S T A T E O F N E W Y O R K

8045

2013-2014 Regular Sessions

I N A S S E M B L Y

June 17, 2013

Introduced by M. of A. ROSENTHAL -- read once and referred to the Committee on Judiciary

AN ACT to amend the lien law, in relation to securing payment of wages for work already performed; to amend the civil practice law and rules, in relation to grounds for attachment; to amend the business corporation law, in relation to streamlining procedures where employees may hold shareholders of non-publicly traded corporations personally liable for wage theft; and to amend the limited liability company law, in relation to creating a right for victims of wage theft to hold the ten members with the largest ownership interests in a company personally liable for wage theft

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 2 of the lien law is amended by adding four new subdivisions 21, 22, 23, and 24 to read as follows:

21. WAGE CLAIMS. THE TERM "WAGE CLAIMS," WHEN USED IN THIS CHAPTER, SHALL INCLUDE ANY CLAIMS OF VIOLATIONS UNDER ARTICLES FIVE, SIX, AND NINETEEN OF THE LABOR LAW, AND THE RELATED REGULATIONS OR WAGE ORDERS PROMULGATED BY THE COMMISSIONER OF LABOR, INCLUDING BUT NOT LIMITED TO ANY CLAIMS OF UNPAID, MINIMUM, OVERTIME, AND SPREAD-OF-HOURS PAY, UNLAWFULLY RETAINED GRATUITIES, UNLAWFUL DEDUCTIONS FROM WAGES, UNPAID COMMISSIONS, AND UNPAID BENEFITS AND WAGE SUPPLEMENTS, AND ANY CLAIMS PURSUANT TO 18 U.S.C. S 1595, 29 U.S.C. S 206, 29 U.S.C. S 207, AND/OR ANY EMPLOYMENT CONTRACT, AS WELL AS THE CONCOMITANT LIQUIDATED DAMAGES AND PENALTIES AUTHORIZED PURSUANT TO THE LABOR LAW, THE FAIR LABOR STANDARDS ACT, OR ANY EMPLOYMENT CONTRACT.

22. EMPLOYER. THE TERM "EMPLOYER," WHEN USED IN ARTICLE TWO-A OF THIS CHAPTER, SHALL HAVE THE SAME MEANING AS "EMPLOYER" PURSUANT TO THE LABOR LAW OR THE FAIR LABOR STANDARDS ACT, AS APPLICABLE.

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

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23. EMPLOYEE. THE TERM "EMPLOYEE," WHEN USED IN ARTICLE TWO-A OF THIS CHAPTER, SHALL HAVE THE SAME MEANING AS "EMPLOYEE" PURSUANT TO THE LABOR LAW OR THE FAIR LABOR STANDARDS ACT, AS APPLICABLE.

24. PERSONAL PROPERTY. THE TERM "PERSONAL PROPERTY," WHEN USED IN ARTICLE TWO-A OF THIS CHAPTER, SHALL HAVE THE SAME MEANING AS "PERSONAL PROPERTY" PURSUANT TO SECTION THIRTY-NINE OF THE GENERAL CONSTRUCTION LAW, EXCEPT WHERE EXEMPT BY FEDERAL LAW.

S 2. The lien law is amended by adding a new article 2-A to read as follows:

ARTICLE 2-A
WAGE LIEN

SECTION 39-AA. WAGE LIEN.
39-BB. ESTABLISHING A LIEN FOR WAGE CLAIMS.
39-CC. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON REAL PROPERTY.
39-DD. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON PERSONAL PROPERTY.
39-EE. REGULATIONS.
39-FF. RIGHTS.
39-GG. FORCE AND EFFECT.
39-HH. OPERATION.

S 39-AA. WAGE LIEN. AN EMPLOYEE OR THE COMMISSIONER OF LABOR SHALL BE ENTITLED TO A LIEN UPON ALL PROPERTY OF THE EMPLOYER, REAL OR PERSONAL, LOCATED IN THIS STATE FOR THE FULL AMOUNT OF THE WAGE CLAIMS, INCLUDING THE PENALTIES AUTHORIZED PURSUANT TO THE LABOR LAW, THE FAIR LABOR STANDARDS ACT, OR THE CONTRACT IN ISSUE. SUCH LIEN SHALL EXTEND TO THE EMPLOYER-OWNER'S RIGHT, TITLE OR INTEREST IN THE REAL AND PERSONAL PROPERTY, EXISTING AT THE TIME OF FILING THE NOTICE OF LIEN, OR THEREAFTER ACQUIRED, AND SHALL HAVE THE SAME PRIORITY AS A MECHANIC'S LIEN PURSUANT TO SECTION THIRTEEN OF THIS CHAPTER.

S 39-BB. ESTABLISHING A LIEN FOR WAGE CLAIMS. 1. TO ESTABLISH A LIEN FOR WAGE CLAIMS UNDER THIS ARTICLE, AN EMPLOYEE SHALL:

(A) PROVIDE AND SERVE WRITTEN NOTICE TO AN EMPLOYER IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN SECTIONS NINE AND ELEVEN OF THIS CHAPTER TO PROVIDE THE EMPLOYER WITH ADEQUATE NOTICE OF THE WAGES CLAIMED AND THE PROPERTY AGAINST WHICH THE LIEN FOR WAGE CLAIMS IS SOUGHT;

(B) SERVE WRITTEN NOTICE TO AN EMPLOYER AT ANY TIME DURING THE PROGRESS OF THE WORK, OR WITHIN SIX YEARS AFTER THE FINAL PERFORMANCE OF THE WORK, AND OTHERWISE IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN SECTION TEN OF THIS CHAPTER.

2. IF PAYMENT IS MADE FOR THE AMOUNT OF WAGE CLAIMS STATED IN THE NOTICE OF WAGE LIEN, THE RECORDED LIEN FOR THE WAGE CLAIMS SHALL BE RELEASED AS SET FORTH IN ARTICLE TWO OF THIS CHAPTER.

3. A LIEN FOR WAGE CLAIMS SHALL BE A LIEN FOR A PERIOD OF TEN YEARS AFTER THE EMPLOYEE HAS FILED THE NOTICE OF LIEN, UNLESS WITHIN THAT TIME AN ACTION IS COMMENCED TO FORECLOSE THE LIEN, AND A NOTICE OF THE PENDENCY OF SUCH ACTION IS FILED. NOTWITHSTANDING THIS PROVISION, A LIEN FOR WAGE CLAIMS SHALL HAVE THE SAME FORCE AND EFFECT OF A LIEN PURSUANT TO ARTICLE TWO OF THIS CHAPTER.

S 39-CC. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON REAL PROPERTY. 1. A LIEN FOR WAGE CLAIMS ON REAL PROPERTY MAY BE ENFORCED IN NEW YORK SUPREME COURT, COUNTY COURT, OR IN A COURT WITH JURISDICTION IN AN ACTION FOUNDED ON A CONTRACT FOR A SUM OF MONEY EQUIVALENT TO THE AMOUNT OF SUCH DEBT, IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN SECTION FORTY-ONE OF THIS CHAPTER. IF THE CONTRACT BETWEEN EMPLOYER AND EMPLOYEE VIOLATES THE MINIMUM PROTECTIONS OF THE LABOR LAW, THE NOTICE OF LIEN

MAY STATE THE LEGAL VALUE OF THE LABOR PERFORMED, AND A COURT MAY LATER DETERMINE UPON TRIAL A HIGHER VALUE THAN THAT STATED BY CLAIMANT.

2. THE EMPLOYEE OR PERSON WHO FILES A WAGE LIEN WHO RECOVERS ANY WAGES, DAMAGES, AND PENALTIES PURSUANT TO SUCH LIEN SHALL BE ENTITLED TO ALSO RECOVER REASONABLE ATTORNEY'S FEES AND COSTS EXPENDED IN ANY ACTION OR PROCEEDING TO FILE AND ENFORCE THE WAGE LIEN.

3. WHERE IN ANY ACTION OR PROCEEDING TO ENFORCE A WAGE LIEN THE COURT SHALL HAVE DECLARED SAID LIEN TO BE VOID ON ACCOUNT OF WILLFUL EXAGGERATION BY THE PERSON FILING SUCH NOTICE OF LIEN, THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY'S FEES TO THE EMPLOYER.

4. ANY NUMBER OF ACTIONS OR PROCEEDINGS TO ENFORCE WAGE LIENS AGAINST THE SAME EMPLOYER MAY BE JOINED IN A SINGLE PROCEEDING UPON THE COURT'S OWN MOTION OR UPON THE APPLICATION OF ANY PARTY.

S 39-DD. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON PERSONAL PROPERTY. A LIEN FOR WAGE CLAIMS ON PERSONAL PROPERTY MAY BE ENFORCED IN THE SAME MANNER AS IS REQUIRED TO PERFECT A SECURITY INTEREST UNDER PARAGRAPH TWO OF SUBSECTION (A) OF SECTION 9-501 ET SEQ. OF THE UNIFORM COMMERCIAL CODE. SUCH NOTICE OF LIEN SHALL BE MADE TO THE SECRETARY OF STATE IN WRITING, SPECIFYING THE PERSON AGAINST WHOM THE CLAIM IS MADE, THE AMOUNT OF THE SAME AND A DESCRIPTION OF THE PROPERTY UPON WHICH THE LIEN IS CLAIMED. THE SALE OF THE PROPERTY MAY BE ENFORCED UNDER SECTION TWO HUNDRED OF THIS CHAPTER. SUCH INTEREST SHALL TERMINATE IN FIVE YEARS IN ACCORDANCE WITH SECTION 9-515 OF THE UNIFORM COMMERCIAL CODE.

S 39-EE. REGULATIONS. THE COMMISSIONER OF THE DEPARTMENT OF LABOR MAY SEEK TO ESTABLISH A LIEN FOR WAGE CLAIMS ON BEHALF OF AN EMPLOYEE AND ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

S 39-FF. RIGHTS. THIS ARTICLE MAY NOT BE CONSTRUED TO PREVENT AN EMPLOYEE FROM EXERCISING ANY RIGHT OR SEEKING ANY REMEDY TO WHICH THE EMPLOYEE MAY OTHERWISE BE ENTITLED.

S 39-GG. FORCE AND EFFECT. A WAGE LIEN SHALL HAVE THE SAME FORCE AND EFFECT AS A MECHANIC'S LIEN PURSUANT TO SUBDIVISION ONE OF SECTION THIRTEEN OF THIS CHAPTER, AND SHALL HAVE PRIORITY OVER A CONVEYANCE, MORTGAGE, JUDGMENT, OR OTHER CLAIM AGAINST SUCH PROPERTY NOT RECORDED, DOCKETED, OR FILED AT THE TIME OF THE FILING OF THE NOTICE OF THE LIEN.

S 39-HH. OPERATION. WHERE APPLICABLE, THE OPERATION OF THIS ARTICLE MAY BE CONSTRUED WITH REFERENCE TO THE REQUIREMENTS SET FORTH IN ARTICLE TWO OF THIS CHAPTER.

S 3. Subdivision 5 of section 6201 of the civil practice law and rules, as amended by chapter 860 of the laws of 1977 and as renumbered by chapter 618 of the laws of 1992, is amended and a new subdivision 6 is added to read as follows:

5. the cause of action is based on a judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or on a judgment which qualifies for recognition under the provisions of article 53[.] OF THIS CHAPTER; OR

6. THE CAUSE OF ACTION IS BASED ON WAGE CLAIMS. "WAGE CLAIMS," WHEN USED IN THIS CHAPTER, SHALL INCLUDE ANY CLAIMS OF VIOLATIONS OF ARTICLES FIVE, SIX, AND NINETEEN OF THE LABOR LAW, SECTION TWO HUNDRED FIFTEEN OF THE LABOR LAW, AND THE RELATED REGULATIONS OR WAGE ORDERS PROMULGATED BY THE COMMISSIONER OF LABOR, INCLUDING BUT NOT LIMITED TO ANY CLAIMS OF UNPAID, MINIMUM, OVERTIME, AND SPREAD-OF-HOURS PAY, UNLAWFULLY RETAINED GRATUITIES, UNLAWFUL DEDUCTIONS FROM WAGES, UNPAID COMMISSIONS, UNPAID BENEFITS AND WAGE SUPPLEMENTS, AND RETALIATION, AND ANY CLAIMS PURSUANT TO 18 U.S.C. S 1595, 29 U.S.C. S 201 ET SEQ., AND/OR EMPLOYMENT CONTRACT AS WELL AS THE CONCOMITANT LIQUIDATED DAMAGES AND PENALTIES AUTHORIZED

PURSUANT TO THE LABOR LAW, THE FAIR LABOR STANDARDS ACT, OR ANY EMPLOYMENT CONTRACT.

S 4. Section 6210 of the civil practice law and rules, as added by chapter 860 of the laws of 1977, is amended to read as follows:

S 6210. Order of attachment on notice; temporary restraining order; contents. Upon a motion on notice for an order of attachment, the court may, without notice to the defendant, grant a temporary restraining order prohibiting the transfer of assets by a garnishee as provided in subdivision (b) of section 6214. WHEN ATTACHMENT IS SOUGHT PURSUANT TO SUBDIVISION SIX OF SECTION 6201, AND IF THE EMPLOYER CONTESTS THE MOTION, THE COURT SHALL HOLD A HEARING WITHIN TEN DAYS OF WHEN THE EMPLOYER'S RESPONSE TO PLAINTIFFS' MOTION FOR ATTACHMENT IS DUE. The contents of the order of attachment granted pursuant to this section shall be as provided in subdivision (a) of section 6211.

S 5. Subdivision (b) of section 6211 of the civil practice law and rules, as amended by chapter 566 of the laws of 1985, is amended to read as follows:

(b) Confirmation of order. Except where an order of attachment is granted on the ground specified in [subdivision] SUBDIVISIONS one AND SIX of section 6201, an order of attachment granted without notice shall provide that within a period not to exceed five days after levy, the plaintiff shall move, on such notice as the court shall direct to the defendant, the garnishee, if any, and the sheriff, for an order confirming the order of attachment. Where an order of attachment without notice is granted on the ground specified in [subdivision] SUBDIVISIONS one AND SIX of section 6201, the court shall direct that the statement required by section 6219 be served within five days, that a copy thereof be served upon the plaintiff, and the plaintiff shall move within ten days after levy for an order confirming the order of attachment. If the plaintiff upon such motion shall show that the statement has not been served and that the plaintiff will be unable to satisfy the requirement of subdivision (b) of section 6223 until the statement has been served, the court may grant one extension of the time to move for confirmation for a period not to exceed ten days. If plaintiff fails to make such motion within the required period, the order of attachment and any levy thereunder shall have no further effect and shall be vacated upon motion. Upon the motion to confirm, the provisions of subdivision (b) of section 6223 shall apply. An order of attachment granted without notice may provide that the sheriff refrain from taking any property levied upon into his actual custody, pending further order of the court.

S 6. Rule 6212 of the civil practice law and rules, as amended by chapter 860 of the laws of 1977, subdivision (b) as separately amended by chapters 15 and 860 of the laws of 1977, is amended to read as follows:

Rule 6212. Motion papers; undertaking; filing; demand; damages. (a) Affidavit; other papers. On a motion for an order of attachment, or for an order to confirm an order of attachment, the plaintiff shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action, that it is probable that the plaintiff will succeed on the merits, that one or more grounds for attachment provided in section 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff. WHEN ATTACHMENT IS SOUGHT PURSUANT TO SUBDIVISION SIX OF SECTION 6201, ONCE THE PLAINTIFF HAS MADE THE INITIAL SHOWING, THE COURT SHALL GRANT AN ATTACHMENT UNLESS THE DEFENDANT CAN SHOW THAT AN ATTACHMENT WOULD BE UNJUST.

(b) Undertaking. [On] 1. EXCEPT WHERE AN ORDER OF ATTACHMENT IS SOUGHT ON THE GROUND SPECIFIED IN SUBDIVISION SIX OF SECTION 6201, ON a motion for an order of attachment, the plaintiff shall give an undertaking, in a total amount fixed by the court, but not less than five hundred dollars, a specified part thereof conditioned that the plaintiff shall pay to the defendant all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property, and the balance conditioned that the plaintiff shall pay to the sheriff all of his allowable fees.

2. ON A MOTION FOR AN ATTACHMENT PURSUANT TO SUBDIVISION SIX OF SECTION 6201, THE COURT SHALL ORDER THAT THE PLAINTIFF GIVE AN ACCESSIBLE UNDERTAKING OF NO MORE THAN FIVE HUNDRED DOLLARS, OR IN THE ALTERNATIVE, MAY WAIVE THE UNDERTAKING ALTOGETHER. The attorney for the plaintiff shall not be liable to the sheriff for such fees. The surety on the undertaking shall not be discharged except upon notice to the sheriff.

(c) Filing. Within ten days after the granting of an order of attachment, the plaintiff shall file it and the affidavit and other papers upon which it was based and the summons and complaint in the action. Unless the time for filing has been extended, the order shall be invalid if not so filed, except that a person upon whom it is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity.

(d) Demand for papers. At any time after property has been levied upon, the defendant may serve upon the plaintiff a written demand that the papers upon which the order of attachment was granted and the levy made be served upon him. Not more than one day after service of the demand, the plaintiff shall cause the papers demanded to be served at the address specified in the demand. A demand under this subdivision shall not of itself constitute an appearance in the action.

(e) Damages. [The] EXCEPT WHERE AN ORDER OF ATTACHMENT IS SOUGHT ON THE GROUND SPECIFIED IN SUBDIVISION SIX OF SECTION 6201, THE plaintiff shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment, or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property. Plaintiff's liability shall not be limited by the amount of the undertaking.

S 7. Section 6223 of the civil practice law and rules, as amended by chapter 860 of the laws of 1977, is amended to read as follows:

S 6223. Vacating or modifying attachment. (a) Motion to vacate or modify. Prior to the application of property or debt to the satisfaction of a judgment, the defendant, the garnishee or any person having an interest in the property or debt may move, on notice to each party and the sheriff, for an order vacating or modifying the order of attachment. Upon the motion, the court may give the plaintiff a reasonable opportunity to correct any defect. [If] EXCEPT AS PROVIDED UNDER SUBDIVISION (B), IF, after the defendant has appeared in the action, the court determines that the attachment is unnecessary to the security of the plaintiff, it shall vacate the order of attachment. Such a motion shall not of itself constitute an appearance in the action.

(b) Burden of proof. [Upon] EXCEPT WHERE AN ORDER OF ATTACHMENT IS GRANTED PURSUANT TO SUBDIVISION SIX OF SECTION 6201, UPON a motion to vacate or modify an order of attachment the plaintiff shall have the burden of establishing the grounds for the attachment, the need for

continuing the levy and the probability that he will succeed on the merits. UPON A MOTION TO VACATE OR MODIFY AN ORDER OF ATTACHMENT GRANTED PURSUANT TO SUBDIVISION SIX OF SECTION 6201, THE DEFENDANT SHALL HAVE THE BURDEN TO DEMONSTRATE EXTRAORDINARY CIRCUMSTANCES IN ORDER TO VACATE OR MODIFY THE ATTACHMENT ORDER.

S 8. Paragraph (b) of section 624 of the business corporation law, as amended by chapter 449 of the laws of 1997, is amended to read as follows:

(b) Any person who shall have been a shareholder of record of a corporation, OR WHO IS OR SHALL HAVE BEEN A LABORER, SERVANT OR EMPLOYEE OTHER THAN A CONTRACTOR, upon at least five days' written demand shall have the right to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its shareholders and record of shareholders and to make extracts therefrom for any purpose reasonably related to such person's interest as a shareholder, LABORER, SERVANT OR EMPLOYEE. Holders of voting trust certificates representing shares of the corporation shall be regarded as shareholders for the purpose of this section. Any such agent or attorney shall be authorized in a writing that satisfies the requirements of a writing under paragraph (b) of section 609 OF THIS ARTICLE (Proxies). A corporation requested to provide information pursuant to this paragraph shall make available such information in written form and in any other format in which such information is maintained by the corporation and shall not be required to provide such information in any other format. If a request made pursuant to this paragraph includes a request to furnish information regarding beneficial owners, the corporation shall make available such information in its possession regarding beneficial owners as is provided to the corporation by a registered broker or dealer or a bank, association or other entity that exercises fiduciary powers in connection with the forwarding of information to such owners. The corporation shall not be required to obtain information about beneficial owners not in its possession.

S 9. Section 630 of the business corporation law, paragraph (a) as amended by chapter 212 of the laws of 1984, paragraph (c) as amended by chapter 746 of the laws of 1963, is amended to read as follows:

S 630. Liability of shareholders for wages due to laborers, servants or employees.

(a) The ten largest shareholders, as determined by the fair value of their beneficial interest as of the beginning of the period during which the unpaid services referred to in this section are performed, of every corporation (other than an investment company registered as such under an act of congress entitled "Investment Company Act of 1940"), 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, shall jointly and severally be personally liable for all debts, wages or salaries due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. [Before such laborer, servant or employee shall charge such shareholder for such services, he shall give notice in writing to such shareholder that he intends to hold him liable under this section. Such notice shall be given within one hundred and eighty days after termination of such services, except that if, within such period, the laborer, servant or employee demands an examination of the record of shareholders under paragraph (b) of section 624 (Books and records; right of inspection, prima facie evidence), such notice may be given within sixty days after he has been given the oppor-

tunity to examine the record of shareholders. An action to enforce such liability shall be commenced within ninety days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for such services.]

(b) For the purposes of this section, wages or salaries shall mean all compensation and benefits payable by an employer to or for the account of the employee for personal services rendered by such employee INCLUDING ANY CONCOMITANT LIQUIDATED DAMAGES, PENALTIES, INTEREST, ATTORNEY'S FEES OR COSTS. These shall specifically include but not be limited to salaries, overtime, vacation, holiday and severance pay; employer contributions to or payments of insurance or welfare benefits; employer contributions to pension or annuity funds; and any other moneys properly due or payable for services rendered by such employee.

(c) A shareholder who has paid more than his pro rata share under this section shall be entitled to contribution pro rata from the other shareholders liable under this section with respect to the excess so paid, over and above his pro rata share, and may sue them jointly or severally or any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this paragraph, "pro rata" means in proportion to beneficial share interest. Before a shareholder may claim contribution from other shareholders under this paragraph, he shall[, unless they have been given notice by a laborer, servant or employee under paragraph (a),] give them notice in writing that he intends to hold them so liable to him. [Such notice shall be given by him within twenty days after the date that notice was given to him by a laborer, servant or employee under paragraph (a).]

S 10. Section 609 of the limited liability company law is amended by adding two new subdivisions (c) and (d) to read as follows:

(C) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, THE TEN MEMBERS WITH THE LARGEST PERCENTAGE OWNERSHIP INTEREST, AS DETERMINED DURING THE TIME WHICH THE UNPAID SERVICES REFERRED TO IN THIS SECTION ARE PERFORMED, OF EVERY LIMITED LIABILITY COMPANY, SHALL JOINTLY AND SEVERALLY BE PERSONALLY LIABLE FOR ALL DEBTS, WAGES OR SALARIES DUE AND OWING TO ANY OF ITS LABORERS, SERVANTS OR EMPLOYEES OTHER THAN CONTRACTORS, FOR SERVICES PERFORMED BY THEM FOR SUCH COMPANY. A MEMBER WHO HAS PAID MORE THAN HIS PRO RATA SHARE UNDER THIS SECTION SHALL BE ENTITLED TO CONTRIBUTION PRO RATA FROM THE OTHER MEMBERS LIABLE UNDER THIS SECTION WITH RESPECT TO THE EXCESS SO PAID, OVER AND ABOVE HIS PRO RATA SHARE, AND MAY SUE THEM JOINTLY OR SEVERALLY OR ANY NUMBER OF THEM TO RECOVER THE AMOUNT DUE FROM THEM. SUCH RECOVERY MAY BE HAD IN A SEPARATE ACTION. AS USED IN THIS PARAGRAPH, "PRO RATA" MEANS IN PROPORTION TO PERCENTAGE OWNERSHIP INTEREST. BEFORE A MEMBER MAY CLAIM CONTRIBUTION FROM OTHER MEMBERS UNDER THIS SECTION, HE SHALL GIVE THEM NOTICE IN WRITING THAT HE INTENDS TO HOLD THEM SO LIABLE TO HIM.

(D) FOR THE PURPOSES OF THIS SECTION, WAGES OR SALARIES SHALL MEAN ALL COMPENSATION AND BENEFITS PAYABLE BY AN EMPLOYER TO OR FOR THE ACCOUNT OF THE EMPLOYEE FOR PERSONAL SERVICES RENDERED BY SUCH EMPLOYEE. THESE SHALL SPECIFICALLY INCLUDE BUT NOT BE LIMITED TO SALARIES, OVERTIME, VACATION, HOLIDAY AND SEVERANCE PAY; EMPLOYER CONTRIBUTIONS TO OR PAYMENTS OF INSURANCE OR WELFARE BENEFITS; EMPLOYER CONTRIBUTIONS TO PENSION OR ANNUITY FUNDS; AND ANY OTHER MONEYS PROPERLY DUE OR PAYABLE FOR SERVICES RENDERED BY SUCH EMPLOYEE, INCLUDING ANY CONCOMITANT LIQUIDATED DAMAGES, PENALTIES, INTEREST, ATTORNEYS' FEES OR COSTS.

S 11. Section 1102 of the limited liability company law is amended by adding a new subdivision (e) to read as follows:

(E) ANY PERSON WHO IS OR SHALL HAVE BEEN A LABORER, SERVANT OR EMPLOYEE OF A LIMITED LIABILITY COMPANY OTHER THAN A CONTRACTOR, UPON AT LEAST FIVE DAYS' WRITTEN DEMAND SHALL HAVE THE RIGHT TO EXAMINE IN PERSON OR BY AGENT OR ATTORNEY, DURING USUAL BUSINESS HOURS, RECORDS DESCRIBED IN PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION THROUGHOUT THE PERIOD OF TIME DURING WHICH SUCH LABORER, SERVANT OR EMPLOYEE PROVIDED SERVICES TO SUCH COMPANY. A COMPANY REQUESTED TO PROVIDE INFORMATION PURSUANT TO THIS PARAGRAPH SHALL MAKE AVAILABLE SUCH RECORDS IN WRITTEN FORM AND IN ANY OTHER FORMAT IN WHICH SUCH INFORMATION IS MAINTAINED BY THE COMPANY AND SHALL NOT BE REQUIRED TO PROVIDE SUCH INFORMATION IN ANY OTHER FORMAT. UPON REFUSAL BY THE COMPANY OR BY AN OFFICER OR AGENT OF THE COMPANY TO PERMIT AN INSPECTION OF THE RECORDS DESCRIBED IN THIS PARAGRAPH, THE PERSON MAKING THE DEMAND FOR INSPECTION MAY APPLY TO THE SUPREME COURT IN THE JUDICIAL DISTRICT WHERE THE OFFICE OF THE COMPANY IS LOCATED, UPON SUCH NOTICE AS THE COURT MAY DIRECT, FOR AN ORDER DIRECTING THE COMPANY, ITS MEMBERS OR MANAGERS TO SHOW CAUSE WHY AN ORDER SHOULD NOT BE GRANTED PERMITTING SUCH INSPECTION BY THE APPLICANT. UPON THE RETURN DAY OF THE ORDER TO SHOW CAUSE, THE COURT SHALL HEAR THE PARTIES SUMMARILY, BY AFFIDAVIT OR OTHERWISE, AND IF IT APPEARS THAT THE APPLICANT IS QUALIFIED AND ENTITLED TO SUCH INSPECTION, THE COURT SHALL GRANT AN ORDER COMPELLING SUCH INSPECTION AND AWARDING SUCH FURTHER RELIEF AS TO THE COURT MAY SEEM JUST AND PROPER. IF THE APPLICANT IS FOUND TO BE QUALIFIED AND ENTITLED TO SUCH INSPECTION, THE COMPANY SHALL PAY ALL REASONABLE ATTORNEY'S FEES AND COSTS OF SAID APPLICANT RELATED TO THE DEMAND FOR INSPECTION OF THE RECORDS.

S 12. This act shall take effect on the thirtieth day after it shall have become a law.