MEMORANDUM OF OPPOSITION
A486 (Rosenthal) / S2844 (Ramos)
Relates to allegations of wage theft

ON SENATE JUDICIARY COMMITTEE AGENDA: APRIL 30, 2019

The New York City Hospitality Alliance – representing restaurants and nightlife establishments across the five boroughs – strongly opposes A486/S2844, which would allow employees to file personal liens against business owners solely upon the allegation of a wage dispute, allow the state to place liens on property on behalf of claimants and make shareholders in limited liability companies personally liable for wage claims. While The Alliance takes wage theft extremely seriously – and recognizes the proposal’s positive intentions – the bill as drafted would have serious negative consequences on small businesses and employment in New York State.

Virtually no other state in the nation has gone this far or utilizes such a problematic approach to the issue. While a small handful of states allow liens against business owners in wage disputes (6 in total), only one state permits such liens purely based on an unproven allegation (Wisconsin). In those other states, a lien is allowed only AFTER a wage theft allegation “has been proved as a result of a lawsuit or an agency investigation” (*NY Times*).

A486/S2844 would put make New York State a complete outlier – and harm us competitively – as it would:

- Allow any disgruntled employee to file a lien on their current or former employer and its owners based on the employee’s mere allegations;
- Freeze credit on small businesses, because when a lien is filed banks won’t extend credit;
- Dissuade employers from incorporating or creating LLCs in New York; Actually, encourage unscrupulous employers to create shell companies to make it difficult for any individual to discover who the real owner is (which is obviously a truly unintended consequence);
- Create additional costs and burdens on employers because even if the employer prevails in the lawsuit, they must undertake additional costs to have the lien removed;
- Decrease the number of investors that businesses can turn to, because the investors may not want to risk their assets or a lien in the event an employee claims that wages were not properly paid;
- Give employees/unions total leverage in any negotiations with the employer because employees/unions could threaten wage claims and leveling liens on employers;
• Increase bankruptcies by employers and individuals to get rid of the liens;
• Encourage employees to greatly exaggerate their claims because they can assert larger liens by doing so;
• Put first-line managers and other middleclass individuals at risk of financial ruin because such individuals are “employers” under state and federal law and employees could assert liens on their assets.
• One disgruntled employee could assert a class action and thus put a lien on individuals and businesses for millions of dollars effectively holding the business and its owners and managers financially hostage.
• CPLR (the rules that govern procedure in state courts) already has a provision where a plaintiff can get an Order of Attachment (similar to a lien) if the plaintiff can prove that the defendant has (or likely to) fraudulently transferred assets that would have the effect of frustrating creditors or the enforcement of a judgment should plaintiff prevail (CPLR s. 6201).
• There is a practical difference between a wage lien and a mechanics lien. In the construction industry, when a payment is made to a contractor, the company will receive a mechanics lien release that prevents the contractor from falsely asserting a lien after being paid. There is no such protection for an employer in the wage lien context. Further, mechanics can only go after the business. An employee can sue owners and managers because the definition of “employer” is so broad.

Wage and hour issues are taken seriously by the NYC Hospitality Alliance and our members have worked, and will continue to work collaboratively with the NYS Department of Labor to ensure that existing laws and regulations both adequately protect employees and employers and are effectively enforced. This proposal has far too many potential negative consequences for small businesses in New York State – with no compelling rationale for such unprecedented new punitive actions – and therefore the NYC Hospitality Alliance strongly opposes this legislation.

ABOUT THE NYC HOSPITALITY ALLIANCE

The New York City Hospitality Alliance is a broad-based membership association founded in 2012 to foster the growth and vitality of the industry that has made New York City the Hospitality Capital of the World. It is the first association ever formed in New York City representing all facets of this diverse industry: restaurants, bars, lounges, destination hotels and major industry suppliers. Through the support and involvement of its members, The Alliance is committed to advancing -- with a clear and unified voice -- an agenda focused on opportunity, economic investment and job creation. Advocating on behalf of our members at all levels of government, The Alliance supports pro-growth public policy, encourages investment in and promotion of NYC’s hospitality industry, and evaluates the development, implementation and fairness of relevant government regulations.

If you have questions about the NYC Hospitality Alliance’s position, please call Executive Director Andrew Rigie at 646-532-2756 or our lobbyists, Yoswein New York, Inc., at 212-233-5700.