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

9175

I N A S S E M B L Y

February 1, 2016

Introduced by M. of A. STECK -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, in relation to the applicability of provisions relating to liability of shareholders for wages due to laborers, servants or employees for certain foreign corporations

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

Section 1. Paragraph (a) of section 630 of the business corporation law, as amended by a chapter of the laws of 2015, amending the business corporation law relating to the applicability of provisions relating to liability of shareholders for wages due to laborers, servants or employees for certain foreign corporations, as proposed in legislative bills numbers S.4476 and A.737, is amended to read as follows:

(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 domestic corporation [(other than an investment company registered as such under an act of congress entitled "Investment Company Act of 1940"),] or of any foreign corporation, when the unpaid services were performed in the state, 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) of this article, such notice

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

LBD04400-03-6

may be given within sixty days after he has been given the opportunity 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. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO AN INVESTMENT COMPANY REGISTERED AS SUCH UNDER AN ACT OF CONGRESS ENTITLED "INVESTMENT COMPANY ACT OF 1940."

S 2. Paragraph (a) of section 1319 of the business corporation law, as amended by chapter 684 of the laws of 1963, subparagraph 4 as amended by chapter 1007 of the laws of 1969, is amended to read as follows:

(a) In addition to articles 1 (Short title; definitions; application; certificates; miscellaneous) and 3 (Corporate name and service of process) and the other sections of article 13 (FOREIGN CORPORATIONS), the following provisions, to the extent provided therein, shall apply to a foreign corporation doing business in this state, its directors, officers and shareholders:

(1) Section 623 (Procedure to enforce shareholder's right to receive payment for shares).

(2) Section 626 (Shareholders' derivative action brought in the right of the corporation to procure a judgment in its favor).

(3) Section 627 (Security for expenses in shareholders' derivative action brought in the right of the corporation to procure a judgment in its favor).

(4) SECTION 630 (LIABILITY OF SHAREHOLDERS FOR WAGES DUE TO LABORERS, SERVANTS OR EMPLOYEES).

(5) Sections 721 ([Exclusivity] NONEXCLUSIVITY of statutory provisions for indemnification of directors and officers) through [727] 726 (Insurance for indemnification of directors and officers), inclusive.

[(5)] (6) Section 808 (Reorganization under act of congress).

[(6)] (7) Section 907 (Merger or consolidation of domestic and foreign corporations).

S 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2015, amending the business corporation law relating to the applicability of provisions relating to liability of shareholders for wages due to laborers, servants or employees for certain foreign corporations, as proposed in legislative bills numbers S.4476 and A.737, takes effect.