



May 25, 2021

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

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

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

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.<sup>1</sup> 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

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<sup>1</sup> "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