

6658

I N S E N A T E

February 24, 2014

Introduced by Sens. PERALTA, HOYLMAN -- read twice and ordered printed,
and when printed to be committed 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:

- 1 Section 1. Section 2 of the lien law is amended by adding four new
2 subdivisions 21, 22, 23, and 24 to read as follows:
3 21. WAGE CLAIMS. THE TERM "WAGE CLAIMS," WHEN USED IN THIS CHAPTER,
4 SHALL INCLUDE ANY CLAIMS OF VIOLATIONS UNDER ARTICLES FIVE, SIX, AND
5 NINETEEN OF THE LABOR LAW, AND THE RELATED REGULATIONS OR WAGE ORDERS
6 PROMULGATED BY THE COMMISSIONER OF LABOR, INCLUDING BUT NOT LIMITED TO
7 ANY CLAIMS OF UNPAID, MINIMUM, OVERTIME, AND SPREAD-OF-HOURS PAY, UNLAW-
8 FULLY RETAINED GRATUITIES, UNLAWFUL DEDUCTIONS FROM WAGES, UNPAID
9 COMMISSIONS, AND UNPAID BENEFITS AND WAGE SUPPLEMENTS, AND ANY CLAIMS
10 PURSUANT TO 18 U.S.C. S 1595, 29 U.S.C. S 206, 29 U.S.C. S 207, AND/OR
11 ANY EMPLOYMENT CONTRACT, AS WELL AS THE CONCOMITANT LIQUIDATED DAMAGES
12 AND PENALTIES AUTHORIZED PURSUANT TO THE LABOR LAW, THE FAIR LABOR STAN-
13 DARDS ACT, OR ANY EMPLOYMENT CONTRACT.
14 22. EMPLOYER. THE TERM "EMPLOYER," WHEN USED IN ARTICLE TWO-A OF THIS
15 CHAPTER, SHALL HAVE THE SAME MEANING AS "EMPLOYER" PURSUANT TO THE LABOR
16 LAW OR THE FAIR LABOR STANDARDS ACT, AS APPLICABLE.
17 23. EMPLOYEE. THE TERM "EMPLOYEE," WHEN USED IN ARTICLE TWO-A OF THIS
18 CHAPTER, SHALL HAVE THE SAME MEANING AS "EMPLOYEE" PURSUANT TO THE LABOR
19 LAW OR THE FAIR LABOR STANDARDS ACT, AS APPLICABLE.
20 24. PERSONAL PROPERTY. THE TERM "PERSONAL PROPERTY," WHEN USED IN
21 ARTICLE TWO-A OF THIS CHAPTER, SHALL HAVE THE SAME MEANING AS "PERSONAL

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

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1 PROPERTY" PURSUANT TO SECTION THIRTY-NINE OF THE GENERAL CONSTRUCTION
2 LAW, EXCEPT WHERE EXEMPT BY FEDERAL LAW.

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

5 ARTICLE 2-A
6 WAGE LIEN

- 7 SECTION 39-AA. WAGE LIEN.
- 8 39-BB. ESTABLISHING A LIEN FOR WAGE CLAIMS.
- 9 39-CC. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON REAL PROPERTY.
- 10 39-DD. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON PERSONAL PROPER-
- 11 TY.
- 12 39-EE. REGULATIONS.
- 13 39-FF. RIGHTS.
- 14 39-GG. FORCE AND EFFECT.
- 15 39-HH. OPERATION.

16 S 39-AA. WAGE LIEN. AN EMPLOYEE OR THE COMMISSIONER OF LABOR SHALL BE
17 ENTITLED TO A LIEN UPON ALL PROPERTY OF THE EMPLOYER, REAL OR PERSONAL,
18 LOCATED IN THIS STATE FOR THE FULL AMOUNT OF THE WAGE CLAIMS, INCLUDING
19 THE PENALTIES AUTHORIZED PURSUANT TO THE LABOR LAW, THE FAIR LABOR STAN-
20 DARDS ACT, OR THE CONTRACT IN ISSUE. SUCH LIEN SHALL EXTEND TO THE
21 EMPLOYER-OWNER'S RIGHT, TITLE OR INTEREST IN THE REAL AND PERSONAL PROP-
22 erty, existing at the time of filing the notice of lien, or thereafter
23 acquired, and shall have the same priority as a mechanic's lien pursuant
24 to section thirteen of this chapter.

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

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

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

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

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

44 S 39-CC. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON REAL PROPERTY. 1. A
45 LIEN FOR WAGE CLAIMS ON REAL PROPERTY MAY BE ENFORCED IN NEW YORK
46 SUPREME COURT, COUNTY COURT, OR IN A COURT WITH JURISDICTION IN AN
47 ACTION FOUNDED ON A CONTRACT FOR A SUM OF MONEY EQUIVALENT TO THE AMOUNT
48 OF SUCH DEBT, IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN SECTION
49 FORTY-ONE OF THIS CHAPTER. IF THE CONTRACT BETWEEN EMPLOYER AND EMPLOYEE
50 VIOLATES THE MINIMUM PROTECTIONS OF THE LABOR LAW, THE NOTICE OF LIEN
51 MAY STATE THE LEGAL VALUE OF THE LABOR PERFORMED, AND A COURT MAY LATER
52 DETERMINE UPON TRIAL A HIGHER VALUE THAN THAT STATED BY CLAIMANT.

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

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

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

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

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

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

24 S 39-GG. FORCE AND EFFECT. A WAGE LIEN SHALL HAVE THE SAME FORCE AND
25 EFFECT AS A MECHANIC'S LIEN PURSUANT TO SUBDIVISION ONE OF SECTION THIR-
26 TEEN OF THIS CHAPTER, AND SHALL HAVE PRIORITY OVER A CONVEYANCE, MORT-
27 GAGE, JUDGMENT, OR OTHER CLAIM AGAINST SUCH PROPERTY NOT RECORDED, DOCK-
28 ETED, OR FILED AT THE TIME OF THE FILING OF THE NOTICE OF THE LIEN.

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

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

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

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

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

55 S 6210. Order of attachment on notice; temporary restraining order;
56 contents. Upon a motion on notice for an order of attachment, the court

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

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

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

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

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

50 (b) Undertaking. [On] 1. EXCEPT WHERE AN ORDER OF ATTACHMENT IS SOUGHT
51 ON THE GROUND SPECIFIED IN SUBDIVISION SIX OF SECTION 6201, ON a motion
52 for an order of attachment, the plaintiff shall give an undertaking, in
53 a total amount fixed by the court, but not less than five hundred
54 dollars, a specified part thereof conditioned that the plaintiff shall
55 pay to the defendant all costs and damages, including reasonable attor-
56 ney's fees, which may be sustained by reason of the attachment if the

1 defendant recovers judgment or if it is finally decided that the plain-
2 tiff was not entitled to an attachment of the defendant's property, and
3 the balance conditioned that the plaintiff shall pay to the sheriff all
4 of his allowable fees.

5 2. ON A MOTION FOR AN ATTACHMENT PURSUANT TO SUBDIVISION SIX OF
6 SECTION 6201, THE COURT SHALL ORDER THAT THE PLAINTIFF GIVE AN ACCESSI-
7 BLE UNDERTAKING OF NO MORE THAN FIVE HUNDRED DOLLARS, OR IN THE ALTERNA-
8 TIVE, MAY WAIVE THE UNDERTAKING ALTOGETHER. The attorney for the plain-
9 tiff shall not be liable to the sheriff for such fees. The surety on the
10 undertaking shall not be discharged except upon notice to the sheriff.

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

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

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

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

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

46 (b) Burden of proof. [Upon] EXCEPT WHERE AN ORDER OF ATTACHMENT IS
47 GRANTED PURSUANT TO SUBDIVISION SIX OF SECTION 6201, UPON a motion to
48 vacate or modify an order of attachment the plaintiff shall have the
49 burden of establishing the grounds for the attachment, the need for
50 continuing the levy and the probability that he will succeed on the
51 merits. UPON A MOTION TO VACATE OR MODIFY AN ORDER OF ATTACHMENT GRANTED
52 PURSUANT TO SUBDIVISION SIX OF SECTION 6201, THE DEFENDANT SHALL HAVE
53 THE BURDEN TO DEMONSTRATE EXTRAORDINARY CIRCUMSTANCES IN ORDER TO VACATE
54 OR MODIFY THE ATTACHMENT ORDER.

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

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

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

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

33 (a) The ten largest shareholders, as determined by the fair value of
34 their beneficial interest as of the beginning of the period during which
35 the unpaid services referred to in this section are performed, of every
36 corporation (other than an investment company registered as such under
37 an act of congress entitled "Investment Company Act of 1940"), no shares
38 of which are listed on a national securities exchange or regularly quot-
39 ed in an over-the-counter market by one or more members of a national or
40 an affiliated securities association, shall jointly and severally be
41 personally liable for all debts, wages or salaries due and owing to any
42 of its laborers, servants or employees other than contractors, for
43 services performed by them for such corporation. [Before such laborer,
44 servant or employee shall charge such shareholder for such services, he
45 shall give notice in writing to such shareholder that he intends to hold
46 him liable under this section. Such notice shall be given within one
47 hundred and eighty days after termination of such services, except that
48 if, within such period, the laborer, servant or employee demands an
49 examination of the record of shareholders under paragraph (b) of section
50 624 (Books and records; right of inspection, prima facie evidence), such
51 notice may be given within sixty days after he has been given the oppor-
52 tunity to examine the record of shareholders. An action to enforce such
53 liability shall be commenced within ninety days after the return of an
54 execution unsatisfied against the corporation upon a judgment recovered
55 against it for such services.]

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

10 (c) A shareholder who has paid more than his pro rata share under this
11 section shall be entitled to contribution pro rata from the other share-
12 holders liable under this section with respect to the excess so paid,
13 over and above his pro rata share, and may sue them jointly or severally
14 or any number of them to recover the amount due from them. Such recov-
15 ery may be had in a separate action. As used in this paragraph, "pro
16 rata" means in proportion to beneficial share interest. Before a share-
17 holder may claim contribution from other shareholders under this para-
18 graph, he shall[, unless they have been given notice by a laborer, serv-
19 ant or employee under paragraph (a),] give them notice in writing that
20 he intends to hold them so liable to him. [Such notice shall be given by
21 him within twenty days after the date that notice was given to him by a
22 laborer, servant or employee under paragraph (a).]

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

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

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

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

52 (E) ANY PERSON WHO IS OR SHALL HAVE BEEN A LABORER, SERVANT OR EMPLOY-
53 EE OF A LIMITED LIABILITY COMPANY OTHER THAN A CONTRACTOR, UPON AT LEAST
54 FIVE DAYS' WRITTEN DEMAND SHALL HAVE THE RIGHT TO EXAMINE IN PERSON OR
55 BY AGENT OR ATTORNEY, DURING USUAL BUSINESS HOURS, RECORDS DESCRIBED IN
56 PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION THROUGHOUT THE PERIOD

1 OF TIME DURING WHICH SUCH LABORER, SERVANT OR EMPLOYEE PROVIDED SERVICES
2 TO SUCH COMPANY. A COMPANY REQUESTED TO PROVIDE INFORMATION PURSUANT TO
3 THIS PARAGRAPH SHALL MAKE AVAILABLE SUCH RECORDS IN WRITTEN FORM AND IN
4 ANY OTHER FORMAT IN WHICH SUCH INFORMATION IS MAINTAINED BY THE COMPANY
5 AND SHALL NOT BE REQUIRED TO PROVIDE SUCH INFORMATION IN ANY OTHER
6 FORMAT. UPON REFUSAL BY THE COMPANY OR BY AN OFFICER OR AGENT OF THE
7 COMPANY TO PERMIT AN INSPECTION OF THE RECORDS DESCRIBED IN THIS PARA-
8 GRAPH, THE PERSON MAKING THE DEMAND FOR INSPECTION MAY APPLY TO THE
9 SUPREME COURT IN THE JUDICIAL DISTRICT WHERE THE OFFICE OF THE COMPANY
10 IS LOCATED, UPON SUCH NOTICE AS THE COURT MAY DIRECT, FOR AN ORDER
11 DIRECTING THE COMPANY, ITS MEMBERS OR MANAGERS TO SHOW CAUSE WHY AN
12 ORDER SHOULD NOT BE GRANTED PERMITTING SUCH INSPECTION BY THE APPLICANT.
13 UPON THE RETURN DAY OF THE ORDER TO SHOW CAUSE, THE COURT SHALL HEAR THE
14 PARTIES SUMMARILY, BY AFFIDAVIT OR OTHERWISE, AND IF IT APPEARS THAT THE
15 APPLICANT IS QUALIFIED AND ENTITLED TO SUCH INSPECTION, THE COURT SHALL
16 GRANT AN ORDER COMPELLING SUCH INSPECTION AND AWARDED SUCH FURTHER
17 RELIEF AS TO THE COURT MAY SEEM JUST AND PROPER. IF THE APPLICANT IS
18 FOUND TO BE QUALIFIED AND ENTITLED TO SUCH INSPECTION, THE COMPANY SHALL
19 PAY ALL REASONABLE ATTORNEY'S FEES AND COSTS OF SAID APPLICANT RELATED
20 TO THE DEMAND FOR INSPECTION OF THE RECORDS.

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