary of labor; and

5. continuously monitor the cooperation of state and county manpower-related agencies in comprehensive employment and training act programs conducted by prime sponsors including the enforcement by state and local social services officials of section one hundred sixty-four of the social services law; and

6. request from the state manpower services council within the state department of labor and from any other department, board, bureau, commission or other agency of the state and its political subdivisions, including prime sponsors, and the same are authorized and directed to provide, such cooperation and assistance, services and data as will enable the board properly to carry out its functions, powers and duties; and

7. make a quarterly report to the governor and to the legislature commencing June first, nineteen hundred seventy-seven, which shall be a public document describing and explaining the allocation of such public law public service jobs within each prime sponsor community, and prepare and issue such other studies and reports as it deems advisable to assist each prime sponsor within the state of New York.

* NB Expired March 31, 1979

ARTICLE 24-A

NEW YORK STATE WORKFORCE INVESTMENT ACT

Section 850. Legislative findings and objectives.

851. Administration.

852. New York state workforce investment board.

853. Report.

854. Quarterly work opportunity tax credit reporting.

§ 850. Legislative findings and objectives. The federal Workforce Investment Act of 1998 (P.L. 105-220), establishes a flexible state framework for a national workforce preparation and employment system designed to meet the needs of the state's businesses, job seekers, incumbent workers and economic development priorities. The department shall be the state's lead workforce investment and development agency. The state strategic training alliance program has been established jointly within the department and the urban development corporation to leverage maximum federal workforce investment act resources to address businesses' demand for a skilled workforce to ensure the continued economic growth of the state and minimize duplication of services among partner agencies.

§ 851. Administration. The department shall be the state's lead workforce investment and development agency.

§ 852. New York state workforce investment board. 1. Creation and constitution. (a) The governor shall establish a board, within the department, to be known as the New York state workforce investment board. The board shall be composed of forty-nine members, including the following permanent members: the governor; two members of the senate, appointed by the temporary president of the senate; two members of the assembly, appointed by the speaker of the assembly; the commissioners of labor, education, of children and family services, temporary and disability assistance and economic development; the chair of the urban development corporation and the chancellor of the state university of New York.

(b) The remaining thirty-seven members of the board shall be appointed by the governor as follows:

(i) twenty-five representatives of business who:

(A) are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority, including members of local workforce investment boards;

(B) represent businesses with employment opportunities that reflect

the employment opportunities of the state;

(C) are appointed from among individuals nominated by state business organizations and business trade associations; and

(D) include one representative from each of the state's five largest industry sectors as determined by the department;

(ii) two chief elected officials (representing both cities and counties, where appropriate);

(iii) four representatives of labor organizations, who have been nominated by the New York State American Federation of Labor and Congress of Industrial Organizations;

(iv) two representatives of individuals and organizations that have experience with respect to youth activities, nominated by state youth organizations;

(v) two representatives of individuals and organizations that have experience and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and community-based organizations nominated by associations representing community colleges and community-based organizations within the state;

(vi) one member who is a veteran nominated from a list provided by the New York State American Federation of Labor - Congress of Industrial Organizations; and

(vii) one member with experience in mature worker issues nominated from a list provided by the New York State American Federation of Labor - Congress of Industrial Organizations.

(c) Members of the board that represent organizations, agencies, or other entities shall be members with optimum policymaking authority within such organizations, agencies or entities. The members of the board shall represent diverse regions of the state, including urban, rural and suburban areas.

(d) Members, excluding those specifically designated permanent members, shall be appointed for the following terms: ten members shall be appointed for one year; ten members shall be appointed for two years; and nineteen members shall be appointed for three years. Thereafter, the terms of new members or members reappointed shall be three years.

(e) The board membership of any appointee described in paragraph (b) of this subdivision shall cease upon a change in such member's qualifying status. In such event, the governor shall appoint a new

member representing the same interest as that originally represented by such member.

(f) Any member appointed to fill a vacancy shall serve the balance of the term that was vacated.

(g) Members of the board shall receive no compensation, but shall be entitled to reimbursement for any necessary expenses incurred in connection with the performance of their duties.

(h) The board shall meet no less than quarterly each calendar year.

2. Chairperson. The governor shall select a chairperson for the board from among the representatives described in subparagraph (i) of paragraph (b) of subdivision one of this section.

3. Duties and responsibilities of the board. The board shall assist the governor in fulfilling the requirements of the federal Workforce Investment Act of 1998 (P.L.105-220) including:

(a) development of the state plan;

(b) development and continuous improvement of a statewide system of activities that are funded under subtitle B of title I of the federal Workforce Investment Act of 1998 (P.L. 105-220) or carried out through a one-stop delivery system that receives funds under such subtitle, including:

(i) development of linkages in order to assure coordination and nonduplication among the programs and activities that comprise the one-stop delivery system; and

(ii) review of local plans;

(c) commenting at least once annually on the measures taken pursuant to paragraph fourteen of subdivision (b) of section one hundred thirteen of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C.2323 (b) (14));

(d) designation of local workforce investment areas. With regard to designations that are not automatic or temporary, the governor may approve a request from any unit of general local government (including a combination of such units) for designation as a local area if the board determines, taking into account the factors described in clauses (i) through (v) of subparagraph (B) of paragraph (1) of subdivision (a) of section one hundred sixteen of the federal Workforce Investment Act of

1998 (P.L. 105-220), and recommends to the governor that such area should be so designated;

(e) development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas;

(f) development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance to assess the effectiveness of the workforce investment activities in the state;

(g) development of the statewide employment statistics system described in subdivision (e) of section fifteen of the Wagner/Peyser Act; and

(h) development of an application for incentive grants awarded by the secretary of labor to states that exceed the state adjusted levels of performance.

4. Subcommittees. The board may establish subcommittees to examine areas of particular interest or to assist it in monitoring the long term needs of employers and job seekers and setting appropriate goals to address such needs. Such areas or needs may include, but are not limited to, incumbent workers, transitional workers, emerging workers, and apprenticeship.

5. Staffing. Staff support for the state board shall be provided by the department in consultation with appropriate workforce investment partners.

6. Conflict of interest. A member of the board may not (a) vote on a matter under consideration by the state board (i) regarding the provision of services by such member or by an entity that such member represents; or (ii) that would provide direct financial benefit to such member or the immediate family of such member; or (b) engage in any other activity determined by the governor to constitute a conflict of interest as specified in the state plan.

7. Removal. Any non-permanent member of the board may be removed by the governor for cause.

8. Transition. Whenever the job training partnership council, the job training partnership committee, or the job training coordinating council is referred to or designated in any general, special or local law, or in any rule, regulation, contract or other document, such reference shall be deemed to refer to the New York state workforce investment board.

9. Sunshine provisions. The state board shall make available to the public, on a regular basis through open meetings, information regarding the activities of the board, including information regarding the state plan prior to submission of the plan, information regarding membership, and, on request, minutes of formal meetings of the state board.

§ 853. Report. The department shall be responsible for the preparation of the annual report to the secretary of labor describing those activities of the workforce investment board taken to comply with the requirements of the federal Workforce Investment Act of 1998 (P.L. 105-220), as well as a report to the governor and legislature describing such activities, on or before the first day of January, two thousand one and on the first day of January in each consecutive year thereafter.

§ 854. Quarterly work opportunity tax credit reporting. The department shall make available on its website certain statistical information and target group eligibility information relating to work opportunity tax credit certifications approved by the department made pursuant to the federal Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114-113)(PATH Act). The information relating to certifications issued by the department that shall be disclosed includes the starting wage, target group, and position information as reported by employers to the department on employer applications for certification pursuant to the PATH Act. No personally identifiable information, including information identifying specific employers, shall be disclosed by the department. The department shall make available the information required to be disclosed by this section no later than ninety days after the effective date of this section and shall update such information every three

months thereafter.

* ARTICLE 25

NEW YORK STATE JOB RETENTION BOARD

Section 856. Declaration of legislative finding.

857. New York state job retention board.

* NB Expired July 1, 1979

* **§ 856. Declaration of legislative finding.** The legislature finds that due to the state's continuing loss of business and industry, declining economy and its resultant excessively high net job loss it is necessary and appropriate to take new and aggressive steps to promote and keep business, industry and jobs within the state of New York and it is therefore in the public interest of the state of New York to create a mechanism to permit the governor of the state of New York, under extraordinary circumstances, subject to provisions of this article, to award a state contract to a New York state resident business bidder over a non-resident New York state bidder with a lower submitted bid upon a finding that such award is in the public interest of the state of New York. The legislature also finds that increased costs incurred by the state from the award of the state contract to other than the lowest bidder will be offset by the benefits of continued and/or additional state and local government tax revenues generated by continued and/or increased employment within the state, and continued and/or additional tax revenues from such additional business being generated within this state.

It is therefore the intent of this article to create and provide the governor of the state of New York with a mechanism for granting a preference in the letting of state contracts to New York state resident bidders, who have substantial economic ties with New York state, and who contribute to the state's economy where sufficient offsetting benefits would be realized by New York state in terms of state employment and generation of state and local tax revenues, through the exercise of this mechanism.

* NB Expired July 1, 1979

* **§ 857. New York state job retention board.** 1. There is hereby established a board, to be hereinafter designated as the New York state job retention board, to be comprised of the following voting members: the governor of the state of New York, the comptroller of the state of New York, the attorney general of the state of New York, the industrial commissioner, the commissioner of commerce, the president of the state tax commission, and the commissioner of the office of general services. The executive director of the New York state economic development board shall be a non-voting ex-officio member.

2. The governor of the state of New York may direct and order the commissioner of the office of general services or other contracting offices to award a contract to a bidder, other than the lowest responsible bidder, whenever such bid substitution in the board's judgment would best promote the public interest of the state of New York, pursuant to the provisions of section one hundred seventy-four of the state finance law, providing such substituting is consistent with the intent of section eight hundred fifty-six of this chapter and section one hundred seventy-four of the state finance law.

3. The New York state job retention board may request any bidder on a state contract to prepare and submit a preferential bidding form.

4. The New York state job retention board shall meet upon the request of the governor of the state of New York.

* NB Expired July 1, 1979

ARTICLE 25-A

NEW YORK STATE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT

Section 860. Short title.

860-a. Definitions.

860-b. Notice.

860-c. Exceptions.

- 860-d. Extension of mass layoff period.
- 860-e. Determinations with respect to employment loss.
- 860-f. Powers of the commissioner.
- 860-g. Violation; liability.
- 860-h. Civil penalty.
- 860-i. Other rights.

§ 860. Short title. This article shall be known and may be cited as the "New York state worker adjustment and retraining notification act".

§ 860-a. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Affected employees" means employees who may reasonably be expected to experience an employment loss as a consequence of a proposed plant closing or mass layoff by their employer.

2. "Employment loss" means:

(a) an employment termination, other than a discharge for cause, voluntary departure, or retirement;

(b) a mass layoff exceeding six months;

(c) a reduction in hours of work of more than fifty percent during each month of any consecutive six-month period.

"Employment loss" shall not result under circumstances where a plant closing or mass layoff is the result of the relocation or consolidation of part or all of the employer's business and, before the closing or mass layoff, the employer offers to transfer the employee to a different site of employment within a reasonable commuting distance with no more than a six-month break in employment, or the employer offers to transfer the employee to any other site of employment, regardless of distance, with no more than a six-month break in employment, and the employee accepts within thirty days of the offer or of the closing or mass layoff, whichever is later.

3. "Employer" means any business enterprise that employs fifty or more

employees, excluding part-time employees, or fifty or more employees that work in the aggregate at least two thousand hours per week.

"Employer" shall not include the federal or state government or any of their political subdivisions, including any unit of local government or any school district.

4. "Mass layoff" means a reduction in force which:

(a) is not the result of a plant closing; and

(b) results in an employment loss at a single site of employment during any thirty-day period for:

(i) at least thirty-three percent of the employees (excluding part-time employees); and

(ii) at least twenty-five employees (excluding part-time employees); or

(iii) at least two hundred fifty employees (excluding part-time employees).

5. "Part-time employee" means an employee who is employed for an average of fewer than twenty hours per week or who has been employed for fewer than six of the twelve months preceding the date on which notice is required.

6. "Plant closing" means the permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any thirty-day period for twenty-five or more employees (other than part-time employees).

7. "Representative" means an exclusive representative within the meaning of section 9(a) or 8(f) of the National Labor Relations Act (29 U.S.C. 159(a), 158(f)) or section 2 of the Railway Labor Act (45 U.S.C. 152).

8. "Relocation" means the removal of all or substantially all of the industrial or commercial operations of an employer to a different location fifty miles or more away.

§ 860-b. Notice. 1. An employer may not order a mass layoff, relocation, or employment loss, unless, at least ninety days before the order takes effect, the employer gives written notice of the order to the following:

(a) affected employees and the representatives of affected employees;

(b) the department;

(c) the local workforce investment boards established pursuant to the federal Workforce Investment Act (P.L. 105-220) for the locality of the site of employment at which the mass layoff, relocation, or employment loss will occur;

(d) the chief elected official of the unit or units of local government and the school district or districts for the locality of the site of employment at which the mass layoff, relocation or employment loss will occur; and

(e) each locality which provides police, firefighting, emergency medical or ambulance services or other emergency services to the site of employment within which such mass layoff, relocation, or employment loss will occur, as applicable.

2. An employer required to give notice of any mass layoff, relocation, or employment loss under this article shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).

3. Notwithstanding the requirements of subdivision one of this section, an employer is not required to provide notice if a mass layoff, relocation, or employment loss is necessitated by a physical calamity or an act of terrorism or war.

4. The mailing of notice to an employee's last known address by either first class or certified mail or the inclusion of notice in an employee's paycheck shall be considered acceptable methods for fulfillment of the employer's obligation to give notice to each affected employee under this article.

5. In the case of a sale of part or all of an employer's business, the seller shall be responsible for providing notice for any plant closing or mass layoff in accordance with this section, up to and including the effective date of the sale. After the effective date of the sale of part or all of an employer's business, the purchaser shall be responsible for providing notice for any plant closing or mass layoff in accordance with this section. Notwithstanding any other provision of this article, any person who is an employee of the seller as of the effective date of the sale shall be considered an employee of the purchaser immediately after the effective date of the sale.

6. Nothing set forth herein shall be read to abridge, abrogate, or restrict the right of any state or local entity to require an employer that is receiving state or local economic development incentives for doing or continuing to do business in this state from being required to provide additional or earlier notice as a condition for the receipt of such incentives.

7. Nothing set forth herein shall be read to prevent an employer who is not required to comply with the notice requirements of this section, to the extent possible, to provide notice to its employees about a proposal to close a plant or permanently reduce its workforce.

8. Calendar days. All references in this article to "days" shall be deemed to mean calendar days.

§ 860-c. Exceptions. 1. In the case of a plant closing, an employer is not required to comply with the notice requirement in subdivision one of section eight hundred sixty-b of this article if:

(a)(i) at the time the notice would have been required, the employer was actively seeking capital or business; and

(ii) the capital or business sought, if obtained, would have enabled the employer to avoid or postpone the relocation or termination; and

(iii) the employer reasonably and in good faith believed that giving the notice required by subdivision one of section eight hundred sixty-b of this article would have precluded the employer from obtaining the

needed capital or business;

(b) the need for a notice was not reasonably foreseeable at the time the notice would have been required;

(c) the plant closing is of a temporary facility or the plant closing or mass layoff is the result of the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility or project or undertaking;

(d) the plant closing or mass layoff is due to any form of natural disaster, such as a flood, earthquake, or drought; or

(e) the closing or mass layoff constitutes a strike or constitutes a lockout not intended to evade the requirements of this article. Nothing in this article shall require an employer to serve written notice when permanently replacing a person who is deemed to be an economic striker under the National Labor Relations Act (29 U.S.C. 151 et seq.). Nothing in this article shall be deemed to validate or invalidate any judicial or administrative ruling relating to the hiring of permanent replacements for economic strikers under the National Labor Relations Act.

2. An employer unable to provide the notice otherwise required by this article in a timely fashion as a result of circumstances described in subdivision one of this section, shall provide as much notice as is practicable and at that time shall provide a brief statement of the basis for reducing the notification period.

§ 860-d. Extension of mass layoff period. A mass layoff of more than six months which, at its outset, was announced to be a mass layoff of six months or less shall be treated as an employment loss under this article unless:

1. the extension beyond six months is caused by business circumstances (including unforeseeable changes in price or cost) not reasonably foreseeable at the time of the initial mass layoff; and

2. notice is given at the time it becomes reasonably foreseeable that

the extension beyond six months will be required.

§ 860-e. Determinations with respect to employment loss. In determining whether a plant closing or mass layoff has occurred or will occur, employment losses for two or more groups of employees at a single site of employment, each of which is less than the minimum number of employees specified in subdivisions four or six of section eight hundred sixty-a of this article but which in the aggregate meet or exceed that minimum number set forth in such subdivisions, and which occur within any ninety-day period shall be considered to be a plant closing or mass layoff unless the employer demonstrates that the employment losses are the result of separate and distinct actions and causes and are not an attempt by the employer to evade the requirements of this article.

§ 860-f. Powers of the commissioner. 1. The commissioner shall prescribe such rules as may be necessary to carry out this article. The rules shall, at a minimum, include provisions that allow the parties access to administrative hearings for any actions of the department under this article.

2. In any investigation or proceeding under this article, the commissioner has, in addition to all other powers granted by law, the authority to examine any information of an employer necessary to determine whether a violation of this article has occurred, including to determine the validity of any defense.

3. Except as provided in this section, information obtained through administration of this article from an employer subject to this article and which is not otherwise obtainable by the commissioner under this chapter shall: (a) be confidential; and (b) not be published or open to public inspection. Prior to public disclosure of any such information in connection with any court action or proceeding, the employer shall be given a reasonable opportunity to make application to protect the information's confidentiality.

4. No decision or order issued pursuant to this article shall be admissible or used in evidence in any subsequent court proceeding except in an action by the commissioner or the employer to implement, enforce, or challenge a determination made by the commissioner pursuant to this article.

5. Any officer or employer of the state, any officer or employee of any entity authorized to obtain information pursuant to this section, and any agent to this state or of such entity who, except with authority of the commissioner under this section, discloses information is guilty of a misdemeanor.

6. If, after an administrative hearing, the commissioner shall determine that an employer has violated any of the requirements of this article or any rules or regulations promulgated hereunder, the commissioner shall issue an order which shall include any penalties assessed by the commissioner under sections eight hundred sixty-g and eight hundred sixty-h of this article. Upon the entry of such order, any party aggrieved thereby may commence a proceeding for the review thereof pursuant to article seventy-eight of the civil practice law and rules within thirty days from the notice of the filing of the said order in the office of the commissioner. Such proceeding shall be commenced directly in the appellate division of the supreme court. If such order is not reviewed, or is so reviewed and the final decision is in favor of the commissioner, the commissioner may file with the county clerk of the county where the employer resides or has a place of business the order of the commissioner containing the amount found to be due. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

7. The commissioner shall distribute any back pay and the value of any benefits recovered to any employees subject to the violation.

§ 860-g. Violation; liability. 1. An employer who fails to give notice as required by paragraph (a) of subdivision one of section eight hundred sixty-b of this article before ordering a mass layoff, relocation, or employment loss is liable to each employee entitled to notice who lost his or her employment for:

(a) Back pay at the average regular rate of compensation received by the employee during the last three years of his or her employment, or the employee's final rate of compensation, whichever is higher.

(b) The value of the cost of any benefits to which the employee would have been entitled had his or her employment not been lost, including the cost of any medical expenses incurred by the employee that would have been covered under an employee benefit plan.

2. Back pay and other liability under this section is calculated for the period of the employer's violation, up to a maximum of sixty days, or one-half the number of days that the employee was employed by the employer, whichever period is smaller.

3. Payments to an employee under this section by an employer who has failed to provide the advance notice of a facility closure required by this article or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 1201 et seq.) shall not be construed as remuneration under article eighteen of this chapter. Unemployment insurance benefits under article eighteen of this chapter may not be denied or reduced because of the receipt of payments related to an employer's violation of this article or the federal Worker Adjustment and Retraining Notification Act.

4. The amount of an employer's liability under subdivision one of this section, shall be reduced by the following:

(a) Any wages, except vacation moneys accrued before the period of the employer's violation, paid by the employer to the employee during the period of the employer's violation.

(b) Any voluntary and unconditional payments made by the employer to the employee that were not required to satisfy any legal obligation.

(c) Any payments by the employer to a third party or trustee, such as premiums for health benefits or payments to a defined contribution

pension plan, on behalf of and attributable to the employee for the period of the violation.

(d) Any liability paid by the employer under any applicable federal law governing notification of mass layoffs, plant closings, or relocations.

(e) In an administrative proceeding by the commissioner, any liability paid by the employer prior to the commissioner's determination as the result of a private action brought under this article.

(f) In a private action brought under this article, any liability paid by the employer in an administrative proceeding by the commissioner prior to the adjudication of such private action.

5. Any liability incurred by an employer under subdivision one of this section with respect to a defined benefit pension plan may be reduced by crediting the employee with service for all purposes under such a plan for the period of the violation.

6. If an employer proves to the satisfaction of the commissioner that the act or omission that violated this article was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this article, the commissioner may, in his or her discretion, reduce the amount of liability provided for in this section. In determining the amount of such reduction, the commissioner shall consider (a) the size of the employer; (b) the hardships imposed on employees by the violation; (c) any efforts by the employer to mitigate the violation; and (d) the grounds for the employer's belief.

7. An aggrieved employee, local government, or an employee representative seeking to establish liability against an employer may bring a civil action on behalf of the person, other persons similarly situated, or both, in any court of competent jurisdiction, within the time period provided by section two hundred thirteen of the civil practice law and rules. The court may award reasonable attorneys' fees as part of costs to any plaintiff who prevails in a civil action brought under this article. If the court determines that an employer conducted a reasonable investigation in good faith, and had reasonable grounds to

believe that its conduct was not a violation of this article, the court may reduce the amount of any penalty it would otherwise impose against the employer under this article.

8. Neither the commissioner nor any court shall have the authority to enjoin a plant closing, relocation, or mass layoff under this article.

§ 860-h. Civil penalty. 1. An employer who fails to give notice as required by paragraph (b) of subdivision one of section eight hundred sixty-b of this article is subject to a civil penalty of not more than five hundred dollars for each day of the employer's violation. The employer is not subject to a civil penalty under this section if the employer pays to all applicable employees the amounts for which the employer is liable under section eight hundred sixty-g within three weeks from the date the employer orders the mass layoff, relocation, or employment loss.

2. The total amount of penalties for which an employer may be liable under this section shall not exceed the maximum amount of penalties for which the employer may be liable under federal law for the same violation.

3. Any penalty amount paid by the employer under federal law shall be considered a payment made under this article.

4. If an employer proves to the satisfaction of the commissioner that the act or omission that violated this article was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this article, the commissioner may in his or her discretion reduce the amount of the penalty provided for in this section. In determining the amount of such reduction, the commissioner shall consider (a) of the size of the employer; (b) the hardships imposed on employees by the violations; (c) any efforts by the employer to mitigate the violation; and (d) the grounds for the employer's belief.

§ 860-i. Other rights. The rights and remedies provided to employees by this article are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the employees, and are not intended to alter or affect such rights and remedies, except that the period of notification required by this article shall run concurrently with any period of notification required by contract or by any other statute.

ARTICLE 25-B

THE NEW YORK STATE CONSTRUCTION INDUSTRY FAIR PLAY ACT

Section 861. Short title.

861-a. Legislative findings and intent.

861-b. Definitions.

861-c. Presumption of employment in the construction industry.

861-d. Notice to persons receiving remuneration from contractors and subcontractors.

861-e. Violations and penalties.

861-f. Retaliation.

861-g. Contractor accountability.

§ 861. Short title. This article shall be known and may be cited as "the New York state construction industry fair play act".

§ 861-a. Legislative findings and intent. The legislature hereby finds and declares that New York state's construction industry is experiencing dangerous levels of employee misclassification fraud. Unscrupulous employers are intentionally reporting employees as independent contractors to state and federal authorities or workers' compensation carriers in record numbers. In addition, there has been an explosion of employers who operate in the underground economy and fail to report all or a sizable portion of their workers.

The legislature hereby finds and declares that recent studies of New

York city's construction industry alone suggests that as many as fifty thousand New York city construction workers -- nearly one in four -- are either misclassified as independent contractors or are employed by construction contractors completely off the books. Construction industry fraud reduces government revenue, shifts tax and workers' compensation insurance costs to law-abiding employees, lowers working conditions and steals jobs from legitimate employers and their employees.

Therefore, the legislature hereby finds and declares that government has an obligation to curb this underground economy, enforce long-standing employment laws, ensure compliance with essential social insurance protections and eliminate the unfair competitive advantage from contractors in the underground economy by and through the enactment of the New York state construction industry fair play act.

§ 861-b. Definitions. As used in this article:

1. "Construction" means constructing, reconstructing, altering, maintaining, moving, rehabilitating, repairing, renovating or demolition of any building, structure, or improvement, or relating to the excavation of or other development or improvement to land.
2. "Contractor" means any sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity permitted by law to do business within the state who engages in construction as defined in this article.
3. "Contractor" includes a general contractor and a subcontractor.
4. "Department" means the department of labor.
5. "Commissioner" means the commissioner of labor.
6. "Employer" means any contractor that employs individuals deemed employees under this article.

§ 861-c. Presumption of employment in the construction industry. 1.

Any person performing services for a contractor shall be classified as an employee unless the person is a separate business entity under subdivision two of this section or all of the following criteria are met, in which case the person shall be an independent contractor:

- (a) the individual is free from control and direction in performing the job, both under his or her contract and in fact;
- (b) the service must be performed outside the usual course of business for which the service is performed; and
- (c) the individual is customarily engaged in an independently established trade, occupation, profession, or business that is similar to the service at issue.

2. A business entity, including any sole proprietor, partnership, corporation or entity that may be a contractor under this section shall be considered a separate business entity from the contractor where all the following criteria are met:

- (a) the business entity is performing the service free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor for whom the service is provided to specify the desired result;
- (b) the business entity is not subject to cancellation or destruction upon severance of the relationship with the contractor;
- (c) the business entity has a substantial investment of capital in the business entity beyond ordinary tools and equipment and a personal vehicle;
- (d) the business entity owns the capital goods and gains the profits and bears the losses of the business entity;
- (e) the business entity makes its services available to the general public or the business community on a continuing basis;
- (f) the business entity includes services rendered on a Federal Income Tax Schedule as an independent business or profession;
- (g) the business entity performs services for the contractor under the business entity's name;
- (h) when the services being provided require a license or permit, the business entity obtains and pays for the license or permit in the

business entity's name;

(i) the business entity furnishes the tools and equipment necessary to provide the service;

(j) if necessary, the business entity hires its own employees without contractor approval, pays the employees without reimbursement from the contractor and reports the employees' income to the Internal Revenue Service;

(k) the contractor does not represent the business entity as an employee of the contractor to its customers; and

(l) the business entity has the right to perform similar services for others on whatever basis and whenever it chooses.

3. The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section, except as set forth in paragraph (f) of subdivision two of this section.

4. An individual's act of securing workers' compensation insurance with a carrier as a sole proprietor, partnership or otherwise shall not be binding on any determination under this section.

5. When a business entity meets the definition of a separate business entity pursuant to subdivision two of this section, the separate business entity will be considered a contractor subject to all the provisions of this article in regard to the classification of individuals performing services for it.

§ 861-d. Notice to persons receiving remuneration from contractors and subcontractors. 1. Every contractor shall post in a prominent and accessible place on the site where the construction is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other federal and state workplace protections, and the protections against retaliation and

the penalties in this article if the contractor fails to properly classify an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English, Spanish or other languages required by the commissioner. The posted statement shall be constructed of materials capable of withstanding adverse weather conditions.

2. Within thirty days of the effective date of this article, the commissioner shall create the notice described in subdivision one of this section and post the notice on the department's website for downloading by contractors.

3. Contractors who violate this section shall be subject to a civil penalty of up to one thousand five hundred dollars for a first violation, and up to five thousand dollars for a subsequent violation within a five year period.

§ 861-e. Violations and penalties. 1. Any contractor who wilfully fails to properly classify an individual as an employee as provided under section eight hundred sixty-one-c of this article shall be subject to the civil and criminal penalties provided under this section. The civil penalties set forth in this section shall be imposed as follows: by the commissioner where such penalty is based on a violation of this chapter; by the chair of the workers' compensation board where such penalty is based on a violation of the workers' compensation law; and by the commissioner of tax and finance when such penalty is based on a violation of the tax law, provided that no more than one civil penalty under this section may be imposed per employee per incident of misclassification.

(a) The workers' compensation board shall provide a copy of any order relating to the misclassification of an employee, the intentional and material underpayment or concealment of payroll, or the failure to secure workers' compensation in the construction industry to the commissioner and commissioner of taxation and finance no later than seven days after the issuance of the order.

(b) Notwithstanding the secrecy provisions contained in articles nine-A and twenty-two of the tax law, the department of taxation and finance shall provide a copy of any assessment for failure to pay business, corporate or personal income tax by an employer in the construction industry arising out of the misclassification of an employee to the commissioner and chair of the workers' compensation board no later than seven days after the issuance of the assessment.

(c) Upon the issuance of an order or determination by the commissioner for a violation and penalties under this article, the commissioner shall provide a copy of the order to the chair of the workers' compensation board and the commissioner of taxation and finance no later than seven days after the issuance of the order.

2. For the purposes of this section, the term "willfully violates" means a contractor knew or should have known that his or her conduct was prohibited by this section.

3. Any contractor who willfully violates section eight hundred sixty-one-c of this article shall be subject to a civil penalty of up to twenty-five hundred dollars for the first violation per misclassified employee and to a civil penalty of up to five thousand dollars for each subsequent violation per misclassified employee within a five year period.

4. In addition to civil penalties, the criminal penalties imposed on a contractor who willfully violates the provisions of this article shall be a misdemeanor and upon conviction shall be punished for a first offense by imprisonment for not more than thirty days or a fine not to exceed twenty-five thousand dollars and for a subsequent offense by imprisonment for not more than sixty days or a fine not to exceed fifty thousand dollars.

5. If the contractor is a corporation, any officer of such corporation or shareholder who owns or controls at least ten percent of the outstanding stock of such corporation who knowingly permits the corporation to willfully violate the provisions of this article shall also be in violation of this article and the civil and criminal

penalties herein shall attach to such officer upon conviction.

6. Any contractor subject to civil penalties under this article shall also be subject to any other applicable penalties or remedies provided by law for failure to pay any other statutory payment or coverage obligations, including but not limited to, unemployment insurance, workers' compensation insurance, or business, corporate or personal income tax, as follows:

(a) for failure to pay unemployment insurance tax, the penalties imposed by section five hundred seventy of this chapter.

(b) for intentional and material understatement or concealment of payroll or failure to secure workers' compensation insurance, the penalties imposed by paragraph (d) of subdivision one of section fifty-two of the workers' compensation law, and for failure to keep a true and accurate record pursuant to section one hundred thirty-one of the workers' compensation law, the penalties of section one hundred thirty-one of the workers' compensation law.

(c) for failure to pay business, corporate or personal income tax, the penalties imposed by section six hundred eighty-five and one thousand eighty-five of the tax law.

7. Any contractor or any officer or shareholder who owns or controls at least ten percent of the outstanding stock of such corporation that has been convicted of a misdemeanor shall be subject to debarment and be ineligible to submit a bid on or be awarded any public works contract with the state, any municipal corporation, public benefit corporation, public authority or public body for a period of up to one year from the date of such conviction or final determination, or up to five years in the event of any subsequent violation.

8. Any substantially owned affiliated entity of a contractor, as defined by paragraph g of subdivision five of section two hundred twenty of this chapter, shall be subject to the same civil penalty provided under this article for a violation of such provision.

9. Any penalties imposed under this section by the commissioner shall be appealed to the industrial board of appeals in accordance with

article three of this chapter. Any penalties imposed under this section by the workers' compensation board or commissioner of taxation and finance shall be appealed in the same manner as the underlying violation.

10. Nothing in this section shall limit the availability of other remedies at law or in equity for a violation of this article.

11. Any fee or penalty assessed for a violation of this article shall be deposited into the department's fee and penalty account.

§ 861-f. Retaliation. 1. It is a violation of this article for an employer or any agent of any employer, to retaliate through discharge or in any other manner against any person in the terms of conditions of his or her employment for exercising any rights granted under this article for:

(a) making, or threatening to make, a complaint to an employer, co-worker or to a public body that rights guaranteed under this article have been violated;

(b) causing to be instituted any proceeding under or related to this article; or

(c) providing information to, or testifying before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer. Nothing in this section shall limit the commissioner's authority under section two hundred fifteen of the labor law, or any other statute.

2. Any act of retaliation under this section shall subject an employer to the civil penalties under section eight hundred sixty-one-e of this article, or to a private cause of action, or both.

§ 861-g. Contractor accountability. When a contractor or sub-contractor is found to have failed to pay all wages as required by article six or nineteen of this chapter, either by a final order issued by the commissioner, an assurance of discontinuance or final settlement

with the office of the attorney general, or a final judgment or order of a court of competent jurisdiction, the contractor or sub-contractor shall notify all of its employees of the nature of these violations. Notification summarizing the findings shall be made via paycheck attachment to employees at all worksites according to such form and manner ordered by the commissioner. The commissioner shall have the authority to promulgate rules necessary to effectuate the terms of this section.

ARTICLE 25-C

THE NEW YORK STATE COMMERCIAL GOODS TRANSPORTATION INDUSTRY FAIR PLAY ACT

Section 862. Short title.

862-a. Definitions.

862-b. Presumption of employment in the commercial goods transportation industry.

862-c. Notice to persons receiving remuneration from commercial goods transportation contractors and commercial goods transportation subcontractors.

862-d. Violations and penalties.

862-e. Retaliation.

§ 862. Short title. This article shall be known and may be cited as the "New York state commercial goods transportation industry fair play act".

§ 862-a. Definitions. As used in this article:

1. "Commercial goods transportation contractor" means any sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity that compensates a driver who possesses a state-issued driver's license, transports goods in the state of New York and operates a commercial motor vehicle as defined in subdivision four-a of section two of the transportation law.

2. "Commercial goods transportation contractor" includes a general commercial goods transportation contractor or a commercial goods transportation subcontractor.

3. "Commercial goods transportation services" means the transportation of goods for compensation by a driver who possesses a state-issued driver's license, transports goods in the state of New York, and operates a commercial motor vehicle as defined in subdivision four-a of section two of the transportation law.

4. "Department" means the department of labor.

5. "Commissioner" means the commissioner of labor.

6. "Employer" means any commercial goods transportation contractor which compensates a person classified as an employee under section eight hundred sixty-two-b of this article.

§ 862-b. Presumption of employment in the commercial goods transportation industry. 1. Any person performing commercial goods transportation services for a commercial goods transportation contractor shall be classified as an employee of the commercial goods transportation contractor unless payment for such services is reported on a Federal Income Tax form 1099 if required by law and either the person is a separate business entity under subdivision two of this section or all of the following criteria are met, in which case the person shall be an independent contractor:

(a) the individual is free from control and direction in performing the job, both under his or her contract and in fact;

(b) the service must be performed outside the usual course of business for which the service is performed; and

(c) the individual is customarily engaged in an independently established trade, occupation, profession, or business that is similar to the service at issue.

2. A business entity, including any sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity that may also be a commercial goods transportation contractor under this section shall be considered a separate business entity from the commercial goods transportation contractor where all the following criteria are met:

(a) the business entity is performing the service free from the direction or control over the means and manner of providing the service, subject only to the right of the commercial goods transportation contractor for whom the service is provided to specify the desired result or federal rule or regulation;

(b) the business entity is not subject to cancellation or destruction upon severance of the relationship with the commercial goods transportation contractor;

(c) the business entity has a substantial investment of capital in the business entity, including but not limited to ordinary tools and equipment;

(d) the business entity owns or leases the capital goods and gains the profits and bears the losses of the business entity;

(e) the business entity may make its services available to the general public or others not a party to the business entity's written contract referenced in paragraph (g) of this subdivision in the business community on a continuing basis;

(f) the business entity provides services reported on a Federal Income Tax form 1099, if required by law;

(g) the business entity performs services for the commercial goods transportation contractor pursuant to a written contract, under the business entity's name, specifying their relationship to be as independent contractors or separate business entities;

(h) when the services being provided require a license or permit, the business entity pays for the license or permit in the business entity's name or, where permitted by law, pays for reasonable use of the commercial goods transportation contractor's license or permit;

(i) if necessary, the business entity hires its own employees without the commercial goods transportation contractor's approval, subject to applicable qualification requirements or federal or state laws, rules or regulations, and pays the employees without reimbursement from the

commercial goods transportation contractor;

(j) the commercial goods transportation contractor does not require that the business entity be represented as an employee of the commercial goods transportation contractor to its customers; and

(k) the business entity has the right to perform similar services for others on whatever basis and whenever it chooses.

3. The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section, except as set forth in paragraph (f) of subdivision two of this section.

4. An individual's act of securing workers' compensation insurance with a carrier as a sole proprietor, partnership or otherwise shall not be binding on any determination under this section.

5. When a business entity meets the definition of a separate business entity pursuant to subdivision two of this section, the separate business entity will be considered a commercial goods transportation contractor subject to all the provisions of this article in regard to the classification of individuals performing services for it.

§ 862-c. Notice to persons receiving remuneration from commercial goods transportation contractors and commercial goods transportation subcontractors. 1. Every commercial goods transportation contractor shall post in a prominent and accessible place on the site where commercial goods transportation activity is conducted a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other federal and state workplace protections, and the protections against retaliation and the penalties in this article if the contractor fails to properly classify an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with

the commissioner about employment classification status. This information shall be provided in English, Spanish or other languages required by the commissioner.

2. Within thirty days of the effective date of this article, the commissioner shall create the notice described in subdivision one of this section and post the notice on the department's website for downloading by commercial goods transportation contractors.

3. Commercial goods transportation contractors who violate this section shall be subject to a civil penalty of up to one thousand five hundred dollars for a first violation, and up to five thousand dollars for a subsequent violation within a five year period.

§ 862-d. Violations and penalties. 1. Any commercial goods transportation contractor who willfully fails to properly classify an individual as an employee as provided under section eight hundred sixty-two-b of this article shall be subject to the civil and criminal penalties provided under this section. The civil penalties set forth in this section shall be imposed as follows: by the commissioner where such penalty is based on a violation of this chapter; by the chair of the workers' compensation board where such penalty is based on a violation of the workers' compensation law; and by the commissioner of taxation and finance when such penalty is based on a violation of the tax law, provided that no more than one civil penalty under this section may be imposed per employee per incident of misclassification.

(a) The workers' compensation board shall provide a copy of any order relating to the misclassification of an employee, the intentional and material underpayment or concealment of payroll, or the failure to secure workers' compensation in the commercial goods transportation industry to the commissioner and commissioner of taxation and finance no later than seven days after the issuance of the order.

(b) Notwithstanding the secrecy provisions contained in articles nine-A and twenty-two of the tax law, the department of taxation and finance shall provide a copy of any assessment for failure to pay business, corporate or personal income tax by an employer in the

commercial goods transportation industry arising out of the misclassification of an employee to the commissioner and chair of the workers' compensation board no later than seven days after the issuance of the assessment.

(c) Upon the issuance of an order or determination by the commissioner for a violation and penalties under this article, the commissioner shall provide a copy of the order to the chair of the workers' compensation board and the commissioner of taxation and finance no later than seven days after the issuance of the order.

2. For the purposes of this section, the term "willfully violates" means a commercial goods transportation contractor knew or should have known that his or her conduct was prohibited by this section.

3. Any commercial goods transportation contractor who willfully violates section eight hundred sixty-two-b of this article shall be subject to a civil penalty of up to twenty-five hundred dollars for the first violation per misclassified employee and to a civil penalty of up to five thousand dollars for each subsequent violation per misclassified employee within a five year period.

4. In addition to civil penalties, the criminal penalties imposed on a commercial goods transportation contractor who willfully violates the provisions of this article shall be a misdemeanor and upon conviction shall be punished for a first offense by imprisonment for not more than thirty days or a fine not to exceed twenty-five thousand dollars and for a subsequent offense by imprisonment for not more than sixty days or a fine not to exceed fifty thousand dollars.

5. If the commercial goods transportation contractor is a corporation, any officer of such corporation or shareholder who owns or controls at least ten percent of the outstanding stock of such corporation who knowingly permits the corporation to willfully violate the provisions of this article shall also be in violation of this article and the civil and criminal penalties herein shall attach to such officer upon conviction.

6. Any commercial goods transportation contractor subject to civil penalties under this article shall also be subject to any other applicable penalties or remedies provided by law for failure to pay any other statutory payment or coverage obligations, including but not limited to, unemployment insurance, workers' compensation insurance, or business, corporate or personal income tax, as follows:

(a) for failure to pay unemployment insurance tax, the penalties imposed by section five hundred seventy of this chapter.

(b) for intentional and material understatement or concealment of payroll or failure to secure workers' compensation insurance, the penalties imposed by paragraph (d) of subdivision one of section fifty-two of the workers' compensation law, and for failure to keep a true and accurate record pursuant to section one hundred thirty-one of the workers' compensation law, the penalties of section one hundred thirty-one of the workers' compensation law.

(c) for failure to pay business, corporate or personal income tax, the penalties imposed by section six hundred eighty-five and one thousand eighty-five of the tax law.

7. Any commercial goods transportation contractor or any officer or shareholder who owns or controls at least ten percent of the outstanding stock of such corporation that has been convicted of a misdemeanor shall be subject to debarment and be ineligible to submit a bid on or be awarded any public works contract with the state, any municipal corporation, public benefit corporation, public authority or public body for a period of up to one year from the date of such conviction or final determination, or up to five years in the event of any subsequent violation.

8. Any substantially owned affiliated entity of a commercial goods transportation contractor, as defined by paragraph g of subdivision five of section two hundred twenty of this chapter, shall be subject to the same civil penalty provided under this article for a violation of such provision.

9. Any penalties imposed under this section by the commissioner shall be appealed to the industrial board of appeals in accordance with

article three of this chapter. Any penalties imposed under this section by the workers' compensation board or commissioner of taxation and finance shall be appealed in the same manner as the underlying violation.

10. Nothing in this section shall limit the availability of other remedies at law or in equity for a violation of this article.

11. Any fee or penalty assessed for a violation of this article shall be deposited into the department's fee and penalty account.

§ 862-e. Retaliation. 1. It is a violation of this article for an employer or any agent of any employer, to retaliate through discharge or in any other manner against any person in the terms of conditions of his or her employment for exercising any rights granted under this article for:

(a) making, or threatening to make, a complaint to an employer, co-worker or to a public body that rights guaranteed under this article have been violated;

(b) causing to be instituted any proceeding under or related to this article; or

(c) providing information to, or testifying before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer. Nothing in this section shall limit the commissioner's authority under section two hundred fifteen of this chapter, or any other statute.

2. Any act of retaliation under this section shall subject an employer to the civil penalties under section eight hundred sixty-two-d of this article, or to a private cause of action, or both.

ARTICLE 26

SAFETY IN SKIING

Section 865. Short title.

866. Declaration of legislative findings.

867. Safety in skiing code.

868. Separability.

§ 865. Short title. This article shall be known and may be cited as the "safety in skiing act".

§ 866. Declaration of legislative findings. The legislature hereby finds that alpine or downhill skiing is both a major recreational sport and a major industry within the state of New York. The legislature further finds: (a) that downhill skiing, like many other sports, is not without some inherent risks; (b) that downhill skiing, without established rules of conduct and care, may result in injuries to persons and property; and (c) that it is necessary and appropriate, as well as in the public interest, to take steps to protect downhill skiers from undue, unnecessary and unreasonable hazards, and to encourage and promote safety in the downhill ski industry.

It is, therefore, the intent of this article to create and provide for the promulgation of a code of conduct for downhill skiers and ski area operators which will minimize the risk of injury to persons and property engaged in the sport of downhill skiing.

§ 867. Safety in skiing code. 1. The commissioner, on the advice of the passenger tramway advisory council as created pursuant to section twelve-c of this chapter, shall promulgate rules and regulations, consistent with article eighteen of the general obligations law, intended to guard against personal injuries to downhill skiers which will, in view of such intent, define the duties and responsibilities of downhill skiers and the duties and responsibilities of ski area operators.

2. The commissioner shall enforce all the provisions of this article and the regulations adopted pursuant hereto and may issue such orders against any entity, public or private, as he finds necessary, directing

compliance with any provision of this article or such regulations. The commissioner may also investigate any fatality or injury resulting in a fatality at a ski area.

3. The passenger tramway advisory council shall conduct any investigation necessary to carry out the provisions of this article.

4. The passenger tramway advisory council shall conduct public hearings on any rules and regulations proposed under this section prior to their promulgation by the commissioner. The passenger tramway advisory council shall fix a time and place for each such hearing and cause such notice as it may deem appropriate to be given to the public and news media prior to such a hearing. Testimony may be taken and evidence received at such a hearing pursuant to procedures prescribed by the passenger tramway advisory council.

5. Upon advice of the passenger tramway advisory council, the commission shall, on the fifteenth day of March, nineteen hundred eighty-nine, promulgate rules which shall set forth specifications for the uniform textual and graphic content, physical description, and conspicuous posting of a "Warning to Skiers" regarding the risks inherent in the sport as set forth in section 18-101 of the general obligations law, which shall be posted and provided to skiers by ski areas operators in accordance with subdivision one of section 18-106 of the general obligations law, and shall promulgate rules which shall set forth textual and graphic specifications designed to occupy not more than twenty-five percent of the imprintable surface area of the face side nor more than eighty percent of the imprintable surface area of the reverse side or backing paper of all lift tickets sold or distributed in the state, as defined by section 18-102 of the general obligations law, which shall uniformly serve to direct the attention of all skiers to the "Warning to Skiers" herein directed to be promulgated and required by section 18-106 of the general obligations law.

§ 868. Separability. If any part or provision of this act or the application thereof to any person is adjudged by a court of competent

jurisdiction to be unconstitutional, such judgment shall not affect or impair any other part or provision or the application thereof to any other person, but shall be confined in its operation to the part, provision, or person directly involved in the controversy.

ARTICLE 27

CARNIVAL, FAIR AND AMUSEMENT PARK SAFETY

Section 870-a. Legislative intent.

870-b. Application.

870-c. Definitions.

870-d. Issuance of permit.

870-e. Inspections.

870-f. Liability insurance.

870-g. Reports of injuries.

870-h. Notice to owners.

870-i. Additional rule making.

870-j. Civil penalties.

870-k. Criminal penalties.

870-l. Local regulations.

870-m. Exceptions.

870-n. Carnival, fair and amusement park safety advisory board.

870-o. Amusement device and attraction awareness.

§ 870-a. Legislative intent. 1. The purpose of this article is to guard against personal injuries in the assembly, disassembly and use of amusement devices, viewing stands and tents at carnivals, fairs and amusement parks to persons employed at or attending the same, and, in the event of a personal injury, to insure to the injured party the possibility of financial recovery as against the owner of the carnival, fair or amusement park where the injury occurred.

2. It is the intent of this article that such devices, viewing stands and tents shall be so designed, constructed, assembled or disassembled, maintained and operated as to prevent such injuries.

§ 870-b. Application. 1. This article applies to amusement devices, viewing stands and tents at carnivals, fairs and amusement parks where an admission or fee is customarily or usually charged located within the state, and to the managers of such devices, to the persons employed in connection with the same and to their employees.

2. This article shall not apply to single passenger, coin-operated, manually, mechanically or electrically operated rides, except where admission is charged for the use of the equipment, nor shall this article be construed so as to limit the right of any person to conduct any hotel, restaurant or eating place at any amusement park.

§ 870-c. Definitions. As used herein, the following terms have the meanings indicated:

1. "Amusement device" means any contrivance that carries and conveys passengers along, around or over a fixed or restricted course or within a defined area for the purpose of amusing or entertaining its passengers, and which is of such nature that accidental personal injuries may be incurred in its assembly, disassembly or use.

2. "Amusement park" means a tract or area used principally as a permanent location for amusement devices or structures.

3. "Commissioner" means the commissioner of labor of the state.

4. "Carnival" means an itinerant enterprise consisting principally of temporary amusement devices or mechanical rides, acrobatic or magic shows, games, stunts or zoo animals operated to provide entertainment or amusement to the public.

5. "Fair" means an enterprise principally devoted to the exhibition of the products of agriculture or industry and at which amusement devices or temporary structures, viewing stands or tents are provided for use by the public.

6. "Owner" means a person, corporation, partnership or association who owns an amusement device, viewing stand or tent or in the event that the amusement device, viewing stand or tent is leased, the lessee.

7. "Permanent device" means a device which is used, or intended to be used, as an amusement device that is erected to remain a lasting part of the premises.

8. "Temporary device" means a device which is used as an amusement device that is regularly relocated from time to time with or without disassembly.

9. "Serious injury" means a personal injury which results in death; dismemberment; significant disfigurement; a compound or comminuted fracture; or permanent loss of use of a body organ, member, function, or system; or loss of consciousness.

10. "Injury" means any personal injury which results in medical treatment.

11. "Safety coordinator" means a person suited by training or experience and designated by the owner or operator of an amusement park, fair or carnival as being in charge of the safety of all amusement devices located at the park, fair or carnival.

12. "Viewing stand" means a bleacher, grandstand or similar structure used at carnivals, fairs and amusement parks for public occupation, which has a capacity of one hundred or more persons, and which is of such nature that accidental personal injuries may be incurred in its assembly, disassembly or use.

13. "Permanent stand" means a viewing stand that is erected to remain a lasting part of the premises.

14. "Temporary stand" means a viewing stand that is designed to be relocated from time to time with or without disassembly.

15. "Tent" means a tent which has a capacity of three hundred or more persons and which is used at carnivals, fairs and amusement parks.

16. "Permanent tent" means a tent that is erected to remain a lasting part of the premises.

17. "Temporary tent" means a tent that is regularly relocated from time to time.

§ 870-d. Issuance of permit. No amusement device, viewing stand or tent may be operated in the state without a permit issued by the commissioner except as provided in section eight hundred seventy-m of this article. Such permits are not transferable and if any permit holder voluntarily discontinues operation of the amusement device, viewing stand or tent, all rights secured under the permit are terminated.

1. Before commencement of the operation of a permanent or temporary device, viewing stand or tent, the owner or lessee shall make written application to the commissioner for a permit to operate, which shall be accompanied by an annual non-refundable fee of one hundred dollars for each amusement ride device. The permit shall be valid for a period of one year.

2. No temporary device, viewing stand or tent shall be used at any time or location unless prior notice of intent to use same has been given to the commissioner. Notice of planned schedules shall (a) be in writing, (b) identify the temporary device, viewing stand or tent, (c) state the intended dates and locations of use, (d) be mailed to the commissioner at least fifteen days before the first intended date of use.

3. A permit to operate shall be issued to the owner or lessee of an amusement device, viewing stand or tent when:

(a) written application has been made to the commissioner;

(b) the amusement device, viewing stand or tent has passed all required inspections; and

(c) the liability insurance or bond required by section eight hundred seventy-f of this article has been met in the amount prescribed.

4. The commissioner may revoke any permit issued pursuant to this article if it is determined that an amusement device, viewing stand or tent is:

(a) being used or operated without the inspections required by section eight hundred seventy-e of this article; or

(b) being used or operated without the insurance or other security required by section eight hundred seventy-f of this article; or

(c) being used or operated with a mechanical, structural or design defect which presents an excessive risk of serious injury to passengers or members of the public.

5. Any other violation of this article may result in a revocation, provided that written notice of non-compliance is served upon the owner specifying any violation of this article and directing the owner to correct such violations within thirty days of receipt of such notice.

6. Nothing herein shall prevent an owner whose permit to operate an amusement device, viewing stand or tent has been revoked pursuant to this section from reapplying for a permit in accordance with this article.

§ 870-e. Inspections. Before a permit may be issued as provided in section eight hundred seventy-d of this article, an inspection of the amusement device, viewing stand or tent shall be made in compliance with the procedures set by the commissioner. Such inspection shall have been conducted within one year prior to the permit application, unless such period shall have been extended by operation of subdivision four of this section.

1. In the case of a permanent device, viewing stand or tent, the amusement device, viewing stand or tent must be inspected by the

commissioner or his authorized representative, or in the city of New York, by the building department, at the time of application for the initial permit. In the case of an amusement device deemed by the commissioner to normally be operated at speeds or with movements creating severe centrifugal forces, the owner or operator making the permit application for such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device. An initial operating permit shall not be granted in the absence of these documents. Thereafter, the amusement device, viewing stand or tent must be inspected at least annually by a licensed architect, professional engineer, qualified inspector of an insurance underwriter, or an inspector approved by the commissioner as a requirement for the issuance of each subsequent permit. Such inspection shall at minimum comply with the requirements of the commissioner, provided that for amusement devices, at the time of each such annual inspection, the owner or operator of such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device and shall have available documentation that such maintenance and testing as are called for by the device manufacturer have been performed during the term covered by the previous operating permit. No subsequent operating permit shall be granted in the absence of these documents. An affidavit of the annual inspection shall be filed with the commissioner.

2. In the case of a temporary device, viewing stand or tent, upon first entry into the state, the amusement device, viewing stand or tent must be inspected by the commissioner or his authorized representative for the permit to be issued. In the case of a temporary amusement device deemed by the commissioner to normally operate at speeds or with movements creating severe centrifugal forces the owner or operator making the permit application for such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device. An operating permit shall not be granted in the absence of these documents. Thereafter, the amusement device, viewing stand or tent must be inspected at least annually by a licensed architect, professional engineer, qualified inspector of an insurance underwriter, or an

inspector approved by the commissioner as a requirement for the issuance of each subsequent permit. Such inspection shall at minimum comply with the requirements of the commissioner, provided that for amusement devices, at the time of each such annual inspection, the owner or operator of such device shall have available for inspection such recommended maintenance and safety schedules or requirements as are supplied by the manufacturer of the device and shall have available documentation that such maintenance and testing as are called for by the device manufacturer have been performed during the term covered by the previous operating permit. No subsequent operating permit shall be granted in the absence of these documents. An affidavit of the annual inspection shall be filed with the commissioner.

2-a. Where such maintenance and safety schedules as are called for in subdivisions one and two of this section do not exist or are not available due to circumstances beyond the control of the owner or operator of an amusement device, the owner or operator shall, within six months of the discovery of the unavailability of such standards, submit to the commissioner a proposed schedule of maintenance for that amusement device consistent with the standards for the testing and maintenance of such devices established in accordance with the rules and regulations promulgated pursuant to subdivision six of this section and shall henceforth be the schedule with which the owner or operator must comply to qualify for annual operating permits.

2-b. None of the provisions contained in subdivision two-a of this section shall be interpreted as to prevent the owner or operator of an amusement device from receiving an annual permit to operate such device during the proposed maintenance schedule submission process described in such subdivision provided that such owner or operator meets all the requirements for an annual operating permit as they exist prior to the effective date of this subdivision.

2-c. The owner or operator of an amusement device shall conspicuously post a sign containing safety guidelines to be followed by patrons while on or in the amusement device and behavior or activities which are prohibited as threats either to the patrons themselves, other patrons or

the general public. Such signs shall contain warnings that there are inherent risks in the participation in or on the amusement device, since it is recognized that participation in or on the device may be hazardous regardless of all feasible safety measures that can be undertaken by the device owner or operator; and that there is a duty for the patrons to become apprised of the warnings and the risks inherent in participation in or on the amusement device if the warnings are not obeyed. Prior to participating in or on such amusement device, patrons shall familiarize themselves with the posted safety warnings so that they may make an informed decision of whether to participate in or on the device notwithstanding the risks.

3. In the case of an amusement device, viewing stand or tent which is substantially rebuilt or substantially modified so as to change the structure, mechanism, or capacity of the device, viewing stand or tent, the owner or lessee shall give written notice to the commissioner who shall cause the device, viewing stand or tent to be inspected prior to the time in which it is put into operation and who shall cause any current permit to be updated so as to include any modifications made to the device, viewing stand or tent.

4. In the event an operator is unable to secure an inspection by his insurance carrier within one year from the date of the previous inspection, such previous inspection shall be deemed valid for purposes of this article for a period of thirty additional days, provided such operator made an inspection request to his insurance carrier at least sixty days prior to the inspection anniversary date.

5. No amusement device, viewing stand or tent which fails to pass an inspection shall be operated for public use until it has passed a subsequent inspection.

6. The commissioner shall, in consultation with the carnival, fair and amusement park safety advisory board as established under section eight hundred seventy-n of this article, as added by a chapter of the laws of two thousand six, establish rules and regulations providing standards for the design, manufacture, testing, inspection, quality assurance and

terminology of amusement devices. The rules and regulations established pursuant to this subdivision shall be consistent with the national standards for amusement devices, as established by the American Society of Testing and Materials.

§ 870-f. Liability insurance. Before the commissioner may issue a permit to the owner or lessee of an amusement device, viewing stand or tent, the owner or lessee of such device, viewing stand or tent shall furnish the commissioner with proof that he has purchased insurance or posted cash or other security in an amount not less than one million dollars per occurrence or a bond in an amount not less than two million five hundred thousand dollars in the aggregate against liability for injury to persons arising out of the use of the amusement device, viewing stand or tent. In the event such liability insurance is cancelled, the insurer shall give thirty days' prior notice of such cancellation to the commissioner.

§ 870-g. Reports of injuries. 1. The owner or lessee of any amusement device, viewing stand or tent which, during the course of its operation, is involved in an accident which results in an injury shall report such injury to the owner's or lessee's insurer.

2. The owner or lessee of any amusement device, viewing stand or tent which, during the course of its operation, is involved in an accident which results in a serious injury shall report such injury to the commissioner prior to the close of business of the commissioner's next business day.

3. When a serious injury occurs involving the operation of an amusement device, viewing stand or tent, the owner or lessee shall immediately shut down the device, viewing stand or tent from further use. (a) In the case of an amusement device, the device may not resume operation until the safety coordinator determines that the serious injury was not caused by a mechanical or structural defect in the amusement device; (b) In the case of a viewing stand or tent, the stand

or tent may not be occupied again until the commissioner or the safety coordinator determines that the serious injury was not caused by a mechanical or structural defect in the viewing stand or tent.

4. If the safety coordinator determines that a serious injury was caused by a mechanical or structural defect, the device shall remain shut down until such repairs are completed and the device is deemed operational by a licensed architect, professional engineer, qualified inspector of an insurance underwriter or an inspector approved by the commissioner. An affidavit of such inspection and correction of defect shall be filed with the commissioner.

§ 870-h. Notice to owners. The commissioner shall furnish to all owners, lessees and operators of amusement devices, viewing stands and tents notice of all rights and obligations prescribed under this article upon receipt of permit applications.

§ 870-i. Additional rule making. The commissioner may make additional rules consistent with this article guarding against personal injuries in the assembly, disassembly and use of amusement devices, viewing stands and tents at carnivals, fairs and amusement parks to persons employed at or to persons attending the carnivals, fairs and amusement parks. Where the carnivals, fairs and amusement parks are located within the city of New York, the department of buildings of the city of New York may also make and enforce such additional rules.

§ 870-j. Civil penalties. 1. Any person who knowingly and willfully operates an amusement device, viewing stand or tent without any of the following:

(a) the permit required by section eight hundred seventy-d of this article; or

(b) the inspections required by section eight hundred seventy-e of this article; or

(c) the insurance or other security required by section eight hundred

seventy-f of this article shall be subject to a civil penalty of not less than two thousand dollars, nor more than four thousand dollars, for each day the violation continues.

2. Any person who operates an amusement device, viewing stand or tent without any of the following:

(a) the permit required by section eight hundred seventy-d of this article; or

(b) the inspections required by section eight hundred seventy-e of this article; or

(c) the insurance or other security required by section eight hundred seventy-f of this article shall be subject to a civil penalty of not less than two thousand dollars, nor more than four thousand dollars.

3. The commissioner, in assessing penalties under subdivision one of this section, shall give due consideration to the appropriateness of the penalty with respect to the size of the owner's or lessee's business, the good faith of the owner or lessee and his history of previous violation.

4. Any operator of an amusement device who has been subject to a civil penalty imposed pursuant to this section relating to the operation of such amusement device on two or more occasions within any five year period of time shall not operate the amusement device in this state, and such device shall be taken out of service as soon as practicable. When an amusement device is taken out of service pursuant to this subdivision, the operator of such device shall sign an affidavit, in a form approved by the commissioner, that the amusement device was taken out of service and will remain out of service until such time as the commissioner determines that the amusement device meets all safety requirements established pursuant to this article. Any operator of an amusement device, which is sworn to have been taken out of service, who operates or allows to be operated such device, in violation of the operator's affidavit, shall be subject to a fine of ten thousand dollars.

§ 870-k. Criminal penalties. 1. (a) Any owner or lessee of an amusement device, viewing stand or tent who wilfully violates any provision of this article or any rule, regulation, standard or order promulgated pursuant to this article, and that violation causes physical injury to any member of the public exposed to the violation, is guilty of a class A misdemeanor and upon conviction shall be sentenced in accordance with the provisions of the penal law.

(b) Any owner or lessee of an amusement device, viewing stand or tent who wilfully violates any provision of this article or any rule, regulation, standard or order promulgated pursuant to this article, and that violation causes death or serious physical injury to any member of the public exposed to the violation, is guilty of a class E felony and upon conviction shall be sentenced in accordance with the provisions of the penal law.

(c) For the purposes of this subdivision, the term "physical injury" shall have the same meaning as that term is defined in subdivision nine of section 10.00 of the penal law and the term "serious physical injury" shall have the same meaning as that term is defined in subdivision ten of section 10.00 of the penal law.

2. A person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article, is guilty of a misdemeanor and upon conviction is subject to a fine of not more than two thousand five hundred dollars or imprisonment for not more than six months, or both.

3. Nothing contained in this section shall be construed to limit or preclude a prosecution under any provision of the penal law.

§ 870-l. Local regulations. Nothing in this article shall be so construed as to prevent municipalities from enacting regulations more restrictive than the provisions set forth by this article.

§ 870-m. Exceptions. (a) In the case of an amusement device, viewing

stand or tent operated in a carnival, fair or amusement park located in a city having a population of over one million, a permit or license issued by such city shall satisfy the requirements of section eight hundred seventy-d of this article, provided that all the requirements for issuance of a permit by the commissioner have been satisfied.

(b) This article shall not apply to the use of a viewing stand or tent on any state or county fairgrounds or to the use of a viewing stand or tent owned, leased or operated by any bona fide religious, charitable, educational, fraternal, service, veteran or volunteer firefighter organization; except that it shall apply to any private owner or lessee who operates an amusement device, viewing stand or tent on a state or county fairground, or for or on behalf of such organization.

§ 870-n. Carnival, fair and amusement park safety advisory board. 1.

To advise the commissioner in relation to industry standards for carnivals, fairs, amusement parks, amusement devices, tents and viewing stands, and his or her duties and powers pursuant to this article, there shall be established in the department an advisory board, to be known as the "carnival, fair and amusement park safety advisory board", consisting of eleven members to be appointed as follows: five members shall be appointed by the governor, two members shall be appointed by the temporary president of the senate, two members shall be appointed by the speaker of the assembly, one member shall be appointed by the minority leader of the senate, and one member shall be appointed by the minority leader of the assembly. The members of such advisory board shall each be a representative of amusement parks; operators of temporary amusement devices; businesses engaged in the rental of temporary amusement devices; manufacturers and suppliers of amusement devices, tents or viewing stands; or the general public. The governor shall appoint the chair of the board from amongst the members appointed by him or her.

2. Each member of the advisory board shall serve a term of five years, or until his or her successor is appointed; provided that of the members initially appointed to the advisory board: one member appointed by the governor and the member appointed by the minority leader of the assembly

shall serve terms of one year; one member appointed by the governor and one member appointed by the temporary president of the senate shall serve terms of two years; one member appointed by the governor and one member appointed by the speaker of the assembly shall be appointed for terms of three years; one member appointed by the governor and one member appointed by the minority leader of the senate shall be appointed for terms of four years; and one member appointed by the governor, one member appointed by the temporary president of the senate and one member appointed by the speaker of the assembly shall be appointed for terms of five years. Any member of the board chosen to fill a vacancy occurring otherwise than by expiration of term shall be appointed for the unexpired term of the member who he or she is to succeed.

3. Each member of the advisory board shall serve without salary or other compensation, but shall be allowed necessary and actual transportation expenses incurred in the performance of his or her duties.

4. The advisory board shall consider all matters relating to the implementation of the provisions of this article and advise the commissioner with respect thereto, and on its own initiative may make recommendations to the commissioner as to any rules, regulations and statutes necessary to assure amusement park, carnival and fair safety.

5. The commissioner shall designate an officer or employee of the department to act as secretary to the advisory board, who shall not be a member of such board and who shall not receive any additional compensation therefor.

6. The advisory board may adopt by-laws to govern its own proceedings. The secretary of the board shall keep a complete record of all proceedings of the advisory board which shows the names of the members present at each meeting and every matter considered by the advisory board and the action taken thereon. Such records shall be filed in the office of the department.

§ 870-o. Amusement device and attraction awareness. The department shall develop, establish and implement, in cooperation with the carnival, fair and amusement park safety advisory board established in section eight hundred seventy-n of this article, a program to educate and provide awareness to the public on the risks of amusement devices and attractions to both adults and children, and how adults can take steps to assure their own safety and the safety of children in their care. The program established pursuant to this section shall provide and disseminate guidelines for safety while riding or using amusement devices or attractions by adults, adolescents and children. Such program shall utilize written information provided to the public and the posting of conspicuous signs at carnivals, fairs and amusement parks, as required by law or regulation.

ARTICLE 28 TOXIC SUBSTANCES

Section 875. Definitions.

876. Notice requirements.

877. Trade secrets.

878. Employee education and training.

879. Records.

880. Employees' rights.

881. Powers of the industrial commissioner.

882. Penalties.

883. Separability.

§ 875. Definitions. When used in this article:

1. "Employer" means any individual, partnership, corporation or association engaged in a business who has employees including the state and its political subdivisions. The term "employer" does not include the employment of domestic workers or casual laborers employed at the place of residence of his or her employer.

2. "Toxic substance" means any substance which is listed in the latest

printed edition of the national institute for occupational safety and health registry of toxic effects of chemical substances or has yielded positive evidence of acute or chronic health hazards in human, animal or other biological testing.

3. "Workplace" means any location away from the home, permanent or temporary, where any employee performs any work-related duty in the course of his employment.

§ 876. Notice requirements. Notice to employees and their representatives regarding toxic substances. 1. Every employer shall post a sign in every workplace at the location or locations where notices to employees are normally posted, to inform employees that they have a right to information from their employer regarding the toxic substances found in the workplace and a description of the toxic effects of these substances and the circumstances under which these effects are produced.

2. Until such time as the commissioner in consultation with the commissioner of health determines that there is a federal program in effect which will guarantee substantially similar protection to employees, each employer shall make available in writing to each employee, and if so requested their representatives, information relating to all toxic effects and the circumstances under which these effects are produced from the toxic substances to which the employee may be exposed in the course and scope of employment.

3. It shall be the responsibility of the employer to obtain information relating to toxic substances from: the manufacturer; the New York state department of health; the Federal Environmental Protection Agency's Chemical Substances Information Network; and the Health Hazard Evaluation Program of the National Institute of Occupational Safety and Health.

4. Subject to the limitations set forth in section eight hundred seventy-seven of this article, any manufacturer, importer, producer or formulator of any toxic substance shipped or transported or sold for any

use within the state must provide, upon request, the following information:

- (a) the name or names of the toxic substance, including the generic or chemical name;
- (b) the trade name of the chemical and any other commonly used name;
- (c) the level at which exposure to the substance is determined to be hazardous, if known;
- (d) the acute and chronic effects of exposure at hazardous levels;
- (e) the symptoms of such effects;
- (f) the potential for flammability, explosion and reactivity of such substance;
- (g) appropriate emergency treatment;
- (h) proper conditions for safe use and exposure to such toxic substance;
- (i) procedures for cleanup of leaks and spills of such toxic substance.

5. Whenever an employer receives new information concerning those subjects listed in subdivision four of this section, whether from the manufacturer, importer, producer or formulator or from state or federal agencies, such employer must make such new information available to employees and if so requested, their representatives upon receipt of same.

6. Each employer shall make available to every employee the informational leaflets that he receives about the toxic substances information program pursuant to section forty-eight hundred four of the public health law.

7. Upon receipt of a request for information the employer must provide the requested information in writing within seventy-two hours, excluding weekends and public holidays. If the information is not provided, the employee may not be required to work with the toxic substance until the information is made available.

8. Provision of information to an employee shall not in any way affect the liability of an employer with regard to the health and safety of an

employee or other persons exposed to toxic substances, nor shall it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. Further, it shall not affect any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a toxic substance pursuant to any other provisions of law.

§ 877. Trade secrets. 1. When a manufacturer, producer, formulator or employer considers the identity of or other information concerning a toxic chemical substance to be a protectable trade secret or a proprietary process whose disclosure would compromise his competitive advantage and when other applicable provisions of the health law are satisfied, he may register this information as secret with the commissioner of health.

2. Manufacturers, producers, formulators and employers who so register a substance, process or product with the commissioner of health must inform in writing, employers who request information relating to such substance, and employees and their representatives, that such substance or process constitutes a registered trade secret or proprietary process and that information regarding the toxic effects of such substance is only available without identifying information and must provide such information without identifying data.

3. No officer, employee or agent of any state or municipal department, agency, commission or authority shall disclose to anyone in any manner any record or portions thereof protected pursuant to this article and which are within his custody or knowledge for so long as such record or portions thereof shall be so exempted or until a final judicial denial of such exemption is rendered. Any person who violates any provision of this subdivision may be fined, suspended or removed from office or employment in the manner provided by law.

§ 878. Employee education and training. 1. Every employer shall institute an education and training program for employees routinely

exposed to toxic substances.

2. The education and training program shall commence prior to initial assignment and shall be repeated at least annually thereafter. Additional instruction must be provided whenever the potential for exposure to toxic substances is altered.

3. The education and training program shall include, but may not be limited to, the following:

(a) the location of toxic substances to which the employee may be exposed;

(b) the properties of toxic substances to which employees may be exposed;

(c) the name or names of the toxic substance, including the generic or chemical name;

(d) the trade name of the chemical and any other commonly used name;

(e) the acute and chronic effects of exposure at hazardous levels;

(f) the symptoms of effects of exposure at hazardous levels;

(g) the potential for flammability, explosion and reactivity of such substance;

(h) appropriate emergency treatment;

(i) proper conditions for safe use and exposure to such toxic substance;

(j) procedures for cleanup of leaks and spills of such toxic substance.

§ 879. Records. Employers shall keep a record of the name, address and social security number of every employee who handles or uses a substance or substances included in section nineteen hundred ten of the federal occupational safety and health regulations, subparagraph z and which such substance or substances was or were handled or used by which employee. Such record shall be made available to each affected employee, former employee, designated physician or representative and the commissioner of health, upon request, for examination and copying. Such record shall be kept for forty years. Such records shall be sent to the department of health if the employer's establishment ceases to operate

within the state of New York.

§ 880. Employees' rights. 1. Employees or their representatives may request in writing from employers and shall receive all information relating to toxic substances set forth in subdivision three of section eight hundred seventy-eight of this article.

2. If an employee has requested information about a substance pursuant to subdivision seven of section eight hundred seventy-six of this article, and has not received information within the time allowed therein, the employee may not be required to work with such substance.

3. No employer shall discharge, or cause to be discharged, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or has instituted, or caused to be instituted, any proceeding under or related to the provisions of this article, or has testified, or is about to testify, in any such proceeding, or because of the exercise of any right afforded pursuant to the provisions of this article on such employee's behalf or on the behalf of others, nor shall any pay, position, seniority, or other benefits be lost for exercise of any right provided by this article.

4. Any employee who believes that he or she has been discharged, disciplined, or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs or thirty days after the employee first obtains knowledge that a violation did occur, file a complaint with the industrial commissioner alleging such discrimination. Upon receipt of such complaint, the industrial commissioner shall cause such investigation to be made as he deems appropriate. If upon such investigation, the industrial commissioner determines that the provisions of this section have been violated, he shall request the attorney general to bring an action in supreme court against the person or persons alleged to have violated the provisions of this section. In any such action the supreme court shall have jurisdiction to restrain violations of this section and to order

all appropriate relief, including but not limited to civil penalties as set forth in section eight hundred eighty-two of this article, hiring, rehiring or reinstatement of the employee in employment together with the payment of any compensation otherwise actually lost as a result of such violation.

5. Within ninety days of the receipt of a complaint filed under this section the industrial commissioner shall notify the complainant and his representative by registered mail of his determination.

6. Any waiver by an employee or applicant for employment of the benefits or requirements of this article shall be against public policy and be null and void.

7. Any employer's request or requirement that an employee waive any rights under this article as a condition of employment shall constitute an act of discrimination.

§ 881. Powers of the industrial commissioner. The industrial commissioner may promulgate such regulations as he shall consider necessary and proper to effectuate the purposes and provisions of this article.

§ 882. Penalties. 1. Civil penalty. Any employer who fails to comply with the provisions of this article shall be liable for a civil penalty not to exceed ten thousand dollars in addition to any other damages for which an employer may be liable pursuant to any other provision of law. The attorney general may bring an action in the supreme court against any person or persons alleged to have violated the provisions of this article. In any such action the supreme court shall have jurisdiction to restrain violations of this article and to levy appropriate penalties. Any penalty assessed for the violation of any of the provisions of this article shall be payable to the commissioner of health to be utilized for the purposes of environmental health pursuant to section forty-eight hundred two of the public health law.

2. Criminal penalty. Any person who willfully and intentionally violates the provisions of this article is guilty of a misdemeanor and upon conviction shall be punished, for a first offense, by a fine of not more than five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a subsequent offense by a fine of not more than one thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

§ 883. Separability. If any section, clause or provision of this article shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

ARTICLE 29

TRAINING AND EDUCATION PROGRAM ON OCCUPATIONAL SAFETY AND HEALTH

Section 884. Legislative findings and intent.

885. Definitions.

886. Training and education program on occupational safety and health.

887. Occupational safety and health inspection account.

§ 884. Legislative findings and intent. The workers of New York state, both public and private, pursuant to state and federal laws, have the right to a safe and healthy workplace, including, pursuant to the provisions of article twenty-eight of this chapter, the right to training and education about the toxic substances in their workplace.

It is the public policy of this state to promote safe and healthy conditions in the workplace. Further, it is the public policy of this state to encourage voluntary compliance with safety and health regulations and the prevention of illness and injury through training

and education programs.

Therefore, it is the intent of this legislature to achieve the full benefits of such preventive measures by creating a training and educational program on occupational safety and health, which will operate through a program of grants to employers (public or private), labor organizations or their federations, trade associations, nonprofit organizations and educational institutions, for conducting training, education, and other proven preventive programs. Furthermore, it is the legislature's intention to foster voluntary preventive activities on the part of employers and employees by the utilization of the training and education program on occupational safety and health.

§ 885. Definitions. As used in this article:

1. "Board" shall mean the New York state occupational safety and health hazard abatement board created pursuant to the provisions of section twenty-seven-a of this chapter.

2. The term "program" shall mean the training and education program on occupational safety and health created pursuant to the provisions of section eight hundred eighty-six of this article.

3. The term "fund" shall mean the training and education program on occupational safety and health fund created pursuant to the provisions of section ninety-seven-c of the state finance law.

§ 886. Training and education program on occupational safety and health. 1. There is hereby created a training and education program on occupational safety and health.

2. The board shall, pursuant to the provisions of subdivision fourteen of section twenty-seven-a of this chapter, provide grants to employers (public or private), labor organizations or their federations, trade associations, nonprofit organizations and educational institutions to

provide occupational safety and health education and training services to employees and employers at locations throughout the state, including education services as required under article twenty-eight of this chapter, training and education for employees concerning the prevention of occupational diseases and injuries, and any other services deemed effective to promote the prevention of accidents and illness.

3. Apportionment of funds. (a) The department shall retain no more than ten percent of the appropriated funds for the administration of this program.

(b) Any funds reappropriated for the purposes provided in this article which the commissioner determines to be unencumbered as of July first of the year in which said grants lapse, shall, by January first of the next succeeding year, be awarded to grantees in the same manner as all other funds appropriated for this purpose in the same manner as other grants under subdivision two of this section.

§ 887. Occupational safety and health inspection account.

Notwithstanding any other law, rule or regulation to the contrary, expenditures by the department made pursuant to appropriations from the miscellaneous special revenue fund, occupational safety and health inspection account shall be deemed an assessable expense of the workers' compensation board within the meaning of section one hundred fifty-one of the workers' compensation law.

ARTICLE 30

ASBESTOS OR PRODUCTS CONTAINING ASBESTOS; LICENSING

Section 900. Legislative findings and declaration.

901. Definitions.

902. Licensing and certification requirements.

903. License and certification procedure.

904. Notice and recordkeeping requirements.

905. Training and education.

906. Regulations.

907. Investigations and complaints.

908. Injunction.

909. Civil penalties and revocation.

910. Enforcement.

§ 900. Legislative findings and declaration. The legislature hereby finds and declares that exposure to asbestos fibers, a known carcinogenic agent, creates a serious risk to the public health and safety. The legislature also finds that the public is more frequently exposed to these risks as a result of an increasing number of rehabilitation and reconstruction projects on buildings containing asbestos or asbestos materials.

The legislature finds that the risks associated with asbestos are exacerbated by the improper and uninformed manner in which some contractors and their employees handle asbestos. Improper design, implementation or inspection of asbestos projects creates unnecessary health and safety hazards which are detrimental to the state's interest, and that of its citizens.

The legislature, therefore, finds and declares it to be its purpose and policy to reduce asbestos related hazards by encouraging proper training of persons employed to design, implement or inspect asbestos projects and those who supervise or employ them, by requiring the licensing of contractors and the certification of individuals involved in asbestos projects pursuant to regulations promulgated by the commissioner, prior to the removal, enclosure, encapsulation or disturbance of friable asbestos or any handling of asbestos material which may result in the release of asbestos fiber and by conferring upon the commissioner the authority to inspect ongoing asbestos projects and promulgate and enforce safety and health standards regulating the conduct of those projects through injunctions, and the imposition of civil and criminal penalties.

§ 901. Definitions. As used in this article, the following terms have the meanings indicated:

1. "Approved asbestos safety program" means a program approved by the commissioner of health providing training in the handling and use of asbestos and asbestos material, education concerning safety and health risks inherent in such handling and use and training in techniques for minimizing exposure of the public to asbestos fibers.

2. "Asbestos" means any naturally occurring hydrated mineral silicate separable into commercially usable fibers, including chrysotile (serpentine), amosite (cummingtonite-grunerite), crocidolite (riebeckite), tremolite, anthrophyllite and actinolite.

3. "Asbestos contract" means an oral or written agreement contained in one or more documents for the performance of work on an asbestos project and includes all labor, goods and services.

4. "Asbestos handling certificate" means a certificate issued by the commissioner pursuant to the provisions of this article to a person who has satisfactorily completed an approved asbestos safety program.

5. "Asbestos handling license" means a license issued by the commissioner pursuant to the provisions of this article to an asbestos contractor engaged in an asbestos project.

6. "Asbestos material" means any material containing more than one percent by weight of asbestos.

7. "Asbestos project" means work undertaken which involves the removal, encapsulation, enclosure, repair or disturbance of friable or non-friable asbestos, or any handling of asbestos material that may result in the release of asbestos fiber except for work in an owner-occupied single family dwelling performed by the owner of such dwelling and, for the purpose of compliance with regulations promulgated pursuant to subdivision one of section nine hundred six of this article, except for in-plant operations as defined in subdivision thirteen of this section. Where all asbestos work on a project is subcontracted to an asbestos contractor with an asbestos handling license, only that part

of the work involving asbestos shall be deemed to be an asbestos project.

8. "Commissioner" means the commissioner of labor.

9. "Asbestos contractor" means the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof, self-employed person, company, unincorporated association, firm, partnership or corporation, limited liability corporation or professional limited liability corporation and any owner or operator thereof, which engages in any portion of an asbestos project or employs persons engaged in an asbestos project.

10. "Department" means the department of labor.

11. "Entity" means a partnership, association, joint venture, company, sole proprietorship, corporation, limited liability corporation, professional limited liability corporation or any other form of doing business.

12. "Friable" means any material that when dry, can be crumbled, pulverized, crushed or reduced to powder by hand pressure or is capable of being released into the air by hand pressure.

13. "In-plant operations" means work within the premises of an employer other than the state, any political subdivision of the state, a public authority or other governmental agency or instrumentality thereof, in an area to which persons other than employees of that employer directly involved in the work will not have access during the course of the work and which is performed in a manner consistent with federal regulations promulgated under the federal occupational safety and health act pursuant to chapter 15 of title twenty-nine of the United States code, and is performed in a manner which will not expose the public or employees of that employer not directly involved with the asbestos project to asbestos fibers in excess of background levels or .01 fibers per cubic centimeter, provided that the work involves the encapsulation, enclosure, removal, repair, disturbance or handling of

(a) less than one hundred sixty square feet or two hundred sixty linear feet of asbestos or asbestos material and is performed by employees of such employer or (b) any quantity of non-friable organically bound asbestos material.

14. "Non-friable organically bound (NOB) asbestos material" means a wide range of non-friable asbestos materials embedded in flexible-to-rigid asphalt or vinyl matrices, including but not limited to, flooring materials, adhesives, mastics, asphalt shingles, roofing materials and caulks.

15. "Parent company" means an entity that directly, or indirectly through one or more intermediaries, controls the asbestos contractor.

16. "Person" means any natural person.

17. "Subsidiary" means an entity that is controlled directly, or indirectly through one or more intermediaries, by an asbestos contractor or by the asbestos contractor's parent company.

18. "Substantially owned-affiliated entity" means, in relation to any asbestos contractor, any (a) parent company of the asbestos contractor, (b) subsidiary of the asbestos contractor, (c) successor of the asbestos contractor, (d) entity in which the parent company of the asbestos contractor owns more than fifty percent of the voting stock, (e) entity in which one or more of the top five shareholders of the asbestos contractor individually or collectively also owns a controlling share of the voting stock, or (f) entity which exhibits any other indicia of control over the asbestos contractor or over which the asbestos contractor exhibits control, regardless of whether the controlling party or parties have any identifiable or documented ownership interest. Such indicia shall include, but not be limited to, power or responsibility over employment decisions, access to and/or use of the relevant entity's assets or equipment, power or responsibility over contracts of the entity, responsibility for maintenance or submission of certified payroll records, and influence over the business decisions of the relevant entity.

19. "Successor" means an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

§ 902. Licensing and certification requirements. 1. It shall be unlawful for any contractor to engage in an asbestos project unless such contractor has a valid asbestos handling license issued by the commissioner. Such license will not be issued without evidence of successful completion by the contractor, or a supervisor designated to act as the contractor's agent, of an approved asbestos safety program which is, at the least, equivalent to the U.S. Environmental Protection Agency Model Accreditation Plan (40 CFR Part 763) and the submission of any additional information which the commissioner may require.

2. A copy of a valid asbestos handling license or other proof of the issuance of a valid asbestos handling license granted to the contractor who will be undertaking the asbestos project must be submitted by the bidder in a form acceptable to the commissioner prior to the award of any public works contract all or part of which involves an asbestos project.

3. A copy of a valid asbestos handling license must be conspicuously displayed at the work site on an asbestos project.

4. It shall be unlawful for any contractor to engage in or to permit a person employed by the contractor, including but not limited to handlers, project designers, inspectors and management planners, to engage in work on an asbestos project or to supervise persons engaging in work on an asbestos project unless each such person and supervisor has a valid asbestos handling certificate. Such certificate will not be issued without evidence of successful completion by each such person of an approved asbestos safety program and the submission of any additional information which the commissioner may require.

5. Any person employed on an asbestos project or the supervisor of any

person engaged in work on an asbestos project or any other person who is otherwise required by law or regulation to obtain an asbestos handler's certificate shall have in his or her possession at all times during the work on the project a copy of the asbestos handling certificate issued to the person by the commissioner.

§ 903. License and certification procedure. 1. All applications for asbestos handling licenses or certificates shall be submitted in writing on forms furnished by the commissioner and shall contain such information which the commissioner may require. An application for an asbestos handling license shall contain a statement by the asbestos contractor or its duly authorized representative, which shall be subscribed by the asbestos contractor or its duly authorized representative and affirmed as true under penalties of perjury, that all persons employed by the asbestos contractor on any asbestos project whose duties involve the removal, encapsulation, enclosure, repair or disturbance of asbestos, or any handling of asbestos material that may result in the release of asbestos fiber or the supervision thereof, shall have valid asbestos handling certificates and that the asbestos contractor will abide by all the rules and regulations promulgated pursuant to this article. The commissioner shall have the authority to deny the issuance or renewal of a license or certificate for good cause shown, including the serious violation of state, federal or local laws by the applicant or by any substantially owned-affiliated entity of the applicant with regard to the conduct of any job involving asbestos or asbestos material, or for any serious violation or violations that resulted in a suspended or revoked license or certificate during the previous five years.

2. The fee for an asbestos handling license shall be five hundred dollars, which shall accompany each license application.

3. The renewal fee for an asbestos handling license shall be three hundred dollars, which shall accompany each license renewal application.

4. An asbestos handling license shall be valid for a period of one

year from the date of issuance and may be renewed on conditions set by the commissioner related to additional training.

5. The fee for an asbestos handling certificate shall be assessed in accordance with the following and shall accompany each certificate application.

Schedule: Asbestos Handling Certificate Category	Application
	Fee
Management Planner	\$150
Project Designer	150
Inspector	100
Air Monitor	75
Supervisor	75
Asbestos Handler	50
Operation and Maintenance	50
Restricted Handler	50

6. The renewal fee for any annual asbestos handling certificate shall be equal to the application fee set forth herein, and shall accompany each certificate renewal application.

7. An asbestos handling certificate shall be valid for a period of one year from date of issuance and may be renewed on conditions set by the commissioner related to additional training.

8. Within thirty days of the receipt of the application and fee for any license or certificate issued under this section, the commissioner shall either issue the license or certificate or deny the license or certificate setting forth the reason for such denial in writing.

§ 904. Notice and recordkeeping requirements. 1. Each contractor shall keep and maintain for at least thirty years a record of each asbestos project in which it engages, which record shall include the following information: the name, address and social security number of the person who supervised the asbestos project; the location and description of the asbestos project; the amount of asbestos or asbestos material that was

removed, enclosed, encapsulated, or disturbed; the starting and completion date of the asbestos project; the name and address of the deposit or waste disposal site or sites where the asbestos material was deposited or disposed of; the name and address of any interim storage sites used for the asbestos or asbestos materials prior to deposit or disposal; the name and address of any transporters used to move asbestos or asbestos material; the name, address and social security number of all persons who worked on the asbestos project; and any other information which the commissioner may require.

2. Any contractor engaged in an asbestos project involving more than two hundred sixty linear feet or more than one hundred sixty square feet of asbestos or asbestos materials shall notify both the United States Environmental Protection Agency, Region II, Air and Hazardous Material Division and the commissioner in writing ten days prior to the commencement of work on the project or, if emergency conditions make it impossible to provide ten days prior notice, as soon as practicable after identification of the project. The notice to the commissioner shall include the following information: the name, address and asbestos handling license number of the contractor working on the project; the address and description of the building or area, including size, age and prior use of the building or area; the amount of friable asbestos material present in square feet and/or linear feet, if applicable; room designation numbers or other local information where such asbestos material is found unless such material is found throughout the entire structure; the scheduled starting and completion dates for removal; the procedures and equipment, including ventilating systems that will be employed; any additional information which the commissioner may require; and shall be accompanied by a project notification fee as follows:

Project Size/Linear Feet	Fee
260-429	\$200
430-824	400
825-1649	1,000
1650 or more	2,000
Project Size/Square Feet	Fee
160-259	\$200
260-499	400

500-999	1,000
1000 or more	2,000

2-a. The project notification fee imposed by subdivision two of this section shall be waived if the project is being undertaken by or on behalf of a city, town, village, or county that is abating or demolishing a building that is a public nuisance or unsafe. Such waiver shall apply only if the city, town, village or county certifies in writing that the project cost will exceed the resulting value of the property.

2-b. The project notification fee imposed by subdivision two of this section shall be waived if the project is being undertaken: (a) pursuant to a plan adopted pursuant to article fifteen of the general municipal law; (b) pursuant to a plan adopted pursuant to article eighteen-C of the general municipal law; or (c) by or on behalf of a land bank operating pursuant to article sixteen of the not-for-profit corporation law.

3. Upon the expiration, revocation or non-renewal of an asbestos handling license, or at any other time at the request of the commissioner, any records required to be kept pursuant to this section shall be given to the commissioner.

4. A contractor shall post or otherwise provide for written notification to residential and business occupants of a building ten days prior to the commencement of work on any asbestos project in the building or, if the work is scheduled to begin less than ten days after the execution of the contract, at least three days prior to the commencement of work, or if emergency conditions make it impossible to provide ten days notice or three days notice as applicable, as soon as practicable after identification of the project. The notification shall be made in such a manner and shall contain such information as is reasonably necessary to advise such occupants of any asbestos project in the building, according to regulations promulgated by the commissioner. If posted, such notice shall remain in place until completion of the project. It shall be a violation of this chapter for any person to

interfere with the obligations of a contractor under this subdivision.

§ 905. Training and education. 1. The commissioner of health shall have authority to approve asbestos safety programs and shall maintain a list of approved programs which shall be made available to license applicants, certificate applicants and other interested parties upon request. The commissioner of health shall promulgate rules and regulations setting forth the criteria for approval of such programs, the procedures to be followed in applying for such approval and any other rules or regulations as shall be necessary and proper to effectuate the purposes of this section and to comply with the requirements of the Federal Asbestos Hazard Emergency Response Act and any other applicable federal standards.

2. (a) The commissioner of health shall assess a fee of no more than fifty dollars for each asbestos safety program completion certificate requested by the training sponsor for each full asbestos safety program and a fee of no more than thirty dollars for each asbestos safety program completion certificate requested by the training sponsor for each refresher training asbestos safety program, provided, however, that in no event shall the cost of such certificates be assessed by the sponsor against the participants.

(b) There shall be established within the special revenue fund-other an asbestos safety program account. All fees assessed and collected pursuant to the provisions of this subdivision shall be paid and deposited into the asbestos safety program account established by this paragraph for the purposes of offsetting the costs incurred by the commissioner of health for the administration of asbestos safety programs.

§ 906. Regulations. The commissioner shall promulgate such rules and regulations as shall be necessary and proper to effectuate the purposes and provisions of this article and to comply with the requirements of the Federal Asbestos Hazard Emergency Response Act and any other applicable federal standards. Such regulations shall include but not be

limited to (1) standards for asbestos projects including methods of removing, encapsulating, enclosing or disturbing friable asbestos and standards for any handling of asbestos material which may result in the creation of friable asbestos or any handling of asbestos material that may result in the release of asbestos fibers, as shall be necessary to protect the public health and safety and shall include regulations which will permit such disturbance that results from actions that are necessary to abate an emergency which poses an immediate threat to safety or the public health; (2) standards for asbestos projects and in-plant operations setting licensing and certification requirements; and (3) standards for asbestos projects and in-plant operations setting goal air monitoring and clearance requirements, including those necessary to insure that asbestos work is properly designated as an in-plant operation as defined in subdivision twelve of section nine hundred one of this chapter.

§ 907. Investigations and complaints. The commissioner shall have the authority to inspect ongoing or completed asbestos projects and to conduct an investigation upon his or her own initiation or upon receipt of a complaint by any person or entity.

§ 908. Injunction. If the commissioner finds that any asbestos project is not being performed in accordance with this article or the rules and regulations promulgated hereunder, the commissioner may, by delivery of notice to the contractor engaged in the asbestos project or its agent or representative, enjoin any further work on such asbestos project. Such notice shall specifically enumerate the violations of law or regulation which are occurring on the asbestos project and shall prohibit any further work on the asbestos project until the violations complained of cease and the notice is rescinded by the commissioner. Upon receipt of a written notification from the contractor that the violations have been corrected, the commissioner shall, within ten days, issue a determination as to whether the notice shall be rescinded. Any person or contractor who may be adversely affected by a notice or determination issued under this section may challenge the validity or applicability of

such notice or determination by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules.

§ 909. Civil penalties and revocation. 1. a. The commissioner may impose a civil penalty upon an asbestos contractor of up to two thousand five hundred dollars for the initial violation of section nine hundred two of this article and up to four thousand dollars for the second or subsequent violation of such section. Any substantially owned-affiliated entity of such asbestos contractor shall be held jointly and severally liable for the payment of such civil penalty. The commissioner may issue an order directing payment of such civil penalty by the asbestos contractor and substantially owned-affiliated entity.

b. If, after an investigation and a formal hearing, the commissioner finds that an asbestos contractor has violated any provision of this article, other than section nine hundred two or any rule or regulation promulgated hereunder, the commissioner shall, by an order which shall describe in detail the nature of the violation or violations, assess the asbestos contractor a civil penalty of not more than the greater of twenty-five percent of the monetary value of the contract upon which the violation was found to have occurred or five thousand dollars per violation. Any asbestos contractor who, having previously been assessed a civil penalty under this section, or whose substantially owned-affiliated entity having previously been assessed a civil penalty under this section, violates any provision of this article or any rule or regulation promulgated hereunder, shall be subject to a civil penalty of not more than the greater of fifty percent of the monetary value of the contract upon which the violation was found to have occurred or twenty-five thousand dollars per violation. Each day a violation continues may be considered a separate violation under this section. In assessing the amount of penalty, the commissioner shall give due consideration to the size of the asbestos contractor's business, the good faith of the contractor, the gravity of the violation and the history of previous violations by the asbestos contractor and/or any substantially owned-affiliated entity of such asbestos contractor. Any substantially owned-affiliated entity of such asbestos contractor shall

be held jointly and severally liable for the payment of such civil penalty. The commissioner may issue an order directing payment of such civil penalty by the asbestos contractor and any substantially owned-affiliated entity.

2. If, after an investigation and a formal hearing, the commissioner finds that an asbestos contractor has violated any provision of this article or any rule or regulation promulgated hereunder within three years of the last assessment of a civil penalty against the asbestos contractor or any substantially owned-affiliated entity of the asbestos contractor under this article, or has been found to have committed serious violations of other state, federal or local laws with regard to the conduct of the asbestos contractor or any substantially owned-affiliated entity of such asbestos contractor at or on any asbestos project or that such asbestos contractor or any substantially owned-affiliated entity of such asbestos contractor has otherwise demonstrated a lack of responsibility in the conduct of any job involving asbestos or asbestos material of such seriousness as to warrant the revocation of the asbestos contractor's license, or the license of any substantially owned-affiliated entity of such asbestos contractor, the commissioner may, by an order which describes in detail the nature of the violation or violations, revoke the asbestos contractor's asbestos handling license or the asbestos handling license of any substantially owned-affiliated entity of such asbestos contractor and neither such asbestos contractor nor any substantially owned-affiliated entity of such asbestos contractor shall be eligible to apply for a new asbestos handling license for a period of up to two years.

3. If, after an investigation and a formal hearing, the commissioner finds that a person who has been issued an asbestos handling certificate has willfully violated any provision of this article, or any rule or regulation promulgated hereunder, the commissioner may, by order which describes in detail the nature of the violation or violations, suspend or revoke the asbestos handling certificate of such person.

4. Any person or asbestos contractor who may be adversely affected by

an order issued under this section may challenge the validity or applicability of such order by commencing a proceeding pursuant to article seventy-eight of the civil practice law and rules. The commissioner may file with the county clerk of the county where the person, asbestos contractor, or substantially owned-affiliated entity of such person or contractor resides or has a place of business, the order containing the amount of civil penalty, unless a proceeding for judicial review as provided in this article shall then be pending or the time for initiation of such proceeding has not expired. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

5. When any person or corporation, or any officer or shareholder who owns or controls at least ten per centum of the outstanding stock of such corporation, has been convicted of a felony offense for conduct directly relating to obtaining or attempting to obtain, an asbestos handling certificate or asbestos handling license or performing or attempting to perform an asbestos contract such person or corporation shall be ineligible to be issued an asbestos handling certificate or asbestos handling license for a period of five years from the date of conviction.

6. Nothing in this section shall be construed as affecting any provision of any other law or regulation relating to the issuance of asbestos handling certificates or asbestos handling licenses.

§ 910. Enforcement. 1. Nothing in this article shall be construed to prevent municipalities from enacting local laws or ordinances which impose standards or requirements relating to the handling of asbestos or asbestos material more effective than those set forth in this article or in any rule or regulation promulgated hereunder.

2. The commissioner shall enforce the provisions of this article and

rules and regulations adopted hereunder; provided, however, that the provisions of this section and sections nine hundred seven, nine hundred eight and nine hundred nine of this article shall not be enforced in reference to persons or contractors performing work in a city or municipality which files with the commissioner a duly certified copy of a local law or ordinance assuming full responsibility for enforcing the provisions of this article and the rules and regulations adopted hereunder. Such city or municipality shall have all the powers of the commissioner in enforcing the provisions of this article and the rules and regulations adopted hereunder, including but not limited to the collection and retention of monetary penalties.

3. Each city or municipality which elects such local enforcement option shall submit a report to the commissioner annually on or before the first day of June of the manner in which this article and the rules and regulations promulgated thereunder have been and are administered, and the results of such administration under the jurisdiction of such city or municipality and shall from time to time submit to the commissioner such other reports as to such other matters as the commissioner may require.

4. A city or municipality may file with the commissioner a duly certified copy of a local law or ordinance terminating its enforcement responsibilities which shall be effective thirty days from the filing thereof.

ARTICLE 31

NEW YORK PROFESSIONAL EMPLOYER ACT

Section 915. Short title.

916. Definitions.

917. Continuing obligations.

918. Registration required.

919. Registration process.

921. Minimum net worth, bonding and reporting.

922. General requirements and provisions.

923. Unemployment compensation insurance.

924. Violations, penalties, procedures.

§ 915. Short title. This article shall be known and may be cited as the "New York professional employer act".

§ 916. Definitions. As used in this article:

1. "Client" means a person who enters into a professional employer agreement with a professional employer organization.

2. "Person" means an individual, an association, a company, a firm, a partnership, a corporation, or any other form of legally recognized entity.

3. "Professional employer agreement" means a written contract whereby:

(a) A professional employer organization expressly agrees to co-employ all or a majority of the employees providing services for the client;

(b) The contract is intended to be on-going rather than temporary in nature;

(c) Employer responsibilities for worksite employees, including those of hiring, firing and disciplining, are expressly allocated by and between the professional employer organization and the client in the agreement; and

(d) The professional employer organization expressly assumes the rights and responsibilities as required in section nine hundred twenty-two of this article.

4. "Professional employer organization" means any person whose business is entering into professional employer agreements with clients. In determining whether the professional employer organization employs all or a majority of the employees of a client, any person employed pursuant to the terms of the professional employer agreement after the initial placement of client employees on the payroll of the professional employer organization shall be included. Temporary help firms and employment agencies, as defined in article eleven of the general

business law, shall not be deemed to be professional employer organizations for purposes of this article.

5. "Temporary help firm" means a business which recruits and hires its own employees, and assigns those employees to perform work at or services for other organizations, to support or supplement the other organization's workforce, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects. A temporary help firm shall not be deemed to be a professional employer organization for the purposes of this article.

6. "Worksite employee" means a person having an employment relationship with both the professional employer organization and the client. Such term may also include the client's officers, directors, shareholders or partners to the extent such persons act as operational managers or perform services for the client.

§ 917. Continuing obligations. 1. Collective bargaining agreements exempted. A professional employer agreement shall have no effect on existing collective bargaining agreements. Notwithstanding any statements to the contrary, nothing in this article shall alter the rights or obligations of any client, professional employer organization or worksite employee under the national labor relations act or any applicable state law.

2. State licensing provisions not exempted. This article shall not exempt a client or a worksite employee from any state, local or federal licensing, registration or certification requirement.

(a) Every individual who is required to be licensed, registered or certified according to law and who is a worksite employee shall be deemed an employee of the client for purposes of any license, registration or certification requirement.

(b) A professional employer organization shall not be deemed to be engaged in an occupation, trade or profession that is subject to licensing, registration or certification requirements, or is otherwise

regulated by a governmental entity solely by entering into a professional employer agreement with a client or an employment relationship with worksite employees.

§ 918. Registration required. A professional employer organization shall not engage in business from offices in this state or enter into any arrangement with a person for the purpose of providing professional employer services as described in section nine hundred twenty-two of this article to persons in this state unless the professional employer organization is registered under this article. No professional employer organization or person shall use the name or title "professional employer organization", "PEO", "staff leasing company", "employee leasing company", "registered staff leasing company" or "staff leasing services company", or otherwise represent that it is registered under this article unless the entity or person is registered under this article. A professional employer organization that does not comply with the provisions of this article shall not be a registered professional employer organization in this state.

§ 919. Registration process. 1. Except as otherwise provided in this section, each professional employer organization required to be registered under this article shall provide the department with information required by the department on forms that the department specifies. At a minimum, professional employer organizations shall provide the following information:

- (a) The name or names under which it conducts business;
- (b) The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state;
- (c) The professional employer organization's taxpayer or employer identification number;
- (d) A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities; and

(e) In the event the professional employer organization or the ultimate parent of a professional employer organization group is a privately or closely held company, the professional employer organization or professional employer organization group shall file a list of all persons or entities that own a five percent or greater interest in the professional employer organization at the time of application and a list of persons who formerly owned a five percent or greater interest in the professional employer organization or its predecessors in the preceding five years. In the event the professional employer organization or the ultimate parent of a professional employer organization group is a publicly traded company, the professional employer organization or professional employer organization group shall file a list of all persons or entities that own a fifty percent or greater interest in the professional employer organization or the ultimate parent of the professional employer organization group at the time of application.

2. Each professional employer organization operating within this state shall complete its initial registration within one hundred eighty days after the end of the professional employer organization's fiscal year ending after the effective date of this article.

3. Within one hundred eighty days after the end of the professional employer organization's fiscal year, each registrant shall renew its registration by notifying the department of any changes in the information previously provided pursuant to this section.

4. Two or more professional employer organizations that are majority owned by the same ultimate parent, entity or persons may be registered as a professional employer organization group. A professional employer organization group may satisfy any reporting and financial requirements of this article on a consolidated basis. As a condition of registration as a professional employer organization group, each company that is a member of the group shall guarantee payment of all financial obligations of each other member.

5. A professional employer organization shall be exempt from the

registration requirements specified in this section if such professional employer organization:

(a) submits a properly executed request for registration and exemption on a form provided by the department;

(b) is domiciled outside this state and is licensed or registered as a professional employer organization in another state that has the same or greater requirements as this article;

(c) does not maintain an office in this state or solicit in any manner clients located or domiciled within this state; and

(d) does not have more than twenty-five worksite employees in this state.

6. The registration and exemption of a professional employer organization under subdivision five of this section shall be valid for one year.

7. The department shall maintain a list of professional employer organizations registered under this article.

8. The department may prescribe forms necessary to promote the efficient administration of this section.

§ 921. Minimum net worth, bonding and reporting. 1. Every initial registration and subsequent annual reporting shall be accompanied by a reviewed or an audited financial statement of the professional employer organization's most recent fiscal year end and prepared within one hundred eighty days prior to the date of application or renewal by an independent certified public accountant in accordance with generally accepted accounting principles, which statement shall show a minimum net worth of seventy-five thousand dollars, and shall be accompanied by a cover letter from the independent certified public accountant that the professional employer organization has satisfied the requirements of this section. A professional employer organization group may submit combined or consolidated audited or reviewed financial statements to meet the requirements of this section. Where the group or the group's parent submits a combined or consolidated statement, the statement shall

include supplemental consolidating or combining schedules covering each professional employer organization registered under the group.

2. As a substitute for the requirement set forth in subdivision one of this section, the department may require that the professional employer organization deposit in a depository designated by the department a bond or securities with a minimum market value of seventy-five thousand dollars. The securities so deposited shall include authorizations to the department to sell those securities in an amount sufficient to pay any taxes, wages, benefits or other entitlement due a worksite employee, if the professional employer organization does not make those payments when due. Any bond or securities deposited under this subdivision shall not be included for the purpose of calculation of net worth required by subdivision one of this section.

3. Every professional employer organization shall submit to the department, within sixty days after the end of each calendar quarter, a statement by an independent certified public accountant that all applicable federal and state payroll taxes have been paid on a timely basis for that quarter.

4. All records, reports and other information obtained from a professional employer organization under this article, except to the extent necessary for the proper administration by the department of this article and all applicable labor laws, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

5. The department may rescind, suspend or revoke a registration for failure to comply with this article. Should a registrant wish to contest an action of the department, the department may require such additional financial assurances or bond required to protect the interests of the state and its citizens during the course of the appeal. Two or more violations by a professional employer organization, of any kind, of this article within any five year period shall be grounds for revocation of a registration and no new registration shall be granted for a period of two years to such professional employer organization or to any person

who was or should have been listed by such professional employer organization at the time of registration in compliance with paragraph (e) of subdivision one of section nine hundred nineteen of this article.

§ 922. General requirements and provisions. 1. A professional employer organization shall meet the following standards:

(a) Have a written professional employer agreement between the client and the professional employer organization setting forth the responsibilities and duties of each party. The professional employer agreement shall contain a description of the type of services to be rendered by the professional employer organization and the respective rights and obligations of the parties and the professional employer agreement shall also provide that the professional employer organization:

(i) reserves a right of direction and control over the worksite employees. However, the client shall maintain such direction and control over the worksite employees as is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility which it may have, or comply with any applicable licensure;

(ii) assumes responsibility for the withholding and remittance of payroll-related taxes and employee benefits for worksite employees and for which the professional employer organization has contractually assumed responsibility from its own accounts, as long as the professional employer agreement between the client and professional employer organization remains in force; and

(iii) retains authority to hire, terminate and discipline the worksite employees.

(b) Provide written notice of the general nature of the relationship between the professional employer organization and the client to the worksite employees located at the client worksite.

2. A professional employer organization shall be considered an employer for the purposes of withholding state income tax of the worksite employees pursuant to section six hundred seventy-one of the tax law.

3. As long as the professional employer organization's professional employer agreement with a client remains in force, the professional employer organization shall have a right to and shall assume the following responsibilities:

(a) pay wages and collect, report and remit employment taxes of its worksite employees from its own accounts;

(b) pay unemployment insurance as required by the unemployment insurance law;

(c) secure and provide required workers' compensation coverage for its worksite employees either in its own name or in its client's name.

4. Both the client and the professional employer organization shall be considered the employer for the purpose of coverage under the workers' compensation law and both the professional employer organization and its client shall be entitled to protection of the exclusive remedy provision of the workers' compensation law irrespective of which entity secures and provides such workers' compensation coverage.

5. A registered professional employer organization shall be deemed for purposes of state law an employer for purposes of sponsoring welfare benefit plans for its worksite employees. Worksite employees participating in that professional employer organization's fully insured welfare benefit plan or plans shall be considered employees participating in a single employer welfare benefit plan or plans. A fully insured welfare benefit plan or plans offered by a registered professional employer organization to its employees and/or worksite employees shall not be considered for purposes of state law a multiple employer welfare arrangement.

6. Subject to any contrary provisions contained in the written professional employer agreement between the client and the professional employer organization, the professional employer arrangement that exists between a professional employer organization and its client or clients shall be interpreted for the purposes of insurance and bonding as follows:

(a) Nothing in this section shall serve to limit any contractual

liability, as may be expressly agreed upon, between the professional employer organization and the client, nor shall this section in any way limit the liabilities of any professional employer organization or client as defined elsewhere in this article; and

(b) Worksite employees are not automatically deemed pursuant to this section to be employees of the professional employer organization for purposes of general liability, insurance, automobile insurance, fidelity bonds, surety bonds, employer's liability which is not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the worksite employees are included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond.

7. The sale of professional employer services in conformance with the provisions of this article shall not constitute the sale of insurance for purposes of the insurance law. However, no professional employer organization shall function or hold itself out as an insurer, insurance broker or insurance agent unless appropriately licensed by this state.

8. Worksite employees whose services are subject to sales tax shall be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the worksite employee.

§ 923. Unemployment compensation insurance. 1. During the term of a professional employer agreement, a professional employer organization shall be liable in accordance with the provisions of article eighteen of this chapter for the payment of contributions, penalties and interest on wages paid by the professional employer organization to worksite employees.

2. The professional employer organization shall report and pay all required contributions to the unemployment compensation fund using the state employer account number and the contribution rate of the professional employer organization.

§ 924. Violations, penalties, procedures. 1. Any professional employer organization or person purporting to be a professional employer organization who has failed to comply with the registration requirements of section nine hundred eighteen of this article shall be deemed to have violated this article.

2. Any professional employer organization or person purporting to be a professional employer organization who has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section nine hundred eighteen of this article shall be deemed to have violated this article.

3. Any client who enters into a professional employer agreement with a professional employer organization or person purporting to be a professional employer organization, who is required to register, but whom the client knows or should have known has failed to register, failed to renew its registration or had its registration revoked by the commissioner shall be deemed to have violated this article.

4. (a) The commissioner may impose a civil penalty upon a professional employer organization, a person purporting to be a professional employer organization, and all persons or entities that own a five percent or greater interest in the professional employer organization, that have been deemed to have violated this article, for no more than three thousand dollars for the initial violation, and for no more than five thousand dollars for a second or subsequent violation.

(b) The commissioner may impose a civil penalty upon any client described in subdivision three of this section that has been deemed to have violated this article, for no more than one thousand dollars for the initial violation, and for no more than five thousand dollars for a second or subsequent violation.

(c) The order imposing such civil penalty may be served personally or by certified mail at the last known mailing address of the person being served. Such order shall be in writing and shall describe the nature of the violation, including reference to the provisions of subdivisions one, two and three of this section alleged to have been violated.

5. An order issued under this section shall be final and not subject to review by any court or agency unless review is had pursuant to section one hundred one of this chapter. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the person against whom the penalty has been imposed has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

6. If any professional employer organization or person purporting to be a professional employer organization shall have failed to comply within twenty days of an order by the commissioner to register or renew registration, the commissioner may seek to enjoin such unlawful activity, pursuant to the civil practice law and rules.

7. The intentional failure of a professional employer organization or person purporting to be a professional employer organization to comply with the registration requirements of section nine hundred eighteen of this article shall be a class B misdemeanor. The officers and agents of a professional employer organization or person purporting to be a professional employer organization who knowingly permit such organization to violate the registration requirements of section nine hundred eighteen of this article shall be guilty of a class B misdemeanor.

ARTICLE 32

LICENSING OF MOLD INSPECTION, ASSESSMENT AND REMEDIATION SPECIALISTS AND MINIMUM WORK STANDARDS

Title 1. Licensing of mold inspection, assessment and remediation

- specialists and minimum work standards (Secs. 930-940.)
2. Minimum work standards for the conduct of mold assessments and remediation by licensed persons (Secs. 945-948.)

TITLE 1

LICENSING OF MOLD INSPECTION, ASSESSMENT AND REMEDIATION SPECIALISTS AND MINIMUM WORK STANDARDS

Section 930. Definitions.

- 931. Licensing requirements.
- 932. License; procedure.
- 933. Exemptions.
- 934. License issuance and renewal.
- 935. Practice by license holder.
- 936. Licensee duties; prohibited activities.
- 937. Civil penalties and revocation.
- 938. Denial of license; complaints; notice of hearing.
- 939. Judicial review.
- 940. Rulemaking authority.

§ 930. Definitions. As used in this article: 1. "Department" means the department of labor.

2. "Mold" means any indoor multi-cellular fungi growth capable of creating toxins that can cause pulmonary, respiratory, neurological or other major illnesses after minimal exposure, as such exposure is defined by the environmental protection agency, centers for disease control and prevention, national institute of health, or other federal, state, or local agency organized to study and/or protect human health.

3. "Mold remediation" means conducting the business of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by a business enterprise, including but not limited to, sole proprietorships. Mold remediation for the purposes of this article shall not include remediation of the underlying sources of moisture that may

be the cause of mold that requires expertise not specific to acts authorized under this article.

4. "Mold assessment" means an inspection or assessment of real property that is designed to discover mold, conditions that facilitate mold, indicia of conditions that are likely to facilitate mold, or any combination thereof.

5. "Mold abatement" means the act of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by an individual.

6. "Project" means mold remediation, mold assessment, or mold abatement, of areas greater than ten square feet, but does not include (a) routine cleaning or (b) construction, maintenance, repair or demolition of buildings, structures or fixtures undertaken for purposes other than mold remediation or abatement.

7. "Commissioner" means the commissioner of the department of labor.

§ 931. Licensing requirements. 1. It shall be unlawful for any contractor to engage in mold assessment on a project, or to advertise or hold themselves out as a mold assessment contractor unless such contractor has a valid mold assessment license issued by the commissioner.

2. It shall be unlawful for any contractor to engage in mold remediation on a project, or to advertise or hold themselves out as a mold remediation contractor unless such contractor has a valid mold remediation license issued by the commissioner.

3. It shall be unlawful for any individual to engage in mold abatement on a project or to advertise or hold themselves out as a mold abatement worker unless such individual has a valid mold abater's license issued by the commissioner.

4. A copy of a valid mold assessment or mold remediation license must be conspicuously displayed at the work site on a mold project.

5. (a) Nothing in this article shall prohibit any design professional licensed pursuant to title eight of the education law from performing mold inspection, assessment, remediation and/or abatement tasks or functions if the person is acting within the scope of his or her practice, or require the design professional to obtain a license under this article for such mold inspection, assessment remediation and/or abatement tasks or functions.

(b) Nothing in this article shall mean that any individual not licensed pursuant to title eight of the education law may perform tasks or functions limited to the scope of practice of a design professional under such title.

§ 932. License; procedure. 1. The commissioner shall establish minimum qualifications for licensing.

2. Applications for licenses and renewal licenses shall be submitted to the commissioner in writing on forms furnished by the commissioner and shall contain the information set forth in this section as well as any additional information that the commissioner may require.

3. An applicant for a license to perform mold assessment shall meet the following minimum requirements:

(a) be eighteen years of age or older;

(b) have satisfactorily completed commissioner approved course work, including training on the appropriate use and care of personal protection equipment;

(c) paid the appropriate fees as provided in subdivision six of this section; and

(d) submitted insurance certificates evidencing workers' compensation coverage, if required, and liability insurance of at least fifty thousand dollars providing coverage for claims arising from the licensed activities and operations performed pursuant to this article.

4. An applicant for a license to perform mold remediation shall meet the following minimum requirements:

(a) be eighteen years of age or older;

(b) have satisfactorily completed commissioner approved course work, including training on the appropriate use and care of personal protection equipment;

(c) paid the appropriate fees as provided in subdivision six of this section; and

(d) submitted insurance certificates evidencing workers' compensation coverage, if required, and liability insurance of at least fifty thousand dollars providing coverage for claims arising from the licensed activities and operations performed pursuant to this article.

5. An applicant for a license to perform mold abatement shall meet the following minimum requirements:

(a) be eighteen years of age or older;

(b) have satisfactorily completed commissioner approved course work, including training on the appropriate use and care of personal protection equipment; and

(c) paid the appropriate fees as provided in subdivision six of this section.

6. The commissioner shall charge and collect the following non-refundable fees which shall accompany each application:

(a) a fee for an initial application for a license as determined by the commissioner, of not less than five hundred dollars nor more than one thousand dollars for a mold remediation license, not less than one hundred fifty dollars nor more than three hundred dollars for a mold assessment license and not less than fifty dollars nor more than one hundred dollars for an individual mold abatement license;

(b) a fee for renewal of a license equal to the application fee; and

(c) a fee to be charged to a course provider for review of each course submitted for approval, as determined by the commissioner, of not less than five hundred dollars and not more than one thousand dollars, and an additional fee to be charged to a course provider of not less than one hundred dollars nor more than two hundred dollars for review of changes of technical content.

§ 933. Exemptions. The following persons shall not be required to obtain a license as provided in this title in order to perform mold assessment, remediation, or abatement:

1. a residential property owner who performs mold inspection, assessment, remediation, or abatement on his or her own property;

2. a non-residential property owner, or the employee of such owner, who performs mold assessment, remediation, or abatement on an apartment building owned by that person that has not more than four dwelling units;

3. an owner or a managing agent or a full-time employee of an owner or managing agent who performs mold assessment, remediation, or abatement on commercial property or a residential apartment building of more than four dwelling units owned by the owner provided, however, that this subdivision shall not apply if the managing agent or employee engages in the business of performing mold assessment, remediation, or abatement for the public; and

4. a federal, state or local governmental unit or public authority and employees thereof that perform mold assessment, remediation, or abatement on any property owned, managed or remediated by such governmental unit or authority.

§ 934. License issuance and renewal. 1. Licenses issued pursuant to the provisions of this title shall be valid for a period of two years from the date of issuance and may be renewed in accordance with the conditions set forth in this article and established by the commissioner.

2. Within thirty days of the receipt of the application and fee for any license issued under this section, the commissioner shall either issue the license or issue a notification of denial pursuant to

subdivision one of section nine hundred thirty-eight of this title.

3. Licenses shall be in a form prescribed by the commissioner.

4. The renewal of all licenses granted under the provisions of this article shall be conditioned upon the submission of a certificate of completion of a commissioner-approved course designed to ensure the continuing education of licensees on new and existing mold assessment and mold remediation standards.

§ 935. Practice by license holder. 1. A mold assessment license holder who intends to perform mold assessment on a mold remediation project shall prepare a work analysis for the project. The mold assessment license holder shall provide the analysis to the client before the mold remediation begins and such plan must include the analysis as defined in section nine hundred forty-five of this article.

2. A mold remediation license holder who intends to perform mold remediation shall prepare a work plan providing instructions for the remediation efforts to be performed for the mold remediation project. The mold remediation license holder shall provide the work plan to the client before the mold remediation begins. The mold remediation license holder shall maintain a copy of the work plan at the job site where the remediation is being performed.

§ 936. Licensee duties; prohibited activities. 1. A mold assessment licensee who performs mold assessment services shall provide a written report to each person for whom such licensee performs mold assessment services for compensation.

2. No licensee shall perform both mold assessment and mold remediation on the same property.

3. No person shall own an interest in both the licensee who performs mold assessment services and the licensee who performs mold remediation

services on the same property.

§ 937. Civil penalties and revocation. 1. The commissioner may, after a notice and hearing, suspend or revoke any license, or censure, fine, or impose probationary or other restrictions on any licensee for good cause shown which shall include, but not be limited to the following:

(a) conviction of a felony relating to the performance of a mold assessment or mold remediation;

(b) deceit or misrepresentation in obtaining a license authorized under this article;

(c) providing false testimony or documents to the commissioner in relation to a license authorized by this article or any other license issued by the commissioner;

(d) deceiving or defrauding the public in relation to services provided for a fee that require a license; or

(e) incompetence or gross negligence in relation to mold assessment or mold remediation.

2. Violators of any of the provisions of this article may be fined by the commissioner in an amount not to exceed two thousand dollars for the initial violation and up to ten thousand dollars for each subsequent violation.

§ 938. Denial of license; complaints; notice of hearing. 1. The commissioner shall, before making a determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notice shall notify the applicant that a request for a hearing must be made within thirty days after issuance of such notification. If a hearing is requested, such hearing shall be held at such time and place as the commissioner shall prescribe.

2. If the applicant fails to make a written request for a hearing within thirty days after issuance of such notification, then the

notification of denial shall become the final determination of the commissioner. The commissioner shall have subpoena powers regulated by the civil practice law and rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant.

3. The commissioner shall, before revoking or suspending any license or imposing any fine as authorized by this article or reprimand on the holder thereof and at least ten days prior to the date set for the hearing, notify in writing the holder of such license, of any charges made and shall afford such person an opportunity to be heard in person or by counsel in reference thereto. No prior notice and hearing is required before the commissioner issues an order directing the cessation of unlicensed activities.

4. Written notice must be served to the licensee or person charged.

5. The hearing on such charges shall be at such time and place as the commissioner shall prescribe.

§ 939. Judicial review. The action of the commissioner in suspending, revoking or refusing to issue or renew a license, or issuing an order directing the cessation of unlicensed activity or imposing a fine or reprimand may be appealed by a proceeding brought under and pursuant to article seventy-eight of the civil practice law and rules.

§ 940. Rulemaking authority. The commissioner may adopt rules and regulations to oversee the practice of mold assessment, remediation and abatement and to ensure the health, safety and welfare of the public.

TITLE 2

MINIMUM WORK STANDARDS FOR THE CONDUCT OF MOLD ASSESSMENTS AND REMEDIATION BY LICENSED PERSONS

Section 945. Minimum work standards for the conduct of mold assessments

by licensed persons.

946. Minimum work standards for the conduct of mold remediation by licensed persons.

947. Post-remediation assessment and clearance.

948. Investigations and complaints.

§ 945. Minimum work standards for the conduct of mold assessments by licensed persons.

1. A mold assessment licensee shall prepare a mold remediation plan that is specific to each remediation project and provide the plan to the client before the remediation begins. The mold remediation plan must specify:

(a) the rooms or areas where the work will be performed;

(b) the estimated quantities of materials to be cleaned or removed;

(c) the methods to be used for each type of remediation in each type of area;

(d) the personal protection equipment (PPE) to be supplied by licensed remediators for use by licensed abaters;

(e) the proposed clearance procedures and criteria for each type of remediation in each type of area;

(f) when the project is a building that is currently occupied, how to properly notify such occupants of such projects taking into consideration proper health concerns; the plan must also provide recommendations for notice and posting requirements that are appropriate for the project size, duration and points of entry;

(g) an estimate of cost and an estimated time frame for completion; and

(h) when possible, the underlying sources of moisture that may be causing the mold and a recommendation as to the type of contractor who would remedy the source of such moisture.

2. The remediation plan may require containment, as appropriate, to prevent the spread of mold to areas of the building outside the containment under normal conditions of use.

3. A mold assessment licensee who indicates in a remediation plan that a disinfectant, biocide, or antimicrobial coating will be used on a mold

remediation project shall indicate a specific product or brand only if it is registered by the United States Environmental Protection Agency for the intended use and if the use is consistent with the manufacturer's labeling instructions. A decision by a mold assessment licensee to use such products must take into account the potential for occupant sensitivities.

§ 946. Minimum work standards for the conduct of mold remediation by licensed persons. 1. A mold remediation licensee shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation plan developed by the mold assessment licensee as provided to the client and provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed. The mold remediation licensee shall provide the mold remediation work plan to the client before site preparation work begins.

2. If a mold assessment licensee specifies in the mold remediation plan that personal protection equipment (PPE) is required for the project, the mold remediation licensee shall provide the specified PPE to all employees who engage in remediation activities and who will, or are anticipated to, disturb or remove mold contamination. The containment, when constructed as described in the remediation work plan and under normal conditions of use, must prevent the spread of mold to areas outside the containment.

3. Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas.

4. No person shall remove or dismantle any containment structures or materials from a project site prior to receipt by the mold remediation licensee overseeing the project of a notice from a mold assessment licensee that the project has achieved clearance as described in section nine hundred forty-seven of this title.

5. Disinfectants, biocides and antimicrobial coatings may be used only

if their use is specified in a mold remediation plan, if they are registered by the United States Environmental Protection Agency for the intended use and if the use is consistent with the manufacturer's labeling instructions. If a plan specifies the use of such a product but does not specify the brand or type of product, a mold remediation licensee may select the brand or type of product to be used. A decision by a mold assessment or remediation licensee to use such a product must take into account the potential for occupant sensitivities and possible adverse reactions to chemicals that have the potential to be off-gassed from surfaces coated with the product.

§ 947. Post-remediation assessment and clearance. 1. For a remediated project to achieve clearance, a mold assessment licensee shall conduct a post-remediation assessment. The post-remediation assessment shall determine whether:

- (a) the work area is free from all visible mold; and
- (b) all work has been completed in compliance with the remediation plan and remediation work plan and meets clearance criteria specified in the plan.

2. Post-remediation assessment shall, to the extent feasible, determine that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated area. If it has been determined that the underlying cause of the mold has not been remediated, the mold assessment licensee shall make a recommendation to the client as to the type of contractor who could remedy the source of the mold or the moisture causing the mold.

3. A mold assessment licensee who determines that remediation has been successful shall issue a written passed clearance report to the client at the conclusion of each mold remediation project.

4. If the mold assessment licensee determines that remediation has not been successful, the licensee shall issue a written final status report to the client and to the remediation licensee and recommend to the client that either a new assessment be conducted, that the remediation

plan as originally developed be completed, or the underlying causes of mold be addressed, as appropriate.

§ 948. Investigations and complaints. The commissioner shall have the authority to inspect ongoing or completed mold assessment and mold remediation projects and to conduct an investigation upon his or her own initiation or upon receipt of a complaint by any person or entity.

ARTICLE 33

ELEVATORS AND OTHER CONVEYANCES; LICENSING

Section 950. Application.

951. Definitions.

952. Licensing and compliance requirements.

953. License procedure.

954. Qualifications, training, and continuing education.

955. Powers of the commissioner.

956. New York state elevator safety and standards advisory board.

957. Exempt persons.

§ 950. Application. 1. This article covers licensing of businesses and occupations that engage in design, construction, installation, inspection, testing, maintenance, alteration, service, and repair of the following equipment:

(a) hoisting and lowering mechanisms equipped with a car or platform which moves between two or more landings. This equipment includes, but is not limited to elevators, platform lifts, and non-residential stairway chair lifts;

(b) power driven stairways and walkways for carrying persons between landings. This equipment includes, but is not limited to, escalators and moving walks;

(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes,

but is not limited to, dumbwaiters, material lifts, and dumbwaiters with automatic transfer devices as defined in section nine hundred fifty-one of this article; and

(d) automatic guided transit vehicles on guideways with an exclusive right-of-way. This equipment includes, but is not limited to, automated people movers.

2. The following equipment is not covered by this article:

- (a) personnel and material hoists;
- (b) manlifts;
- (c) mobile scaffolds, towers, and platforms;
- (d) powered platforms and equipment for exterior and interior maintenance;
- (e) conveyor and related equipment;
- (f) cranes, derricks, hoists, hooks, jacks, and slings;
- (g) industrial trucks;
- (h) portable equipment, except for portable escalators;
- (i) tiering and piling machines used to move materials to and from storage located and operating entirely within one story;
- (j) equipment for feeding or positioning materials including, but not limited to, machine tools and printing presses;
- (k) skip or furnace hoists;
- (l) wharf ramps;
- (m) railroad car lifts or dumpers;
- (n) stairway chairlifts for private residences; and
- (o) line jacks, false cars, shafters, moving platforms, and similar equipment used for installing an elevator by a contractor licensed in this state.

3. The licensing provisions of this article shall not apply to the owners or lessees of private residences who design, construct, install, alter, repair, service, or maintain conveyances that are located or will be located in such owner or lessee's private residence. However, any person hired to design, construct, install, alter, repair, service, maintain, or perform any other work related to such conveyances must comply with the provisions of this article.

4. No license shall be required for the removal or dismantling of conveyances.

5. No license shall be required for the outfitting, removal, refinishing, or replacement of interior finishes, including wall panels, drop ceilings, handrails and flooring, removal or replacement of interior lighting, recladding of doors, transoms and front return panels, finishing, or ornamental work on car operating panels.

6. The provisions of this article and the rules adopted pursuant thereto shall be the minimum standard required and shall supersede any special law or local ordinance inconsistent therewith, and no local ordinance inconsistent therewith shall be adopted, but nothing herein contained shall prevent the enactment by local law or ordinance of additional requirements and restrictions.

7. Any municipal corporation may waive licensing fees for any individual seeking an elevator license, or its equivalent, offered by such municipal corporation if such individual holds an elevator mechanic's license pursuant to this article; provided, however, that any elevator mechanic's license, or its equivalent, offered by a municipal corporation shall not be inconsistent with the requirements of this article and nothing herein shall prevent the enactment by local law or ordinance of additional requirements.

§ 951. Definitions. As used in this article, the following terms shall have the following definitions:

1. "Automated people mover" means a guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right-of-way.

2. "Accessibility lift" means elevators or conveyances that are intended for transportation of persons with disabilities, such as platform lifts and stairway chairlifts, including equipment covered by the provisions of ASME (American Society of Mechanical Engineers) A18.1

2017 Safety Standard for Platform Lifts and Stairway Chairlifts.

3. "Accessibility lift technician" means a person who performs accessibility lift work.

4. "Accessibility lift technician's license" means a restricted elevator mechanic's license that authorizes the holder to engage in accessibility lift work.

5. "Accessibility lift work" means elevator and conveyance work that is restricted to accessibility lifts.

6. "Business license" means a license that authorizes the holder to engage in the business of elevator and conveyance work, or elevator and conveyance inspections.

7. "Elevator and conveyance work" means performing activities that include the design, construction, installation, testing, maintenance, alteration, service, and repair of any elevator or conveyance.

8. "Elevator or conveyance" means any equipment identified in paragraphs (a) through (d) of subdivision one of section nine hundred fifty of this article, including any elevator, dumbwaiter, escalator, moving sidewalk, platform lifts, non-residential stairway chairlifts and automated people movers. Elevator or conveyance shall not mean any equipment identified in subdivision two of section nine hundred fifty of this article.

9. "Elevator and conveyance inspections" means performing the inspection or any related testing of any elevator or conveyance, but does not include government regulatory inspections performed by an authority having jurisdiction to enforce any applicable building codes and any elevator codes.

10. "Elevator" means a hoisting and lowering mechanism, equipped with a car, that moves within guides and serves two or more landings.

11. "Elevator or conveyance component" means any elevator or conveyance, or any parts, components, or subsystems thereof, or any combination thereof.

12. "Elevator contractor" means any business that engages in elevator and conveyance work.

13. "Elevator helper/apprentice/assistant mechanic" means any person who works under the general direction of a licensed elevator mechanic.

14. "Elevator inspector" means any person who performs elevator and conveyance inspections, whether individually or through an elevator inspection contractor or public employer.

15. "Elevator inspection contractor" means any business that performs elevator and conveyance inspections.

16. "Elevator mechanic" means any person who performs elevator and conveyance work.

17. "Escalator" means a power-driven, inclined, continuous stairway used for raising or lowering passengers.

18. "Existing installation" means an installation that has been completed or is under construction prior to the effective date of this article.

19. "License" means a credential duly issued by the commissioner authorizing the holder to engage a business or an occupation whose scope includes accessibility lift work, or elevator and conveyance work, or elevator and conveyance inspections.

20. "Elevator contractor's license" means a business license that entitles the holder thereof to engage in the business of elevator and conveyance work in this state.

21. "Elevator inspection contractor's license" means a business

license that entitles the holder thereof to engage in the business of elevator and conveyance inspections in this state.

22. "Elevator mechanic's license" means an occupational license that entitles the holder thereof to engage in elevator and conveyance work in this state for a licensed elevator contractor.

23. "Elevator inspector's license" means an occupational license that entitles the holder thereof to perform elevator and conveyance inspections in this state for a licensed elevator inspection contractor.

24. "Elevator accessibility technician's license" means an occupational license that entitles the holder thereof to engage in elevator and conveyance work in this state that is restricted to platform lifts including those installed in private residences which are covered by the provisions of ASME (American Society of Mechanical Engineers) codes and standards A18.1 2017 Safety Standard for Platform Lifts and Stairway Chairlifts and any successor standard for just platform lifts and stairway chairlifts. An applicant for such a restricted license shall complete an application approved by the commissioner and shall have at least three years verified work experience in constructing, maintaining, and repairing such lifts and shall provide the commissioner a certificate of completion of an accessibility training program for lifts under the scope of A18.1 2017 such as the certified accessibility and private residence lift technician (CAT) training provided by the National Association of Elevator Contractors (NAEC), or an equivalent program as determined by the commissioner.

25. "Moving walk/sidewalk" means a type of passenger-carrying device on which passengers stand or walk, and in which the passenger-carrying surface remains parallel to its direction of motion and is uninterrupted.

26. "Occupational license" means a license that authorizes the holder to engage in accessibility lift work, or elevator and conveyance work or elevator and conveyance inspections.

27. "Person" means any natural person.

28. "Business" means any corporation, or instrumentality of a corporation, self-employed person, company, unincorporated association, firm, partnership, limited liability company, corporation, or any other entity, or any owner or operator of any of the foregoing entities.

29. "Private residence" means a separate dwelling or a separate apartment in a multiple dwelling, which is occupied by members of a single family unit.

30. "Repair" means reconditioning or renewal of any elevator or conveyance or component necessary to keep such equipment in compliance with applicable code requirements.

31. "Alteration" means any change to any conveyance or component other than maintenance, repair, or replacement, but shall not include the professional services of engineering or architecture as defined in sections seventy-two hundred one and seventy-three hundred one of the education law.

32. "Design" means the act or process of planning the repair, alteration, or construction of any conveyance, but shall not include the professional services of engineering or architecture as defined in sections seventy-two hundred one and seventy-three hundred one of the education law.

33. "Construction" means the act or process of constructing any conveyance, and includes vertically constructing or connecting any conveyance or part or system thereof.

34. "Inspection" means a critical examination, observation, or evaluation of quality and code compliance of any conveyance.

35. "Testing" means a process or trial of operation of any conveyance.

36. "Maintenance" means a process of routine examination, lubrication, cleaning, and adjustment of any conveyance or components for the purpose of ensuring performance in accordance with any applicable code requirements.

37. "Service or servicing" means a service call or other unscheduled visit, not including routine maintenance or a repair, to troubleshoot, adjust or repair an improperly functioning or an otherwise shut down conveyance.

38. "Temporarily dormant elevator, dumbwaiter, or escalator" means an installation temporarily placed out of service under the following circumstances: (a) (i) when such installation's power supply has been disconnected; and (ii) the car is parked and any doors are closed and latched; and (iii) a wire seal is installed on the mainline disconnect switch by an elevator inspector; or (b) as determined by state or local law, code, rule, or regulation.

39. "Personnel and material hoists" means rack and pinion hoists, alimaks, and machines of a similar nature used for the hoisting of construction material, equipment and personnel, or the removal of debris, all during the construction, renovation, and/or demolition phase of any construction project whether an inside or outside hoist.

40. "Installation" means to place or fix any conveyance or component in position for operation.

41. "Subsidiary" means an entity that is controlled directly, or indirectly through one or more intermediaries, by an elevator contractor or elevator inspection contractor or by such contractor's parent company.

42. "Successor" means an entity engaged in work substantially similar to that of the predecessor, where there is substantial continuity of operation with that of the predecessor.

43. "Board" means the New York state elevator safety and standards

advisory board established by section nine hundred fifty-six of this article.

§ 952. Licensing and compliance requirements. 1. Except as otherwise provided for in subdivisions three, four, and five of section nine hundred fifty of this article, it shall be unlawful for any business or person:

(a) to engage in the business of elevator and conveyance work, or accessibility lift work, or hold themselves out as an elevator contractor, or both, unless such person or business has a valid elevator contractor's license; or

(b) to engage in the business of elevator and conveyance inspections, or hold themselves out as an elevator inspection contractor, or both unless such person or business has a valid elevator inspection contractor's license; or

(c) any combination of the above.

2. Except as otherwise provided for in subdivisions three, four, and five of section nine hundred fifty of this article, it shall be unlawful for any person:

(a) to engage in elevator and conveyance work, or to hold themselves out as an elevator mechanic, or both, unless such person has a valid elevator mechanic's license and works for a licensed elevator contractor or a public entity; or

(b) to engage in accessibility lift work, or to hold themselves out as accessibility lift technicians, or both, unless such person has a valid accessibility lift technician's license and works for a licensed elevator contractor or a public entity; or

(c) to engage in elevator and conveyance inspections, or to hold themselves out as an elevator inspector, or both, unless such person holds an elevator inspector's license and works for a licensed elevator inspection contractor or a public entity; or

(d) any combination of the above, provided, however, that the installation of branch circuits and wiring terminations for machine room and pit lighting, receptacles and HVAC as described in the NFPA National Electric Code 620.23 and 620.24 as well as fire and heat detectors and

alarms, may be performed by a licensed electrical contractor.

3. It shall be the responsibility of licensees to ensure that any elevator and conveyance work or elevator and conveyance inspections that they perform is in compliance with existing state and local building and maintenance codes.

4. It shall be the responsibility of holders of business licenses to ensure that the licensing requirements of subdivisions one and two of this section are complied with by their employees and by businesses that they contract with, and to immediately report to the commissioner any failures to comply with the licensing requirements of subdivisions one and two of this section by other businesses or persons that they become aware of.

§ 953. License procedure. All applications for licenses shall be submitted to the department in writing on forms furnished by the commissioner and shall contain the information set forth in this section as well as any additional information that the commissioner may require. The commissioner shall also set fees for licensing under this section. Upon approval of an application for a license the commissioner shall issue such license which shall be valid for two years. The fees for such license and renewal thereof shall be set by the commissioner. Any denial for such application shall set forth the reasons therefor.

1. Applications for business licenses. Every application for a license under this article shall include the following:

(a) the name, residence address, and business address of the applicant;

(b) the number of years the applicant has engaged in the business or practice of elevator contracting;

(c) the approximate number of persons, if any, to be employed by the applicant;

(d) evidence that the applicant is or will be covered by general liability, personal injury, and property damage insurance; and

(e) any other information which the commissioner may require.

2. Application for occupational licenses. Every application for a license under this article shall include the following:

(a) the name and residential address of the applicant;

(b) the relevant experience of the applicant, including years, or hours, or both, of experience in performing elevator and conveyance work, or elevator inspection work, or both and the nature of such experience, and the names of the elevator contractors or elevator inspection contractors that the applicant has worked for, including the license numbers of such contractors;

(c) any training completed by the applicant, including certificates of completion;

(d) any continuing education completed by the applicant, including certificates of completion;

(e) the name and license number, if known, of the elevator contractor or elevator inspection contractor that the applicant works for or seeks to work for; and

(f) any other information which the commissioner may require.

3. The department shall maintain and publish a registry of all licenses issued pursuant to this section and shall make the registry available on its website.

§ 954. Qualifications, training, and continuing education. 1. No license or application for renewal shall be granted to any business or person who has not paid the required application fee and demonstrated his or her qualifications and abilities, training, and any applicable continuing education, by obtaining and maintaining in good standing the industry certifications and continuing education identified or required in this section.

(a) Applicants for an elevator mechanic's license must possess a current industry certification issued by the National Association of Elevator Contractors (NAEC) as a Certified Elevator Technician (CET), or equivalent certification recognized by the commissioner.

(b) Applicants for an accessibility lift technician license must possess a current industry certification issued by the National

Association of Elevator Contractors (NAEC) as a certified accessibility and private residence lift technician (CAT) program or an equivalent certification recognized by the commissioner.

(c) Applicants for an elevator inspector's license must possess a current industry certification issued by the Qualified Elevator Inspector Training Fund (QEITF) or by the National Association of Elevator Safety Authorities (NAESA) as a qualified elevator inspector (QEI) or an equivalent license recognized by the commissioner.

2. Applicants for an elevator contractor's license must demonstrate to the commissioner that such elevator contractor employs licensed elevator mechanics who perform elevator and conveyance work and have proof of compliance with the insurance requirements of this article.

3. Applicants for an elevator inspection contractor's license must demonstrate to the satisfaction of the commissioner that such applicant is a certified elevator inspector, or employs certified elevator inspectors, or both, to perform elevator and conveyance inspections and have proof of compliance with the insurance requirements of this article.

4. Alternative qualifications. Applicants for an elevator mechanic's license or accessibility lift technician's license who do not possess the industry certifications identified above may demonstrate their qualifications and abilities, training, and continuing education by providing acceptable proof of:

(a) a certificate of successful completion and successfully passing the mechanic examination of a nationally recognized training program for the elevator industry including, but not limited to, the national elevator industry educational program or its equivalent, supplemented with continuing education as may be required by this section; or

(b) a certificate of successful completion of the state registered apprenticeship programs for the apprenticeable trades of Elevator Servicer Repairer, including the joint apprentice and training committee of the elevator industry of local 3, IBEW, EE division training program, or equivalent registered apprenticeship program for elevator mechanics, having standards substantially equivalent to those programs and

registered with the bureau of apprenticeship and training, U.S. department of labor or a state apprenticeship council, supplemented with continuing education as may be required by this section; or

(c) successful completion of an examination established by the New York state civil service commission or a municipal civil service commission having jurisdiction as defined by subdivision four of section two of the civil service law, subsequent appointment to a position related to work on elevator construction, maintenance, mechanics, inspection, or repair as may be properly classified by the commissioner of civil service or a municipal civil service commission having jurisdiction, and work on elevator construction, maintenance, mechanics, inspection, or repair, with direct and immediate supervision in this state for a period of not less than four years immediately prior to the effective date of this article supplemented with continuing education as may be required by this section; or

(d) in the event an elevator contractor encounters a verifiable shortage of licensed mechanics, an elevator contractor may request that the commissioner issue a temporary elevator mechanic license to an elevator apprentice who can provide documentation demonstrating that such apprentice is currently enrolled in an elevator apprenticeship program and has a minimum of four thousand hours of elevator industry experience. A verifiable shortage can be determined by the commissioner in consultation with the board. Each temporary elevator mechanic license shall be valid for ninety days so long as such temporary elevator mechanic is employed by the licensed elevator contractor that requested the temporary elevator mechanic license and shall be renewable so long as the verifiable shortage of license holders exists. Fees shall be determined by the commissioner.

5. Continuing education. The renewal of all licenses granted under the provisions of subdivision four of this section shall be conditioned upon acceptable proof of completion of a course designed to ensure the continuing education of licensees on new and existing national, state, and local conveyances codes and standards and on technology and technical education and workplace safety, provided the applicant was notified of the availability of such courses when the license was previously granted or renewed. Such course shall consist of not less

than eight contact hours (.8 CEU) annually and completed preceding any such license renewal. The board shall be empowered to make recommendations to the commissioner on nationally recognized continuing education and training programs. The commissioner shall establish requirements for continuing education and training programs which shall be reviewed by the board annually, and shall approve such programs and providers, as well as maintain a list of approved programs which shall be made available to license applicants, permit applicants, renewal applicants and other interested parties upon request. The commissioner may promulgate rules and regulations setting forth the criteria for approval of such programs, the procedures to be followed in applying for such approval, and other rules and regulations as the commissioner deems necessary and proper to effectuate the purposes of this section.

6. Examinations. The board shall determine, if after the successful completion of the first renewal, if an examination is warranted as a condition of a subsequent renewal provided the applicant was notified of the availability of such examination when the license was previously granted or renewed. The board shall take into consideration previous years' experience, training, and previous relevant examinations that the applicant has already completed.

7. Special provisions. No person shall erect, construct, alter, replace, maintain, remove, or dismantle any conveyance, or wire any conveyance from the mainline feeder terminals on the controller in existing buildings or structures in the jurisdiction of this state unless such person is a licensed elevator mechanic working under the direct supervision of a licensed elevator contractor. A licensed elevator contractor is not required for removing or dismantling conveyances, which are destroyed as a result of a complete demolition of an existing building or structure.

§ 955. Powers of the commissioner. 1. The commissioner shall have the authority to inspect, or cause to be inspected, ongoing or completed conveyance projects and to conduct an investigation thereof upon the commissioner's own initiation or upon receipt of a complaint by any

person or entity. However, nothing in this subdivision shall permit the commissioner to enter a private residence.

2. If, upon receipt of a complaint alleging a violation of this article, the commissioner reasonably believes that such violation exists, he or she shall investigate as soon as practicable to determine if such violation exists. If the commissioner determines that no violation or danger exists, the commissioner shall inform the complaining person or entity. If, upon investigation, the commissioner determines that the alleged violation exists, the commissioner may deem such violation to create a dangerous condition for purposes of section two hundred of this chapter only and may issue a notice thereunder prohibiting further work.

3. The commissioner may, after a notice and hearing, suspend or revoke a license issued under this article based on any of the following violations:

- (a) any false statement as to a material matter in the application;
- (b) fraud, or misrepresentation, in securing a license;
- (c) failure to notify the commissioner and the owner or lessee of a conveyance of any condition not in compliance with this article;
- (d) a violation of section nine hundred fifty-two of this article; or
- (e) a finding by the commissioner that a license holder has violated this article or any rule or regulation promulgated thereunder twice within a period of three years, or that a license holder has violated a provision of this article and such violation resulted in a serious threat to the health or safety of an individual or individuals. The commissioner may, in addition to ordering that such license be revoked, bar such license holder from being eligible to reapply for such license, or any other license under this article, for a period not to exceed two years.

4. (a) Except as provided in paragraph (b) of this subdivision, if the commissioner finds, after notice and hearing, that an individual has violated any provision of this article, such commissioner may impose a civil penalty not to exceed ten thousand dollars for each such violation. The commissioner may impose civil penalties on a contractor

or any party that employs or otherwise utilizes unlicensed mechanics. Upon a second or subsequent violation within three years of the determination of a prior violation, the commissioner may impose a civil penalty not to exceed twenty thousand dollars per violation. The commissioner shall submit a quarterly report to the board on violations found pursuant to this subdivision.

(b) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed five thousand dollars if the violation resulted in a serious threat to the health or safety of an individual or individuals provided, however, that such penalty may be increased to an amount not to exceed twenty-five thousand dollars if the violation resulted in the death of any individual or individuals.

5. The commissioner may bring an action in a court of competent jurisdiction to enjoin any conduct that violates the provisions of this article.

6. The board shall examine the various state and local requirements and industry standards and practices with respect to elevator inspections in this state and shall provide recommendations to the commissioner for coordinating existing state, local, and private inspections to ensure that elevators are being inspected by licensed inspectors.

7. The commissioner may promulgate rules and regulations necessary to carry out and effectuate the provisions of this article.

§ 956. New York state elevator safety and standards advisory board. 1. An elevator safety and standards advisory board is hereby created, to consist of thirteen members. The governor shall appoint seven members, the temporary president of the senate shall appoint three members, and the speaker of the assembly shall appoint three members. The appointees to the board shall be representatives of elevator manufacturers, building owners or managers, elevator industry construction workers, elevator servicing companies, elevator industry associations, elevator mechanics, or fire marshals. The board shall meet on an as needed basis

to advise the commissioner on the implementation of this article. The board shall elect a chairperson to serve for the term of their appointment to the board.

2. The members appointed pursuant to this section shall serve at the pleasure of the authority appointing such member. The members shall serve without salary or compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

3. The board may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the maintenance, servicing, construction, alteration, installation, and inspection of conveyances and the adequate, reasonable, and necessary qualifications of elevator mechanics, contractors, and inspectors.

4. The board shall have the authority to administer, oversee, and approve examinations for the purpose of qualifying applicants pursuant to subdivision six of section nine hundred fifty-four of this article. In exercising this authority, the board shall, in its discretion, determine the criteria and standards for examinations to satisfy the requirements of this subdivision, such as the mechanic examination of the national elevator industry educational program, or an equivalent examination recognized by the board, which shall satisfy the requirements of this subdivision.

§ 957. Exempt persons. 1. This article shall not be construed to apply to the practice, conduct, activities, or services by a person licensed to practice architecture within this state pursuant to article one hundred forty-seven of the education law or engineering within this state pursuant to article one hundred forty-five of the education law.

2. This article shall not be construed to apply to the outfitting, removal, refinishing, or replacement of interior finishes of elevators, including wall panels, drop ceilings, handrails and flooring, removal or replacement of interior lighting, recladding of doors, transoms and

front return panels, finishing or ornamental work on elevator car operating panels.

3. This article shall not be construed to apply to the operation of an elevator by any person employed as an operator of such elevator, including elevators operating under a temporary certificate of occupancy as issued by the appropriate issuing agency.

ARTICLE 34

CERTIFICATION OF PUBLIC SERVICE EMPLOYMENT

Section 1000. Definitions.

1001. Hours worked and full-time employment.

1002. Certifying employment.

§ 1000. Definitions. For purposes of this article:

1. "Certifying employment" means either completing the employer sections of the public service loan forgiveness form or sharing data directly with the U.S. department of education that corresponds to the information required for the public service loan forgiveness form.

2. "Employee" means someone who works for a public service employer, regardless of whether the public service employer considers that work to be full-time or part-time, contingent, or contracted.

3. "Full-time" for the purpose of certifying employment only means working at least an average of thirty hours per week or at least an average of thirty hours per week throughout a contractual or employment period of at least eight months in a twelve-month period, such as elementary and secondary school teachers, provided, however, that should the U.S. department of education adopt a lower hourly standard, that standard shall apply.

4. "Public service employer" means any employer designated as a public service organization or employer by the U.S. department of education for

the purpose of the public service loan forgiveness program. The term shall include any state, county, city or other local government employer, including any office, department, independent agency, school district, public college or university system, public library system, authority, or other body, including the legislature and the judiciary, as well as any employer that has received designation as a tax-exempt organization pursuant to section 501(c)(3) of the U.S. Internal Revenue Code. For the purposes of this article, this term does not include a federal or tribal nation government organization, agency, or entity.

5. "Public service loan forgiveness form" means the form used by the U.S. department of education to certify an individual's employment at a public service organization and determine eligibility for the purposes of the public service loan forgiveness program.

6. "Public service loan forgiveness program" means the federal loan forgiveness program established pursuant to 20 U.S.C. 1087e(m) and administered pursuant to 34 C.F.R 685.219, as of the effective date of this article.

§ 1001. Hours worked and full-time employment. The following shall apply for the purposes of certifying employment for the purposes of the public service loan forgiveness program only and shall have no other applicability for public service employers and their employees.

1. For faculty or teacher employees, a public service employer certifying employment after the effective date of this subdivision shall credit 3.35 hours worked for each hour of lecture or classroom time, regardless of when the hours were worked, including hours worked prior to the effective date of this subdivision. This subdivision does not supersede any greater adjustment factor established by a collective bargaining agreement or employer policy in recognition of additional work associated with lecture or classroom time for the purpose of the public service loan forgiveness program.

2. When determining whether an employee is considered "full-time," as

that term is defined in this article, for the purpose of certifying employment for the public service loan forgiveness program only, a public service employer shall not treat any adjusted total hours worked pursuant to subdivision one of this section differently from hours worked without an adjustment factor.

3. For the purpose of certifying employment only, a public service employer shall consider as "full-time" any employee who satisfies the definition of "full-time" provided in this article.

§ 1002. Certifying employment. 1. Should the U.S. department of education permit public service employers to certify employment for past or present individual employees or groups of employees directly with the U.S. department of education or its agents, notwithstanding other provisions of law, a public service employer shall be permitted to send to the U.S. department of education or its agents the information necessary for employment certification.

2. If a public service employer does not directly certify employment with the U.S. department of education pursuant to subdivision one of this section, the public service employer shall annually provide notice of renewal and a copy of the public service loan forgiveness form with the employer information and employment certification sections of the form already completed to:

- a. an employee who requests a public service loan forgiveness form;
- b. any current employee for whom the public service employer has previously certified employment; and
- c. an employee who is ending his or her work with the public service employer.

The partially completed form should reflect employment for the prior calendar year, and may reflect longer periods of employment, as necessary.

3. A public service employer shall not unreasonably delay in certifying employment.

4. Nothing in this section shall prevent a public service employer from seeking permission from its employees prior to certifying their employment.

ARTICLE 35

NEW YORK YOUTH JOBS CONNECTOR PROGRAM

Section 1005. Administration and services.

1006. Funding.

1007. Public outreach.

1008. Annual report.

§ 1005. Administration and services. 1. There is hereby established within the department a New York youth jobs connector program to connect unemployed and underemployed individuals between the ages of sixteen and twenty-four years with targeted educational, occupational, and training services to help prepare such individuals for employment and improve opportunities for such individuals to become employed. The New York youth jobs connector program shall be responsible for facilitating the coordination and delivery of existing programs and resources throughout the state which are designed to assist individuals identified in this article with opportunities for employment, skills development, job training, and the other related services described in subdivision two of this section.

2. The department shall coordinate with the office of strategic workforce development, the department of education, the state university of New York, the city university of New York, the office of temporary and disability assistance, the office of children and family services, the urban development corporation and its subsidiaries, and any other relevant agency or entity, to carry out the purposes of this article and leverage existing funds and programs for unemployed and underemployed

youth consistent with the purposes described herein. Services provided by such programs may include, but are not limited to, high school equivalency, basic education, job skills training, English-as-a-second language, job readiness training, job placement services, case management, career counseling and assessment, pre-apprenticeships and apprenticeships, pre-vocational skills training, employability planning, supportive services, proactive outreach to unemployed and underemployed youths, skills and vocational programs leading to career pathways and gainful employment, and the development or promulgation of other resources and programs to assist youths between the ages of sixteen and twenty-four years, particularly at-risk youths in such category.

§ 1006. Funding. The department shall identify and leverage any available funds as necessary, including any private funds provided for the purpose of supporting this article, which may be used to subsidize the New York youth jobs connector program. The department may further identify any private or not-for-profit entities which currently provide job placement or training services, or other services described in section one thousand five of this article, whether as the entity's primary purpose or coincidental to such entities' operations. Such entities may include, but not be limited to, boys and girls clubs, local or statewide affiliated young persons' organizations, and employer associations. The department may, to the extent practicable, contract with such entities for the explicit purpose of using their membership or staff to directly seek out and notify unemployed youths between the ages of sixteen and twenty-four years about the New York youth jobs connector program and the services offered thereunder.

§ 1007. Public outreach. 1. The department shall engage in outreach efforts to raise awareness about the New York youth jobs connector program and the services offered thereunder. Such outreach may include, but not be limited to:

(a) brochures and posters to be distributed to school districts, boards of cooperative educational services, public libraries, community colleges, trade schools, agricultural and technical colleges, and other

public institutions of higher education;

(b) use of social media, internet, radio, newspapers, and print advertising;

(c) participation in, or organization of program and job fairs;

(d) posting easily accessible hyperlinks to such information on the department's website;

(e) collaboration with employment agencies or unions; and

(f) recruitment of individuals to serve as visible public ambassadors to promote the program.

2. The department, in consultation with the office of information technology services, shall create publicly accessible online surveys to assess the goals, eligibility, and job readiness of individuals served by the program to match such individuals with a subset of relevant programs and services for consideration. Such surveys shall be made available on the department's website. The department shall also publish an informational webpage to provide details on the program and outreach events as well as information on and a hyperlink to the online surveys.

§ 1008. Annual report. Not later than two years after the effective date of this article, and annually thereafter, the commissioner shall prepare and submit a report to the governor, the temporary president of the senate, and the speaker of the assembly on the efficacy and progress made by the New York youth jobs connector program. In preparing the report, the commissioner may seek and include input from relevant stakeholders, including participating youths, schools, programs, and employers. The report shall also include recommendations on further improvements concerning outreach efforts to spread awareness of the program.

ARTICLE 36

NEW YORK STATE FASHION WORKERS ACT

Section 1030. Short title.

1031. Definitions.

1032. Registration required.

- 1033. Registration process.
- 1034. Duties of model management companies.
- 1035. Prohibitions on model management companies.
- 1036. Power of attorney.
- 1037. Duties of clients.
- 1038. Violations, penalties and procedures.
- 1039. Other legal requirements.

§ 1030. Short title. This article shall be known and may be cited as the "New York state fashion workers act".

§ 1031. Definitions. As used in this article:

1. "Client" means a person or entity that contracts for and manages the performance of modeling services from a model or model management company, directly or through intermediaries.
2. "Model" means an individual who, in the course of such individual's trade, occupation or profession, performs modeling services, regardless of the individual's status as an employee or independent contractor.
3. (a) "Model management company" means any person or entity, other than a person or entity licensed as an employment agency under article eleven of the general business law, that:
 - (i) is in the business of managing models participating in entertainments, exhibitions or performances;
 - (ii) procures or attempts to procure, for a fee, employment or engagements for persons seeking employment or engagements as models; or
 - (iii) renders vocational guidance or counseling services to models for a fee.(b) Model managing shall not include direct engagement of a model who is not represented by an agency or management company for use of models in a campaign or shoot.
4. "Model management group" means two or more model management

companies that are majority owned by the same ultimate parent, entity or persons. A model management group may satisfy any reporting and financial requirements of this article on a consolidated basis. As a condition of registration as a model management group, each company that is a member of the group shall guarantee payment of all financial obligations of each other member.

5. "Modeling services" means the appearance by a model in photographic sessions or the engagement of a model in live runway, live, filmed, or taped performances, including on social media platforms, requiring the model to pose, provide an example or standard of artistic expression or to be a representation to show the construction or appearance of something or place for purposes of display or advertising, including the provisions of castings, fittings, photoshoots, showroom, parts or fit modeling services. "Modeling services" includes the use of a digital replica.

6. "Exclusive representation" means an agreement, or a clause contained in an agreement, entered into between a model management company and a model that restricts such model from being represented by another party not subject to such agreement for a specified period of time or in a specified geographical area, that is similar to such model's work for the model management company.

7. "Deal memo" means a summary written in plain language which identifies the key components of any employment, engagement, entertainment, exhibition, or performance, including but not limited to the scope of work, rate of pay, payment term, usages, incurred expenses, including any expenses to be initially incurred by either the model management company or the model and reimbursed by the client, and other expectations of the model. A deal memo shall be provided in the language requested by the model.

8. "Digital replica" means a significant, computer-generated or artificial intelligence-enhanced representation of a model's likeness, including but not limited to, their face, body, or voice, which substantially replicates or replaces the model's appearance or

performance, excluding routine photographic edits such as color correction, minor retouching, or other standard post-production modifications.

§ 1032. Registration required. 1. Except as otherwise provided in this section, a model management company or model management group shall not engage in business in this state or enter into any arrangement with a client or model for the purpose of providing model management company or model management group services in this state unless the model management company or model management group is registered under this article. A model management company or model management group that does not comply with the provisions of this article shall not be a registered model management company or model management group in this state.

2. A model management company or model management group shall be exempt from the registration requirements specified in this section if such model management company or model management group:

(a) submits a properly executed request for an exemption from registration to the department;

(b) is domiciled outside this state and is licensed or registered as a model management company in another state that has requirements at least as strict as this article; and

(c) does not maintain an office in this state or solicit in any manner clients located or domiciled within this state.

§ 1033. Registration process. 1. Except as otherwise provided in this section, a model management company or model management group required to be registered under this article shall provide the department with information required by the department on forms that the department specifies.

2. At a minimum, a model management company or model management group shall provide the following information:

(a) all names under which it conducts business;

(b) the address of the principal place of business of the model

management company or model management group and the address of each office it maintains in New York state;

(c) the model management company or model management group's taxpayer or employer identification number;

(d) a list by jurisdiction of each name under which the model management company or model management group has operated in the preceding five years, including any alternative names, names of predecessors and, if known, successor business entities; and

(e) in the event the model management company or the ultimate parent of a model management group is a privately or closely held company, the model management company or model management group shall file a list of all persons or entities that beneficially own a five percent or greater interest in the model management company at the time of application and a list of persons who formerly beneficially owned a five percent or greater interest in the model management company or its predecessors in the preceding five years. In the event the model management company or the ultimate parent of a model management group is a publicly traded company, the model management company or model management group shall file a list of all persons or entities that beneficially own a fifty percent or greater interest in the model management company or the ultimate parent of the model management group at the time of application.

3. Each model management company or model management group operating within this state shall submit its initial registration to the department within one year after the effective date of this article.

4. Upon application for registration, a model management company or model management group with more than five employees that either work from a location in this state or perform work relating to models in this state shall deposit with the department a surety bond in the sum of fifty thousand dollars.

5. Every model management company or model management group registered pursuant to the provisions of this article shall pay to the commissioner a registration fee before the certificate of registration is issued. The registration fee for a model management company or model management

group operating with five or less employees shall be five hundred dollars, and for a model management company or model management group operating with more than five employees, the registration fee shall be seven hundred dollars. If the application for registration is denied or withdrawn, one-half of the registration fee provided herein shall be returned to the applicant.

6. A registration or exemption from registration of a model management company or model management group shall be valid for two calendar years from the date of registration or exemption. Registrations or exemptions may be renewed not less than ninety days before the expiration date of the immediately preceding registration.

7. The department shall maintain a list of model management companies and model management groups registered under this article and shall issue a certificate of registration or a certificate of exemption to each model management company or model management group duly registered.

8. The department shall prescribe forms necessary to promote the efficient administration of this section.

§ 1034. Duties of model management companies. A model management company shall:

1. be deemed to have a fiduciary duty to the models they represent and shall be required to act in good faith, with the utmost honesty and integrity, in the best interests of the models. This fiduciary duty shall encompass all aspects of the model management company's representation, including, but not limited to, negotiations, contracts, financial management, and the protection of the models' legal and financial rights;

2. conduct due diligence to ensure that any employment or engagement procured through the model management company does not pose an unreasonable risk of danger to the model. An unreasonable risk of danger shall include, but not be limited to, failing to establish and

communicate a company policy that equals or exceeds the minimum standards provided for by existing laws that address abuse, harassment, or any other form of inappropriate behavior towards models represented by the model management company or model management group;

3. use its best efforts to procure employment, engagements, entertainments, exhibitions or performances for remuneration for the models signed to the model management company or model management group;

4. ensure that any employment, engagement, entertainment, exhibition or performance which requires nudity or other sexually explicit material shall comply with the requirements of subdivision three of section fifty-two-c of the civil rights law, as added by chapter three hundred four of the laws of two thousand twenty;

5. provide models with written physical or digital copies of: (a) a deal memo memorializing agreements, which includes the remuneration and compensation such model shall be owed upon conclusion of services that the model accepts, as soon as reasonably practical prior to the commencement of a model's services, and (b) the final agreement negotiated with clients in relation to such booking in the language requested by the model making best efforts to sign the contract ahead of booking, provided that the final agreement shall be provided to the model within seven calendar days of the conclusion of the model's services;

6. clearly specify and seek prior written approval from the model of all items that may be initially paid for by the model management company but will ultimately be deducted from the compensation due to the model at the time of payment or settlement, together with an itemized recitation as to how each item is to be computed, provided such charges are not otherwise prohibited by this article. On a quarterly basis, a model shall also be given copies of any and all documentation held by or available to the model management company necessary to determine the validity of each charge;

7. disclose any financial relationship, contractual or otherwise, that

may exist between the model management company and the client, other than the agreement relating specifically to modeling services;

8. notify former models in writing, including electronic notification, if the model management company collects royalties due to a model whom the management company no longer represents;

9. post a physical copy of the model management company's certificate of registration in a conspicuous place in the office of the model management company and a digital copy on the model management company's website;

10. include, in clear and legible type, the registration number of the model management company in any advertisement, including social media profiles for the model management company, for the purpose of the solicitation of models for the model management company and in any contract with a model or client; and

11. obtain clear written consent from the model for any creation or use of a model's digital replica, detailing the scope, purpose, rate of pay, and duration of such use. This consent must be obtained separately from the representation agreement.

§ 1035. Prohibitions on model management companies. A model management company shall not:

1. require or collect any fee or deposit from a model upon the signing of, or as a condition to entering into, any contract or agreement between the model management company and the model;

2. procure any accommodation for which payment shall be provided or reimbursed by the model in any way, without providing a written disclosure of the rate charged for the accommodation to the model in advance of such model's stay at the accommodation;

3. deduct or offset from a model's payment or compensation any fee or

expense, including interest, other than the agreed upon commission as set forth in the contract and any items advanced pursuant to subdivision six of section one thousand thirty-four of this article;

4. advance the cost of travel or visa-related costs without informed written consent from the model;

5. require a model to sign a model management company contract that contains a term greater than three years;

6. require a model to sign a model management company contract that renews without the model's affirmative written consent;

7. impose a commission fee greater than twenty percent of the model's payment or compensation;

8. engage in discrimination or harassment of any kind against a model because of any protected status covered under paragraph (a) of subdivision one of section two hundred ninety-six of the executive law; or

10. create, alter, or manipulate a model's digital replica using artificial intelligence without clear, conspicuous and separate written consent from the model.

§ 1036. Power of attorney. 1. Any power of attorney agreement between a model management company and a model shall:

(a) be presented as an optional component of the model management company's representation agreement;

(b) not be presented as a necessary condition of entering into an agreement with the model management company;

(c) be subject to termination by the model at any time and for any reason;

(d) not violate the provisions of subdivision one of section one thousand thirty-four of this article and extend only to matters directly related to the provision of modeling services, with the exclusion of the

use of the model's digital replica.

2. Any power of attorney agreement that violates this section shall be considered void as a matter of public policy.

§ 1037. Duties of clients. A client shall:

1. compensate models at an hourly rate at least fifty percent higher than the contracted hourly rate for any employment, engagement, entertainment, exhibition or performance that exceeds eight hours in any twenty-four hour period;

2. provide at least one thirty minute meal break for any employment, engagement, entertainment, exhibition or performance that exceeds eight hours in any twenty-four hour period;

3. only offer an employment or engagement to a model that does not pose an unreasonable risk of danger to the model. An unreasonable risk of danger shall include, but not be limited to, failure to establish and communicate a company policy that equals or exceeds the minimum standards provided for by existing law that addresses abuse, harassment, or any other form of inappropriate behavior;

4. ensure that any employment, engagement, entertainment, exhibition or performance which requires nudity or other sexually explicit material shall comply with the requirements of subdivision three of section fifty-two-c of the civil rights law, as added by chapter three hundred four of the laws of two thousand twenty;

5. allow the model to be accompanied by their agent, manager, chaperone, or other representative to any employment, engagement, entertainment, exhibition or performance;

6. provide liability insurance to cover and safeguard the health and safety of models; and

7. obtain clear and conspicuous prior written consent from the model for any creation or use of a model's digital replica, detailing the scope, purpose, rate of pay, and duration of such use.

§ 1038. Violations, penalties and procedures. 1. Any model management company or model management group that has failed to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

2. Any model management company or model management group that has failed to comply within the time specified by law with an order issued by the commissioner to comply with the registration requirements of section one thousand thirty-two of this article shall be deemed to have violated this article.

3. (a) The commissioner may impose a civil penalty upon a model management company, model management group, or client that has been deemed to have violated this article, for three thousand dollars for the initial violation, and for five thousand dollars for a second or subsequent violation.

(b) The order imposing such civil penalty may be served personally or by certified mail in accordance with section thirty-three of this chapter. Such order shall be in writing and shall describe the nature of the violation, including reference to the provisions of subdivisions one, two and three of this section alleged to have been violated.

4. An order issued under this section shall be final and not subject to review by any court or agency unless a review is had pursuant to section one hundred one of this chapter. Provided that no proceeding for administrative or judicial review as provided in this chapter shall then be pending and the time for initiation of such proceeding shall have expired, the commissioner may file with the county clerk of the county where the person against whom the penalty has been imposed has a place of business the order of the commissioner or the decision of the industrial board of appeals containing the amount of the civil penalty. The filing of such order or decision shall have the full force and

effect of a judgment duly docketed in the office of such clerk. The order or decision may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

5. If any model management company has failed to comply within twenty days of an order by the commissioner to register or renew registration, the commissioner may seek to enjoin such unlawful activity, pursuant to the civil practice law and rules.

6. The attorney general may bring and maintain an action in a court of competent jurisdiction to enforce the provisions of this article when the attorney general has determined there is reasonable cause to believe that a model management company, model management group, or client has engaged in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting, or transacting of business.

7. (a) A model who is aggrieved by a violation of this article may file a complaint with the commissioner within six years after the acts alleged to have violated this article occurred. The commissioner shall prescribe the form of the complaint, which shall include, at a minimum:

- (i) the name and mailing address of the model and of the person or entity alleged to have violated this article;
- (ii) a statement detailing the terms of the model's contract, including a copy of such contract if available;
- (iii) the model's occupation;
- (iv) a statement detailing the alleged violations of this article; and
- (v) a signed affirmation that all facts alleged in the complaint are true.

(b) (i) Upon receiving a complaint alleging a violation of this article, the commissioner shall send the person or entity named in the complaint a written notice of complaint. The commissioner shall send such notice by certified mail in accordance with section thirty-three of the labor law and shall bear the cost of sending such notice.

(ii) Notice shall include:

- (1) a copy of the complaint;

(2) materials of remedies available to the model for the violations of said article by the person or entity named in the complaint;

(3) materials informing the person or entity that twenty days after receiving the notice of complaint, the person or entity identified in the complaint must answer; and

(4) materials informing the person or entity that failure to respond to the complaint will create a rebuttable presumption in any civil action commenced pursuant to this article that such person or entity committed the violations alleged in the complaint.

(c) The response shall include:

(i) a written statement that the model has been paid in full and proof of such payment;

(ii) a written statement that the model has not been paid in full and the reasons for the failure to provide such payment; or

(iii) a written statement and any proof responding to the violations alleged in the complaint.

(d) (i) Upon receiving the written response, the commissioner shall send the model a copy of:

(1) the response;

(2) any enclosures submitted to the commissioner with the response; and

(3) any other information about the status of the complaint.

(ii) If the commissioner receives no response from the person or entity alleged to have violated this article to the notice of complaint within the time provided by this subdivision, then there shall be a determination that such person or entity committed the violations alleged in the complaint. The commissioner shall mail a notice of non-response to both the model and the person or entity named in the complaint by regular mail and shall include with such notice proof that the commissioner previously mailed the notice of complaint to the person or entity named in the complaint by certified mail.

8. An aggrieved model may bring and maintain an action in a court of competent jurisdiction to enforce the provisions of sections one thousand thirty-four and one thousand thirty-five of this article. A model management company or model management group that violates these sections shall be liable for actual damages to any model that has

suffered damages due to such violation, reasonable attorneys' fees and costs, and, unless the model management company or group proves a good faith basis to believe that its actions were in compliance with the law, an additional amount as liquidated damages in an amount of no more than one hundred percent of the total amount of actual damages, except such liquidated damages may be up to three hundred percent if found that the actions were willful.

9. No client, model management company, or model management group shall be permitted to retaliate against a model for exercising any of such model's rights under this article, including the right to raise complaints with the client, model management company, model management group, commissioner, or attorney general. Any violation of this section shall be subject to enforcement in the same manner as prescribed in section two hundred fifteen of this chapter.

§ 1039. Other legal requirements. Nothing in this article shall diminish the rights, privileges, wages, working conditions or remedies of any employee under any applicable collective bargaining agreement.

* ARTICLE 37

TRAPPED AT WORK ACT

Section 1050. Definitions.

1051. Scope.

1052. Prohibiting the use of employment promissory notes and other similar provisions.

1053. Enforcement.

1054. Rules.

1055. Savings clause.

* NB Effective December 19, 2026

* **§ 1050. Definitions.** For purposes of this article:

1. "Employer" means any person, corporation, limited liability

company, or association employing any individual in any occupation, industry, trade, business or service including the state and its political subdivisions.

2. "Employee" means any person employed for hire by an employer in any employment.

3. "Employment promissory note" means any instrument, agreement, or contract provision that requires an employee to pay the employer, or the employer's agent or assignee, a sum of money if the employee's employment relationship with a specific employer terminates before the passage of a stated period of time.

4. "Transferable credential" shall mean any degree, diploma, license, certificate, or documented evidence of skill proficiency or course completion that is widely recognized by employers in the relevant industry as a qualification for employment, independent of the employer's specific business practices, or that provides skills or qualifications that demonstrably enhance the employee's employability with other employers in the relevant industry. Notwithstanding the foregoing, a "transferable credential" shall not include:

(a) Employer-specific or non-transferable training. (i) Instruction regarding the employer's proprietary processes, proprietary systems, internal policies, proprietary software, or proprietary equipment unique to the employer, or (ii) instruction that does not qualify the employee for a new occupational title, classification, or industry-recognized credential and instead consists of skillful variations of general processes known to the relevant trade or industry.

(b) Mandated safety and compliance training. Any training required by federal, state, or local law to maintain workplace safety, including but not limited to OSHA certifications, sexual harassment prevention, or diversity training.

* NB Effective December 19, 2026

* **§ 1051. Scope.** The rights and remedies provided pursuant to this article shall not supersede any other rights and remedies provided by

statute or common law.

* NB Effective December 19, 2026

*** § 1052. Prohibiting the use of employment promissory notes and other similar provisions.** 1. No employer may require, as a condition of employment, any employee or prospective employee to execute an employment promissory note. The execution of an employment promissory note as a condition of employment is unconscionable, against public policy, and unenforceable, and any such note shall be null and void. If any such note is part of a larger agreement, the invalidity of such note shall not affect the other provisions of such agreement.

2. Nothing in this section shall prohibit or render void or unenforceable any agreement between an employee and an employer that:

(a) requires the employee to reimburse the employer for the cost of tuition, fees, and required educational materials for a transferable credential that meets all of the following requirements:

(i) The agreement is set forth in a written contract that is offered separately from any contract for employment.

(ii) The agreement does not require the employee to obtain the transferable credential as a condition of employment.

(iii) The agreement specifies the repayment amount before the employee agrees to the contract, and the repayment amount does not exceed the cost to the employer of the tuition, fees, and required educational materials for the transferable credential received by the employee.

(iv) The agreement provides for a prorated repayment amount during any required employment period that is proportional to the total repayment amount and the length of the required employment period and does not require an accelerated payment schedule if the employee separates from the employment.

(v) The agreement does not require repayment to the employer by the employee if the employee is terminated, except if the employee is terminated for misconduct.

(b) requires the employee to pay the employer for any property the employer has sold or leased to the employee, as long as such sale or lease was voluntary.

(c) requires the employee to repay a financial bonus, relocation assistance, or other non-educational incentive or other payment or benefit that is not tied to specific job performance, unless the employee was terminated for any reason other than misconduct or the duties or requirements of the job were misrepresented to the employee.

(d) requires educational personnel to comply with any terms or conditions of sabbatical leaves granted by their employers; or

(e) is entered into as part of a program agreed to by the employer and its employees' collective bargaining representative.

* NB Effective December 19, 2026

* **§ 1053. Enforcement.** 1. Notwithstanding any other provision of law, an employee who is sued by an employer seeking to enforce the provisions of a promissory note made null and void by this article shall be able to recover attorney's fees upon a successful defense.

2. An employee or prospective employee who is aggrieved by a violation of this article may file a complaint with the commissioner. Any employer determined by the commissioner to have violated this article shall be fined by the commissioner not less than one thousand dollars and not more than five thousand dollars for each violation. In assessing the amount of the penalty, the commissioner shall give due consideration to the size of the employer's business, the good faith basis of the employer to believe that its conduct was in compliance with the law, the gravity of the violation, and the history of previous violations. Each employee or prospective employee whom an employer required to execute an employment promissory note or against whom an employer seeks to enforce such a note shall constitute a separate violation of this article.

* NB Effective December 19, 2026

* **§ 1054. Rules.** The commissioner may promulgate rules and regulations necessary to carry out the provisions of this article.

* NB Effective December 19, 2026

* **§ 1055. Savings clause.** If any portion of this article or the application thereof to any person, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.

* NB Effective December 19, 2026

ARTICLE 40

WHEN TO TAKE EFFECT

Section 1200. When to take effect.

§ 1200. When to take effect. This act shall take effect immediately.