



May 25, 2021

Majority Leader Andrea Stewart-Cousins
Legislative Office Building, Room 907
Albany, NY 12247

Senate Minority Leader Rob Ortt
Capitol Building, Room 315
Albany, NY 12247

Speaker Carl Heastie
Legislative Office Building, Room 932
Albany, NY 12248

Assembly Minority Leader Will Barclay
Legislative Office Building, Room 933
Albany, NY 12248

Dear Leaders,

On behalf of our organizations which represent tens of thousands of businesses throughout New York State, we respectfully urge that you to oppose S.2762/A.766 (SWEAT). This legislation, which allows for the creation of an "employee lien" is duplicative and unnecessarily arduous as there are both state and federal laws protecting employees from wage and hour violations.

To be clear our organizations support the State's enforcement of existing wage and hour laws and condemn any intentional wage violations; however, this legislation goes too far and will

undoubtedly have serious consequences for businesses across the state. The legislation allows an employee to secure a lien on an employer's personal or company property for a mere claim of wage and hour violations. This essentially creates an instant presumption of guilt against the employer and denies businesses their due process. The legislation completely ignores the fact that New York's Wage Theft Prevention Act already provides for civil and criminal penalties against bad acting employers. Furthermore, SWEAT seeks to expand the definition of employer to include passive owners and managers who have no control over the pay practices of other parties.

Allowing employees to secure liens based on a simple claim of wage and hour violations will threaten the financial viability of businesses, especially small businesses and their ability to secure, establish, or stabilize creditworthiness. Since the start of the pandemic, businesses have had to secure sizeable loans to stay afloat and finance normal operating expenses, and businesses will likely have to secure additional loans in the near future as the national and state economy have not fully recovered. According to a recent survey by the National Federation of Independent Business, 17% of small businesses are still planning on applying for a PPP loan and another 27% may apply for a loan.¹ While PPP loans are now limited to community financial institutions, these institutions generally provide loans to businesses that are run by women, minorities, and other underserved communities. If this law is passed, businesses will not be able to acquire financial loans, which will detract from investment opportunities and limit growth.

Lastly, the true beneficiaries of SWEAT will be legions of unscrupulous – and often out-of-state -- plaintiffs' attorneys looking to capitalize on poorly crafted policy at the expense of New York's small, independent businesses who are the least financially equipped to defend against frivolous and predatory litigation tactics.

At a time when New York's businesses are finally seeing a glimpse of a reopening economy and a path towards recovery, the state should not add to its duplicative and onerous regulatory environment – the result will be devastating to businesses, especially small businesses, who are already hanging by a thread.

On behalf of our organizations, businesses, industries, and communities we represent, we urge you to oppose this legislation.

Thank you for your time and consideration.

Sincerely,

Associated Builders and Contractors, Empire State Chapter
Associated General Contractors of New York State
Big I New York

¹ "Covid-19 Small Business Survey (17)." NFIB Research Center, 23-28 April. 2021.
<https://assets.nfib.com/nfibcom/Covid-19-17-Questionnaire.pdf>

Buffalo Niagara Partnership
Business Council of Westchester
Capital Region Chamber
Commerce Chenango
Empire State Forest Products Association
Food Industry Alliance
Greater Binghamton Chamber of Commerce
Greater Rochester Chamber of Commerce
Manufacturers Association of Central New York
New York Association of Convenience Stores
New York Farm Bureau
New York State Builders Association
New York State Hospitality & Tourism Association
National Federation of Independent Business
Northeastern Retail Lumber Association
Rochester Technology and Manufacturing Association
Trucking Association of New York
Upstate United

cc: NYS Assembly
NYS Senate