

2232--A

2015-2016 Regular Sessions

I N S E N A T E

January 22, 2015

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the lien law, in relation to employee liens; to amend the labor law, in relation to employee complaints; 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 three new
2 subdivisions 21, 22 and 23 to read as follows:
3 21. EMPLOYEE. THE TERM "EMPLOYEE", WHEN USED IN THIS CHAPTER, SHALL
4 HAVE THE SAME MEANING AS "EMPLOYEE" PURSUANT TO THE LABOR LAW OR THE
5 FAIR LABOR STANDARDS ACT, AS APPLICABLE.
6 22. EMPLOYER. THE TERM "EMPLOYER", WHEN USED IN THIS CHAPTER, SHALL
7 HAVE THE SAME MEANING AS "EMPLOYER" PURSUANT TO THE LABOR LAW OR THE
8 FAIR LABOR STANDARDS ACT, AS APPLICABLE.
9 23. WAGE CLAIM. THE TERM "WAGE CLAIM", WHEN USED IN THIS CHAPTER,
10 MEANS A CLAIM THAT AN EMPLOYEE HAS SUFFERED A VIOLATION OF SECTIONS ONE
11 HUNDRED SEVENTY, ONE HUNDRED NINETY-ONE, ONE HUNDRED NINETY-THREE, ONE
12 HUNDRED NINETY-SIX-D, SIX HUNDRED FIFTY-TWO OR SIX HUNDRED SEVENTY-THREE
13 OF THE LABOR LAW OR THE RELATED REGULATIONS AND WAGE ORDERS PROMULGATED
14 BY THE COMMISSIONER OF LABOR, A CLAIM FOR WAGES DUE TO AN EMPLOYEE
15 PURSUANT TO AN EMPLOYMENT CONTRACT THAT WERE UNPAID IN VIOLATION OF THAT

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

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1 CONTRACT, OR A CLAIM THAT AN EMPLOYEE HAS SUFFERED A VIOLATION OF 29
2 U.S.C. S 206.

3 S 2. Section 3 of the lien law, as amended by chapter 137 of the laws
4 of 1985, is amended to read as follows:

5 S 3. Mechanic's lien AND EMPLOYEE'S LIEN on [real] property. 1.
6 MECHANIC'S LIEN. A contractor, subcontractor, laborer, materialman,
7 landscape gardener, nurseryman or person or corporation selling fruit or
8 ornamental trees, roses, shrubbery, vines and small fruits, who performs
9 labor or furnishes materials for the improvement of real property with
10 the consent or at the request of the owner thereof, or of his agent,
11 contractor or subcontractor, and any trust fund to which benefits and
12 wage supplements are due or payable for the benefit of such laborers,
13 shall have a lien for the principal and interest, of the value, or the
14 agreed price, of such labor, including benefits and wage supplements due
15 or payable for the benefit of any laborer, or materials upon the real
16 property improved or to be improved and upon such improvement, from the
17 time of filing a notice of such lien as prescribed in this chapter.
18 Where the contract for an improvement is made with a husband or wife and
19 the property belongs to the other or both, the husband or wife contract-
20 ing shall also be presumed to be the agent of the other, unless such
21 other having knowledge of the improvement shall, within ten days after
22 learning of the contract give the contractor written notice of his or
23 her refusal to consent to the improvement. Within the meaning of the
24 provisions of this chapter, materials actually manufactured for but not
25 delivered to the real property, shall also be deemed to be materials
26 furnished.

27 2. EMPLOYEE'S LIEN. AN EMPLOYEE WHO HAS A WAGE CLAIM AS THAT TERM IS
28 DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION TWO OF THIS CHAPTER SHALL
29 HAVE A LIEN ON HIS EMPLOYER'S PROPERTY FOR THE VALUE OF THE WAGE CLAIM
30 ARISING OUT OF THE EMPLOYMENT, FROM THE TIME OF FILING A NOTICE OF SUCH
31 LIEN AS PRESCRIBED IN THIS CHAPTER. AN EMPLOYEE'S LIEN BASED ON A WAGE
32 CLAIM MAY BE HAD AGAINST THE EMPLOYER'S REAL PROPERTY AND AGAINST ANY OF
33 THE EMPLOYER'S PERSONAL PROPERTY THAT CAN BE SUFFICIENTLY DESCRIBED
34 WITHIN THE MEANING OF SECTION 9-108 OF THE UNIFORM COMMERCIAL CODE,
35 EXCEPT THAT AN EMPLOYEE'S LIEN SHALL NOT EXTEND TO ACCOUNTS OR GOODS AS
36 THOSE TERMS ARE DEFINED IN SECTION 9-102 OF THE UNIFORM COMMERCIAL CODE.

37 S 3. Subdivisions 1 and 2 of section 4 of the lien law, subdivision 1
38 as amended by chapter 515 of the laws of 1929 and subdivision 2 as added
39 by chapter 704 of the laws of 1985, are amended to read as follows:

40 (1) [Such] A MECHANIC'S OR EMPLOYEE'S lien AND EMPLOYEE'S LIEN AGAINST
41 REAL PROPERTY shall extend to the owner's right, title or interest in
42 the real property and improvements, existing at the time of filing the
43 notice of lien, or thereafter acquired, except as hereinafter in this
44 article provided. If an owner assigns his interest in such real property
45 by a general assignment for the benefit of creditors, within thirty days
46 prior to such filing, the lien shall extend to the interest thus
47 assigned. If any part of the real property subjected to such lien be
48 removed by the owner or by any other person, at any time before the
49 discharge thereof, such removal shall not affect the rights of the
50 lienor, either in respect to the remaining real property, or the part so
51 removed. If labor is performed for, or materials furnished to, a
52 contractor or subcontractor for an improvement, the MECHANIC'S lien
53 shall not be for a sum greater than the sum earned and unpaid on the
54 contract at the time of filing the notice of lien, and any sum subse-
55 quently earned thereon. In no case shall the owner be liable to pay by
56 reason of all MECHANIC'S liens created pursuant to this article a sum

greater than the value or agreed price of the labor and materials remaining unpaid, at the time of filing notices of such liens, except as hereinafter provided.

(2) [Such] A MECHANIC'S OR EMPLOYEE'S lien shall not extend to the owner's right, title or interest in real property and improvements, existing at the time of filing the notice of lien if such lien arises from the failure of a lessee of the right to explore, develop or produce natural gas or oil, to pay for, compensate or render value for improvements made with the consent or at the request of such lessee by a contractor, subcontractor, materialman, equipment operator or owner, landscaper, nurseryman, or person or corporation who performs labor or furnishes materials for the exploration, development, or production of oil or natural gas or otherwise improves such leased property. Such MECHANIC'S OR EMPLOYEE'S lien shall extend to the improvements made for the exploration, development and production of oil and natural gas, and the working interest held by a lessee of the right to explore, develop or produce oil and natural gas.

S 4. The opening paragraph of section 4-a of the lien law, as amended by chapter 696 of the laws of 1959, is amended to read as follows:

The proceeds of any insurance which by the terms of the policy are payable to the owner of real property improved, and actually received or to be received by him because of the destruction or removal by fire or other casualty of an improvement on which lienors have performed labor or services or for which they have furnished materials, OR UPON WHICH AN EMPLOYEE HAS ESTABLISHED AN EMPLOYEE'S LIEN, shall after the owner has been reimbursed therefrom for premiums paid by him, if any, for such insurance, be subject to liens provided by this act to the same extent and in the same order of priority as the real property would have been had such improvement not been so destroyed or removed.

S 5. Subdivisions 1, 2 and 5 of section 9 of the lien law, as amended by chapter 515 of the laws of 1929, are amended to read as follows:

1. The name OF THE LIENOR, and EITHER THE residence of the lienor OR THE NAME AND BUSINESS ADDRESS OF THE LIENOR'S ATTORNEY, IF ANY; and if the lienor is a partnership or a corporation, the business address of such firm, or corporation, the names of partners and principal place of business, and if a foreign corporation, its principal place of business within the state.

2. The name of the owner of the [real] property against whose interest therein a lien is claimed, and the interest of the owner as far as known to the lienor.

5. The amount unpaid to the lienor for such labor or materials, OR THE AMOUNT OF THE WAGE CLAIM IF A WAGE CLAIM IS THE BASIS FOR ESTABLISHMENT OF THE LIEN.

S 6. Subdivision 1 of section 10 of the lien law, as amended by chapter 367 of the laws of 2011, is amended to read as follows:

1. (A) Notice of MECHANIC'S lien may be filed at any time during the progress of the work and the furnishing of the materials, or, within eight months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished; provided, however, that where the improvement is related to real property improved or to be improved with a single family dwelling, the notice of MECHANIC'S lien may be filed at any time during the progress of the work and the furnishing of the materials, or, within four months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed

1 or materials furnished; and provided further where the notice of MECHAN-
2 IC'S lien is for retainage, the notice of MECHANIC'S lien may be filed
3 within ninety days after the date the retainage was due to be released;
4 except that in the case of a MECHANIC'S lien by a real estate broker,
5 the notice of MECHANIC'S lien may be filed only after the performance of
6 the brokerage services and execution of lease by both lessor and lessee
7 and only if a copy of the alleged written agreement of employment or
8 compensation is annexed to the notice of lien, provided that where the
9 payment pursuant to the written agreement of employment or compensation
10 is to be made in installments, then a notice of lien may be filed within
11 eight months after the final payment is due, but in no event later than
12 a date five years after the first payment was made. For purposes of this
13 section, the term "single family dwelling" shall not include a dwelling
14 unit which is a part of a subdivision that has been filed with a munici-
15 pality in which the subdivision is located when at the time the lien is
16 filed, such property in the subdivision is owned by the developer for
17 purposes other than his personal residence. For purposes of this
18 section, "developer" shall mean and include any private individual,
19 partnership, trust or corporation which improves two or more parcels of
20 real property with single family dwellings pursuant to a common scheme
21 or plan. [The]

22 (B) NOTICE OF EMPLOYEE'S LIEN MAY BE FILED AT ANY TIME NOT LATER THAN
23 SIX YEARS FOLLOWING THE END OF THE EMPLOYMENT GIVING RISE TO THE WAGE
24 CLAIM.

25 (C) A notice of lien, OTHER THAN FOR A LIEN ON PERSONAL PROPERTY, must
26 be filed in the clerk's office of the county where the property is situ-
27 ated. If such property is situated in two or more counties, the notice
28 of lien shall be filed in the office of the clerk of each of such coun-
29 ties. The county clerk of each county shall provide and keep a book to
30 be called the "lien docket," which shall be suitably ruled in columns
31 headed "owners," "lienors," "lienor's attorney," "property," "amount,"
32 "time of filing," "proceedings had," in each of which he shall enter the
33 particulars of the notice, properly belonging therein. The date, hour
34 and minute of the filing of each notice of lien shall be entered in the
35 proper column. Except where the county clerk maintains a block index,
36 the names of the owners shall be arranged in such book in alphabetical
37 order. The validity of the lien and the right to file a notice thereof
38 shall not be affected by the death of the owner before notice of the
39 lien is filed. A NOTICE OF EMPLOYEE'S LIEN ON PERSONAL PROPERTY MUST BE
40 FILED, TOGETHER WITH A FINANCING STATEMENT, IN THE FILING OFFICE AS SET
41 FORTH IN SECTION 9-501 OF THE UNIFORM COMMERCIAL CODE.

42 S 7. Section 11 of the lien law, as amended by chapter 147 of the laws
43 of 1996, is amended to read as follows:

44 S 11. Service of copy of notice of lien. 1. Within five days before
45 or thirty days after filing the notice of A MECHANIC'S lien, the lienor
46 shall serve a copy of such notice upon the owner, if a natural person,
47 (a) by delivering the same to him personally, or if the owner cannot be
48 found, to his agent or attorney, or (b) by leaving it at his last known
49 place of residence in the city or town in which the real property or
50 some part thereof is situated, with a person of suitable age and
51 discretion, or (c) by registered or certified mail addressed to his last
52 known place of residence, or (d) if such owner has no such residence in
53 such city or town, or cannot be found, and he has no agent or attorney,
54 by affixing a copy thereof conspicuously on such property, between the
55 hours of nine o'clock in the forenoon and four o'clock in the afternoon;
56 if the owner be a corporation, said service shall be made (i) by deliv-

1 ering such copy to and leaving the same with the president, vice-presi-
2 dent, secretary or clerk to the corporation, the cashier, treasurer or a
3 director or managing agent thereof, personally, within the state, or
4 (ii) if such officer cannot be found within the state by affixing a copy
5 thereof conspicuously on such property between the hours of nine o'clock
6 in the forenoon and four o'clock in the afternoon, or (iii) by regis-
7 tered or certified mail addressed to its last known place of business.
8 Failure to file proof of such a service with the county clerk within
9 thirty-five days after the notice of lien is filed shall terminate the
10 notice as a lien. Until service of the notice has been made, as above
11 provided, an owner, without knowledge of the lien, shall be protected in
12 any payment made in good faith to any contractor or other person claim-
13 ing a lien.

14 2. WITHIN FIVE DAYS BEFORE OR THIRTY DAYS AFTER FILING THE NOTICE OF
15 AN EMPLOYEE'S LIEN, THE LIENOR SHALL SERVE A COPY OF SUCH NOTICE UPON
16 THE EMPLOYER, IF A NATURAL PERSON, (A) BY DELIVERING THE SAME TO HIM
17 PERSONALLY, OR IF THE EMPLOYER CANNOT BE FOUND, TO HIS AGENT OR ATTOR-
18 NEY, OR (B) BY LEAVING IT AS HIS LAST KNOWN PLACE OF RESIDENCE OR BUSI-
19 NESS, WITH A PERSON OF SUITABLE AGE AND DISCRETION, OR (C) BY REGISTERED
20 OR CERTIFIED MAIL ADDRESSED TO HIS LAST KNOWN PLACE OF RESIDENCE OR
21 BUSINESS, OR (D) IF SUCH EMPLOYER OWNS REAL PROPERTY, BY AFFIXING A COPY
22 THEREOF CONSPICUOUSLY ON SUCH PROPERTY, BETWEEN THE HOURS OF NINE
23 O'CLOCK IN THE FORENOON AND FOUR O'CLOCK IN THE AFTERNOON; IF THE
24 EMPLOYER BE A CORPORATION, SAID SERVICE SHALL BE MADE (I) BY DELIVERING
25 SUCH COPY TO AND LEAVING THE SAME WITH THE PRESIDENT, VICE-PRESIDENT,
26 SECRETARY OR CLERK TO THE CORPORATION, THE CASHIER, TREASURER OR A
27 DIRECTOR OR MANAGING AGENT THEREOF, PERSONALLY, WITHIN THE STATE, OR
28 (II) IF SUCH OFFICER CANNOT BE FOUND WITHIN THE STATE BY AFFIXING A COPY
29 THEREOF CONSPICUOUSLY ON SUCH PROPERTY BETWEEN THE HOURS OF NINE O'CLOCK
30 IN THE FORENOON AND FOUR O'CLOCK IN THE AFTERNOON, OR (III) BY REGIS-
31 TERED OR CERTIFIED MAIL ADDRESSED TO ITS LAST KNOWN PLACE OF BUSINESS,
32 OR (IV) BY DELIVERY TO THE SECRETARY OF THE DEPARTMENT OF STATE IN THE
33 SAME MANNER AS REQUIRED BY PARAGRAPH ONE OF SUBDIVISION (B) OF SECTION
34 306 OF THE BUSINESS CORPORATION LAW. FAILURE TO FILE PROOF OF SUCH A
35 SERVICE WITH THE COUNTY CLERK WITHIN THIRTY-FIVE DAYS AFTER THE NOTICE
36 OF LIEN IS FILED SHALL TERMINATE THE NOTICE AS A LIEN. UNTIL SERVICE OF
37 THE NOTICE HAS BEEN MADE, AS ABOVE PROVIDED, AN OWNER, WITHOUT KNOWLEDGE
38 OF THE LIEN, SHALL BE PROTECTED IN ANY PAYMENT MADE IN GOOD FAITH TO ANY
39 OTHER PERSON CLAIMING A LIEN.

40 S 8. Section 11-b of the lien law, as amended by chapter 147 of the
41 laws of 1996, is amended to read as follows:

42 S 11-b. Copy of notice of MECHANIC'S lien to a contractor or subcon-
43 tractor. Within five days before or thirty days after filing a notice
44 of MECHANIC'S lien in accordance with section ten of this chapter or the
45 filing of an amendment of notice of MECHANIC'S lien in accordance with
46 section twelve-a of this chapter the lienor shall serve a copy of such
47 notice or amendment by certified mail on the contractor, subcontractor,
48 assignee or legal representative for whom he was employed or to whom he
49 furnished materials or if the lienor is a contractor or subcontractor to
50 the person, firm or corporation with whom the contract was made. A
51 lienor having a direct contractual relationship with a subcontractor or
52 a sub-subcontractor but not with a contractor shall also serve a copy of
53 such notice or amendment by certified mail to the contractor. Failure to
54 file proof of such a service with the county clerk within thirty-five
55 days after the notice of lien is filed shall terminate the notice as a
56 lien. Any lienor, or a person acting on behalf of a lienor, who fails to

1 serve a copy of the notice of MECHANIC'S lien as required by this
2 section shall be liable for reasonable attorney's fees, costs and
3 expenses, as determined by the court, incurred in obtaining such copy.

4 S 9. Subdivision 1 of section 12-a of the lien law, as amended by
5 chapter 1048 of the laws of 1971, is amended to read as follows:

6 1. Within sixty days after the original filing, a lienor may amend his
7 lien upon twenty days notice to existing lienors, mortgagees and the
8 owner, provided that no action or proceeding to enforce or cancel the
9 mechanics' lien OR EMPLOYEE'S LIEN has been brought in the interim,
10 where the purpose of the amendment is to reduce the amount of the lien,
11 except the question of wilful exaggeration shall survive such amendment.

12 S 10. Subdivision 1 of section 13 of the lien law, as amended by chap-
13 ter 878 of the laws of 1947, is amended to read as follows:

14 (1) [A] AN EMPLOYEE'S LIEN, OR A lien for materials furnished or labor
15 performed in the improvement of real property, shall have priority over
16 a conveyance, mortgage, judgment or other claim against such property
17 not recorded, docketed or filed at the time of the filing of the notice
18 of such lien, except as hereinafter in this chapter provided; over
19 advances made upon any mortgage or other encumbrance thereon after such
20 filing, except as hereinafter in this article provided; and over the
21 claim of a creditor who has not furnished materials or performed labor
22 upon such property, if such property has been assigned by the owner by a
23 general assignment for the benefit of creditors, within thirty days
24 before the filing of either of such notices; and also over an attachment
25 hereafter issued or a money judgment hereafter recovered upon a claim,
26 which, in whole or in part, was not for materials furnished, labor
27 performed or moneys advanced for the improvement of such real property;
28 and over any claim or lien acquired in any proceedings upon such judg-
29 ment. Such liens shall also have priority over advances made upon a
30 contract by an owner for an improvement of real property which contains
31 an option to the contractor, his successor or assigns to purchase the
32 property, if such advances were made after the time when the labor began
33 or the first item of material was furnished, as stated in the notice of
34 lien. If several buildings are demolished, erected, altered or repaired,
35 or several pieces or parcels of real property are improved, under one
36 contract, and there are conflicting liens thereon, each lienor shall
37 have priority upon the particular part of the real property or upon the
38 particular building or premises where his labor is performed or his
39 materials are used. Persons shall have no priority on account of the
40 time of filing their respective notices of liens, but all liens shall be
41 on a parity except as hereinafter in section fifty-six of this chapter
42 provided; and except that in all cases laborers for daily or weekly
43 wages WITH A MECHANIC'S LIEN, AND EMPLOYEES WITH AN EMPLOYEE'S LIEN,
44 shall have preference over all other claimants under this article.

45 S 11. Section 17 of the lien law, as amended by chapter 324 of the
46 laws of 2000, is amended to read as follows:

47 S 17. Duration of lien. 1. (A) No MECHANIC'S lien specified in this
48 article shall be a lien for a longer period than one year after the
49 notice of lien has been filed, unless within that time an action is
50 commenced to foreclose the lien, and a notice of the pendency of such
51 action, whether in a court of record or in a court not of record, is
52 filed with the county clerk of the county in which the notice of lien is
53 filed, containing the names of the parties to the action, the object of
54 the action, a brief description of the real property affected thereby,
55 and the time of filing the notice of lien; or unless an extension to
56 such lien, except for a lien on real property improved or to be improved

1 with a single family dwelling, is filed with the county clerk of the
2 county in which the notice of lien is filed within one year from the
3 filing of the original notice of lien, continuing such lien and such
4 lien shall be redocketed as of the date of filing such extension. Such
5 extension shall contain the names of the lienor and the owner of the
6 real property against whose interest therein such lien is claimed, a
7 brief description of the real property affected by such lien, the amount
8 of such lien, and the date of filing the notice of lien. No lien shall
9 be continued by such extension for more than one year from the filing
10 thereof. In the event an action is not commenced to foreclose the lien
11 within such extended period, such lien shall be extinguished unless an
12 order be granted by a court of record or a judge or justice thereof,
13 continuing such lien, and such lien shall be redocketed as of the date
14 of granting such order and a statement made that such lien is continued
15 by virtue of such order. A lien on real property improved or to be
16 improved with a single family dwelling may only be extended by an order
17 of a court of record, or a judge or justice thereof. No lien shall be
18 continued by court order for more than one year from the granting there-
19 of, but a new order and entry may be made in each of two successive
20 years. If a lienor is made a party defendant in an action to enforce
21 another lien, and the plaintiff or such defendant has filed a notice of
22 the pendency of the action within the time prescribed in this section,
23 the lien of such defendant is thereby continued. Such action shall be
24 deemed an action to enforce the lien of such defendant lienor. The fail-
25 ure to file a notice of pendency of action shall not abate the action as
26 to any person liable for the payment of the debt specified in the notice
27 of lien, and the action may be prosecuted to judgment against such
28 person. The provisions of this section in regard to continuing liens
29 shall apply to liens discharged by deposit or by order on the filing of
30 an undertaking. Where a lien is discharged by deposit or by order, a
31 notice of pendency of action shall not be filed.

32 (B) A lien, the duration of which has been extended by the filing of a
33 notice of the pendency of an action as above provided, shall neverthe-
34 less terminate as a lien after such notice has been canceled as provided
35 in section sixty-five hundred fourteen of the civil practice law and
36 rules or has ceased to be effective as constructive notice as provided
37 in section sixty-five hundred thirteen of the civil practice law and
38 rules.

39 2. (A) NO EMPLOYEE'S LIEN ON REAL PROPERTY SHALL BE A LIEN FOR A LONG-
40 ER PERIOD THAN ONE YEAR AFTER THE NOTICE OF LIEN HAS BEEN FILED, UNLESS
41 AN EXTENSION TO SUCH LIEN IS FILED WITH THE COUNTY CLERK OF THE COUNTY
42 IN WHICH THE NOTICE OF LIEN IS FILED WITHIN ONE YEAR FROM THE FILING OF
43 THE ORIGINAL NOTICE OF LIEN, CONTINUING SUCH LIEN AND SUCH LIEN SHALL BE
44 REDOCKETED AS OF THE DATE OF FILING SUCH EXTENSION. SUCH EXTENSION SHALL
45 CONTAIN THE NAMES OF THE LIENOR AND THE OWNER OF THE REAL PROPERTY
46 AGAINST WHOSE INTEREST THEREIN SUCH LIEN IS CLAIMED, A BRIEF DESCRIPTION
47 OF THE PROPERTY AFFECTED BY SUCH LIEN, THE AMOUNT OF SUCH LIEN, AND THE
48 DATE OF FILING THE NOTICE OF LIEN. NO LIEN SHALL BE CONTINUED BY SUCH
49 EXTENSION FOR MORE THAN ONE YEAR FROM THE FILING THEREOF. IN THE EVENT
50 AN ACTION IS NOT COMMENCED TO OBTAIN JUDGMENT ON THE WAGE CLAIM OR TO
51 FORECLOSE THE LIEN WITHIN SUCH EXTENDED PERIOD, SUCH LIEN SHALL BE
52 EXTINGUISHED UNLESS AN ORDER BE GRANTED BY A COURT OF RECORD OR A JUDGE
53 OR JUSTICE THEREOF, CONTINUING SUCH LIEN, AND SUCH LIEN SHALL BE REDOCK-
54 ETED AS OF THE DATE OF GRANTING SUCH ORDER AND A STATEMENT MADE THAT
55 SUCH LIEN IS CONTINUED BY VIRTUE OF SUCH ORDER.

1 (B) NO EMPLOYEE'S LIEN ON PERSONAL PROPERTY SHALL BE A LIEN FOR A
2 LONGER PERIOD THAN ONE YEAR AFTER THE FINANCING STATEMENT HAS BEEN
3 RECORDED, UNLESS AN EXTENSION TO SUCH LIEN, IS FILED WITH THE FILING
4 OFFICE IN WHICH THE FINANCING STATEMENT IS REQUIRED TO BE FILED PURSUANT
5 TO SECTION 9-501 OF THE UNIFORM COMMERCIAL CODE WITHIN ONE YEAR FROM THE
6 FILING OF THE ORIGINAL FINANCING STATEMENT, CONTINUING SUCH LIEN. SUCH
7 EXTENSION SHALL CONTAIN THE NAMES OF THE LIENOR AND THE OWNER OF THE
8 PROPERTY AGAINST WHOSE INTEREST THEREIN SUCH LIEN IS CLAIMED, A BRIEF
9 DESCRIPTION OF THE PRIOR FINANCING STATEMENT TO BE EXTENDED, AND THE
10 DATE OF FILING THE PRIOR FINANCING STATEMENT. NO LIEN SHALL BE CONTIN-
11 UED BY SUCH EXTENSION FOR MORE THAN ONE YEAR FROM THE FILING THEREOF. IN
12 THE EVENT AN ACTION IS NOT COMMENCED TO OBTAIN JUDGMENT ON THE WAGE
13 CLAIM OR TO FORECLOSE THE LIEN WITHIN SUCH EXTENDED PERIOD, SUCH LIEN
14 SHALL BE EXTINGUISHED UNLESS AN ORDER BE GRANTED BY A COURT OF RECORD OR
15 A JUDGE OR JUSTICE THEREOF, CONTINUING SUCH LIEN, AND SUCH LIEN SHALL BE
16 REFILED AS OF THE DATE OF GRANTING SUCH ORDER AND A STATEMENT MADE THAT
17 SUCH LIEN IS CONTINUED BY VIRTUE OF SUCH ORDER.

18 (C) IF A LIENOR IS MADE A PARTY DEFENDANT IN AN ACTION TO ENFORCE
19 ANOTHER LIEN, AND THE PLAINTIFF OR SUCH DEFENDANT HAS FILED A NOTICE OF
20 THE PENDENCY OF THE ACTION WITHIN THE TIME PRESCRIBED IN THIS SECTION,
21 THE LIEN OF SUCH DEFENDANT IS THEREBY CONTINUED. SUCH ACTION SHALL BE
22 DEEMED AN ACTION TO ENFORCE THE LIEN OF SUCH DEFENDANT LIENOR. THE FAIL-
23 URE TO FILE A NOTICE OF PENDENCY OF ACTION SHALL NOT ABATE THE ACTION AS
24 TO ANY PERSON LIABLE FOR THE PAYMENT OF THE DEBT SPECIFIED IN THE NOTICE
25 OF LIEN, AND THE ACTION MAY BE PROSECUTED TO JUDGMENT AGAINST SUCH
26 PERSON. THE PROVISIONS OF THIS SECTION IN REGARD TO CONTINUING LIENS
27 SHALL APPLY TO LIENS DISCHARGED BY DEPOSIT OR BY ORDER ON THE FILING OF
28 AN UNDERTAKING. WHERE A LIEN IS DISCHARGED BY DEPOSIT OR BY ORDER, A
29 NOTICE OF PENDENCY OF ACTION SHALL NOT BE FILED.

30 (D) NOTWITHSTANDING THE FOREGOING, IF A LIENOR COMMENCES A FORECLOSURE
31 ACTION OR AN ACTION TO OBTAIN A JUDGMENT ON THE WAGE CLAIM WITHIN ONE
32 YEAR FROM THE FILING OF THE NOTICE OF LIEN ON REAL PROPERTY OR THE
33 RECORDING OF THE FINANCING STATEMENT CREATING LIEN ON PERSONAL PROPERTY,
34 THE LIEN SHALL BE EXTENDED DURING THE PENDENCY OF THE ACTION AND FOR ONE
35 HUNDRED TWENTY DAYS FOLLOWING THE ENTRY OF FINAL JUDGMENT IN SUCH
36 ACTION, UNLESS THE ACTION RESULTS IN A FINAL JUDGMENT OR ADMINISTRATIVE
37 ORDER IN THE LIENOR'S FAVOR ON THE WAGE CLAIMS AND THE LIENOR COMMENCES
38 A FORECLOSURE ACTION, IN WHICH INSTANCE THE LIEN SHALL BE VALID DURING
39 THE PENDENCY OF THE FORECLOSURE ACTION. IF A LIEN IS EXTENDED DUE TO THE
40 PENDENCY OF A FORECLOSURE ACTION OR AN ACTION TO OBTAIN A JUDGMENT ON
41 THE WAGE CLAIM, THE LIENOR SHALL FILE A NOTICE OF SUCH PENDENCY AND
42 EXTENSION WITH THE COUNTY CLERK OF THE COUNTY IN WHICH THE NOTICE OF
43 LIEN IS FILED, CONTAINING THE NAMES OF THE PARTIES TO THE ACTION, THE
44 OBJECT OF THE ACTION, A BRIEF DESCRIPTION OF THE PROPERTY AFFECTED
45 THEREBY, AND THE TIME OF FILING THE NOTICE OF LIEN, OR IN THE CASE OF A
46 LIEN ON PERSONAL PROPERTY SHALL FILE SUCH NOTICE WITH THE OFFICE AUTHOR-
47 IZED TO ACCEPT FINANCING STATEMENTS PURSUANT TO SECTION 9-501 OF THE
48 UNIFORM COMMERCIAL CODE. FOR PURPOSES OF THIS SECTION, AN ACTION TO
49 OBTAIN JUDGMENT ON A WAGE CLAIM INCLUDES AN ACTION BROUGHT IN ANY COURT
50 OF COMPETENT JURISDICTION OR THE SUBMISSION OF A COMPLAINT TO THE
51 DEPARTMENT OF LABOR. AN ACTION ALSO INCLUDES AN INVESTIGATION OF WAGE
52 CLAIMS BY THE COMMISSIONER OF LABOR OR THE ATTORNEY GENERAL OF THE STATE
53 OF NEW YORK, REGARDLESS OF WHETHER SUCH INVESTIGATION WAS INITIATED BY A
54 COMPLAINT.

55 (E) A LIEN, THE DURATION OF WHICH HAS BEEN EXTENDED BY THE FILING OF A
56 NOTICE OF THE PENDENCY OF AN ACTION AS ABOVE PROVIDED, SHALL NEVERTHE-

1 LESS TERMINATE AS A LIEN AFTER SUCH NOTICE HAS BEEN CANCELED AS PROVIDED
2 IN SECTION SIXTY-FIVE HUNDRED FOURTEEN OF THE CIVIL PRACTICE LAW AND
3 RULES OR HAS CEASED TO BE EFFECTIVE AS CONSTRUCTIVE NOTICE AS PROVIDED
4 IN SECTION SIXTY-FIVE HUNDRED THIRTEEN OF THE CIVIL PRACTICE LAW AND
5 RULES.

6 S 12. Subdivision 2 of section 19 of the lien law, as amended by chap-
7 ter 310 of the laws of 1962, is amended to read as follows:

8 (2) By failure to begin an action to foreclose such lien or to secure
9 an order continuing it, within one year from the time of filing the
10 notice of lien, unless (I) an action be begun within the same period to
11 foreclose a mortgage or another mechanic's lien upon the same property
12 or any part thereof and a notice of pendency of such action is filed
13 according to law, OR (II) AN ACTION IS COMMENCED TO OBTAIN A JUDGMENT ON
14 A WAGE CLAIM PURSUANT TO SUBDIVISION TWO OF SECTION SEVENTEEN OF THIS
15 ARTICLE, but a lien, the duration of which has been extended by the
16 filing of a notice of the pendency of an action as herein provided,
17 shall nevertheless terminate as a lien after such notice has been
18 cancelled or has ceased to be effective as constructive notice.

19 S 13. Section 24 of the lien law, as amended by chapter 515 of the
20 laws of 1929, is amended to read as follows:

21 S 24. Enforcement of [mechanic's] lien. The [mechanics'] liens speci-
22 fied in this article may be enforced against the property specified in
23 the notice of lien and which is subject thereto and against any person
24 liable for the debt upon which the lien is founded, as prescribed in
25 article three of this chapter.

26 S 14. Section 26 of the lien law, as amended by chapter 373 of the
27 laws of 1977, is amended to read as follows:

28 S 26. Subordination of liens after agreement with owner. In case an
29 owner of real property shall execute to one or more persons, or a corpo-
30 ration, as trustee or trustees, a bond and mortgage or a note and mort-
31 gage affecting such property in whole or in part, or an assignment of
32 the moneys due or to become due under a contract for a building loan in
33 relation to such property, and in case such mortgage, if any, shall be
34 recorded in the office of the register of the county where such real
35 property is situated, or if such county has no register then in the
36 office of the clerk of such county, and in case such assignment, if any,
37 shall be filed in the office of the clerk of the county where such real
38 property is situated; and in case lienors having [mechanics'] liens
39 against said real property, notices of which have been filed up to and
40 not later than fifteen days after the recording of such mortgage or the
41 filing of such assignment, and which liens have not been discharged as
42 in this article provided, shall, to the extent of at least fifty-five
43 per centum of the aggregate amount for which such notices of liens have
44 been so filed, approve such bond and mortgage or such note and mortgage,
45 if any, and such assignment, if any, by an instrument or instruments in
46 writing, duly acknowledged and filed in the office of such county clerk,
47 then all mechanics' liens for labor performed or material furnished
48 prior to the recording of such mortgage or filing of such assignment,
49 whether notices thereof have been theretofore or are thereafter filed
50 and which have not been discharged as in this article provided, shall be
51 subordinate to the lien of such trust bond and mortgage or such trust
52 note and mortgage to the extent of the aggregate amount of all certif-
53 icates of interest therein issued by such trustee or trustees, or their
54 successors, for moneys loaned, materials furnished, labor performed and
55 any other indebtedness incurred after said trust mortgage shall have
56 been recorded, and for expenses in connection with said trust mortgage,

1 and shall also be subordinate to the lien of the bond and mortgage or
2 note and mortgage, given to secure the amount agreed to be advanced
3 under such contract for a building loan to the extent of the amount
4 which shall be advanced by the holder of such bond and mortgage or such
5 note and mortgage to the trustee or trustees, or their successors, under
6 such assignment. The provisions of this section shall apply to all bonds
7 and mortgages and notes and mortgages and all assignments of moneys due,
8 or to become due under building loan contracts executed by such owner,
9 in like manner, and recorded or filed, from time to time as hereinbefore
10 provided. In case of an assignment to trustees under the provisions of
11 this section, the trustees and their successors shall be the agents of
12 the assignor to receive and receipt for any and all sums advanced by the
13 holder of the building loan bond and mortgage or the building loan note
14 and mortgage under the building loan contract and such assignment. No
15 lienor shall have any priority over the bond and mortgage or note and
16 mortgage given to secure the money agreed to be advanced under a build-
17 ing loan contract or over the advances made thereunder, by reason of any
18 act preceding the making and approval of such assignment.

19 S 15. Section 38 of the lien law, as amended by chapter 859 of the
20 laws of 1930, is amended to read as follows:

21 S 38. Itemized statement may be required of lienor. A lienor who has
22 filed a notice of MECHANIC'S lien shall, on demand in writing, deliver
23 to the owner or contractor making such demand a statement in writing
24 which shall set forth the items of labor and/or material and the value
25 thereof which make up the amount for which he claims a lien, and which
26 shall also set forth the terms of the contract under which such items
27 were furnished. A LIENOR WHO HAS FILED A NOTICE OF EMPLOYEE LIEN SHALL,
28 ON DEMAND IN WRITING, DELIVER TO THE EMPLOYER MAKING SUCH DEMAND A
29 STATEMENT IN WRITING WHICH SHALL SET FORTH THE ITEMS OF THE WAGE CLAIM
30 AND THE VALUE THEREOF WHICH MAKE UP THE AMOUNT FOR WHICH HE CLAIMS A
31 LIEN. The statement shall be verified by the lienor or his agent in the
32 form required for the verification of notices in section nine of this
33 chapter. If the lienor shall fail to comply with such a demand within
34 five days after the same shall have been made by the EMPLOYER, owner or
35 contractor, or if the lienor delivers an insufficient statement, the
36 person aggrieved may petition the supreme court of this state or any
37 justice thereof, or the county court of the county where the premises
38 are situated, or the county judge of such county for an order directing
39 the lienor within a time specified in the order to deliver to the peti-
40 tioner the statement required by this section. Two days' notice in writ-
41 ing of such application shall be served upon the lienor. Such service
42 shall be made in the manner provided by law for the personal service of
43 a summons. The court or a justice or judge thereof shall hear the
44 parties and upon being satisfied that the lienor has failed, neglected
45 or refused to comply with the requirements of this section shall have an
46 appropriate order directing such compliance. In case the lienor fails to
47 comply with the order so made within the time specified, then upon five
48 days' notice to the lienor, served in the manner provided by law for the
49 personal service of a summons, the court or a justice or judge thereof
50 may make an order cancelling the lien.

51 S 16. Section 39 of the lien law, as added by chapter 859 of the laws
52 of 1930, is amended to read as follows:

53 S 39. Lien wilfully exaggerated is void. In any action or proceeding
54 to enforce a [mechanic's] lien upon a private or public improvement or
55 in which the validity of the lien is an issue, if the court shall find
56 that a lienor has wilfully exaggerated the amount for which he claims a

1 lien as stated in his notice of lien, his lien shall be declared to be
2 void and no recovery shall be had thereon. No such lienor shall have a
3 right to file any other or further lien for the same claim. A second or
4 subsequent lien filed in contravention of this section may be vacated
5 upon application to the court on two days' notice.

6 S 17. Section 40 of the lien law, as amended by chapter 515 of the
7 laws of 1929, is amended to read as follows:

8 S 40. Construction of article. This article is to be construed in
9 connection with article two of this chapter, and provides proceedings
10 for the enforcement of EMPLOYEE'S LIENS ON REAL PROPERTY, AS WELL AS
11 liens for labor performed and materials furnished in the improvement of
12 real property, created by virtue of such article.

13 S 18. Section 41 of the lien law, as amended by chapter 807 of the
14 laws of 1952, is amended to read as follows:

15 S 41. Enforcement of mechanic's OR EMPLOYEE'S lien on real property. A
16 mechanic's lien OR EMPLOYEE'S LIEN on real property may be enforced
17 against such property, and against a person liable for the debt upon
18 which the lien is founded, by an action, by the lienor, his assignee or
19 legal representative, in the supreme court or in a county court other-
20 wise having jurisdiction, regardless of the amount of such debt, or in a
21 court which has jurisdiction in an action founded on a contract for a
22 sum of money equivalent to the amount of such debt.

23 S 19. Section 43 of the lien law, as amended by chapter 310 of the
24 laws of 1962, is amended to read as follows:

25 S 43. Action in a court of record; consolidation of actions. The
26 provisions of the real property actions and proceedings law relating to
27 actions for the foreclosure of a mortgage upon real property, and the
28 sale and the distribution of the proceeds thereof apply to actions in a
29 court of record, to enforce mechanics' liens AND EMPLOYEES' LIENS on
30 real property, except as otherwise provided in this article. If actions
31 are brought by different lienors in a court of record, the court in
32 which the first action was brought, may, upon its own motion, or upon
33 the application of any party in any of such actions, consolidate all of
34 such actions.

35 S 20. Section 46 of the lien law, as amended by chapter 515 of the
36 laws of 1929, is amended to read as follows:

37 S 46. Action in a court not of record. If an action to enforce a
38 mechanic's lien OR EMPLOYEE'S LIEN against real property is brought in a
39 court not of record, it shall be commenced by the personal service upon
40 the owner of a summons and complaint verified in the same manner as a
41 complaint in an action in a court of record. The complaint must set
42 forth substantially the facts contained in the notice of lien, and the
43 substance of the agreement under which the labor was performed or the
44 materials were furnished, OR IF THE LIEN IS BASED UPON A WAGE CLAIM AS
45 DEFINED IN SECTION TWO OF THIS CHAPTER, THE BASIS FOR SUCH WAGE CLAIM.
46 The form and contents of the summons shall be the same as provided by
47 law for the commencement of an action upon a contract in such court. The
48 summons must be returnable not less than twelve nor more than twenty
49 days after the date of the summons, or if service is made by publica-
50 tion, after the day of the last publication of the summons. Service
51 must be made at least eight days before the return day.

52 S 21. Section 50 of the lien law, as amended by chapter 515 of the
53 laws of 1929, is amended to read as follows:

54 S 50. Execution. Execution may be issued upon a judgment obtained in
55 an action to enforce a mechanic's lien OR AN EMPLOYEE'S LIEN against
56 real property in a court not of record, which shall direct the officer

1 to sell the title and interest of the owner in the premises, upon which
2 the lien set forth in the complaint existed at the time of filing the
3 notice of lien.

4 S 22. Section 53 of the lien law, as amended by chapter 515 of the
5 laws of 1929, is amended to read as follows:

6 S 53. Costs and disbursements. If an action is brought to enforce a
7 mechanic's lien OR AN EMPLOYEE'S LIEN against real property in a court
8 of record, the costs and disbursements shall rest in the discretion of
9 the court, and may be awarded to the prevailing party. The judgment
10 rendered in such an action shall include the amount of such costs and
11 specify to whom and by whom the costs are to be paid. If such action is
12 brought in a court not of record, they shall be the same as allowed in
13 civil actions in such court. The expenses incurred in serving the
14 summons by publication may be added to the amount of costs now allowed
15 in such court.

16 S 23. Section 59 of the lien law, as amended by chapter 515 of the
17 laws of 1929, is amended to read as follows:

18 S 59. Vacating of a [mechanic's] lien; cancellation of bond; return of
19 deposit, by order of court. 1. A mechanic's lien notice of which has
20 been filed on real property or a bond given to discharge the same may be
21 vacated and cancelled or a deposit made to discharge a lien pursuant to
22 section twenty may be returned, by an order of a court of record. Before
23 such order shall be granted, a notice shall be served upon the lienor,
24 either personally or by leaving it as his last known place of residence,
25 with a person of suitable age, with directions to deliver it to the
26 lienor. Such notice shall require the lienor to commence an action to
27 enforce the lien, within a time specified in the notice, not less than
28 thirty days from the time of service, or show cause at a special term of
29 a court of record, or at a county court, in a county in which the prop-
30 erty is situated, at a time and place specified therein, why the notice
31 of lien filed or the bond given should not be vacated and cancelled, or
32 the deposit returned, as the case may be. Proof of such service and that
33 the lienor has not commenced the action to foreclose such lien, as
34 directed in the notice, shall be made by affidavit, at the time of
35 applying for such order.

36 2. AN EMPLOYEE'S LIEN NOTICE OF WHICH HAS BEEN FILED ON REAL PROPERTY
37 OR A BOND GIVEN TO DISCHARGE THE SAME MAY BE VACATED AND CANCELLED OR A
38 DEPOSIT MADE TO DISCHARGE A LIEN PURSUANT TO SECTION TWENTY MAY BE
39 RETURNED, BY AN ORDER OF A COURT OF RECORD. BEFORE SUCH ORDER SHALL BE
40 GRANTED, A NOTICE SHALL BE SERVED UPON THE LIENOR, EITHER PERSONALLY OR
41 BY LEAVING IT AT HIS LAST KNOWN PLACE OF RESIDENCE OR ATTORNEY'S PLACE
42 OF BUSINESS, WITH A PERSON OF SUITABLE AGE, WITH DIRECTIONS TO DELIVER
43 IT TO THE LIENOR. SUCH NOTICE SHALL REQUIRE THE LIENOR TO COMMENCE AN
44 ACTION TO ENFORCE THE LIEN, OR TO COMMENCE AN ACTION TO OBTAIN JUDGMENT
45 ON THE WAGE CLAIM UPON WHICH THE LIEN WAS ESTABLISHED, WITHIN A TIME
46 SPECIFIED IN THE NOTICE, NOT LESS THAN NINETY DAYS FROM THE TIME OF
47 SERVICE, OR SHOW CAUSE AT A SPECIAL TERM OF A COURT OF RECORD, OR AT A
48 COUNTY COURT, IN A COUNTY IN WHICH THE PROPERTY IS SITUATED, AT A TIME
49 AND PLACE SPECIFIED THEREIN, WHY THE NOTICE OF LIEN FILED OR THE BOND
50 GIVEN SHOULD NOT BE VACATED AND CANCELLED, OR THE DEPOSIT RETURNED, AS
51 THE CASE MAY BE. PROOF OF SUCH SERVICE AND THAT THE LIENOR HAS NOT
52 COMMENCED THE ACTION TO FORECLOSE SUCH LIEN OR AN ACTION TO OBTAIN JUDG-
53 MENT ON THE WAGE CLAIM UPON WHICH THE LIEN WAS ESTABLISHED, AS DIRECTED
54 IN THE NOTICE, SHALL BE MADE BY AFFIDAVIT, AT THE TIME OF APPLYING FOR
55 SUCH ORDER.

1 S 24. Section 62 of the lien law, as amended by chapter 697 of the
2 laws of 1934, is amended to read as follows:

3 S 62. Bringing in new parties. A lienor who has filed a notice of lien
4 after the commencement of an action in a court of record to foreclose or
5 enforce AN EMPLOYEE'S LIEN OR a mechanic's lien against real property or
6 a public improvement, may at any time up to and including the day
7 preceding the day on which the trial of such action is commenced, make
8 application upon notice to the plaintiff or his attorney in such action,
9 to be made a party therein. Upon good cause shown, the court must order
10 such lienor to be brought in by amendment. If the application is made by
11 any other party in said action to make such lienor or other person a
12 party, the court may in its discretion direct such lienor or other
13 person to be brought in by like amendment. The order to be entered on
14 such application shall provide the time for and manner of serving the
15 pleading of such additional lienor or other person and shall direct that
16 the pleadings, papers and proceedings of the other several parties in
17 such action, shall be deemed amended, so as not to require the making or
18 serving of papers other than said order to effectuate such amendment,
19 and shall further provide that the allegations in the answer of such
20 additional lienor or other person shall, for the purposes of the action,
21 be deemed denied by the other parties therein. The action shall be so
22 conducted by the court as not to cause substantially any delay in the
23 trial thereof. The bringing in of such additional lienor or other
24 person shall be without prejudice to the proceedings had, and if the
25 action be on the calendar of the court, same shall retain its place on
26 such calendar without the necessity of serving a new note of issue and
27 new notices of trial.

28 S 25. Subdivision 3 of section 199-a of the labor law, as amended by
29 chapter 564 of the laws of 2010, is amended to read as follows:

30 3. Each employee and his or her authorized representative shall be
31 notified in writing, OF THE TERMINATION OF THE COMMISSIONER'S INVESTI-
32 GATION OF THE EMPLOYEE'S COMPLAINT AND THE RESULT OF SUCH INVESTIGATION,
33 of any award and collection of back wages and civil penalties, and of
34 any intent to seek criminal penalties. In the event that criminal penal-
35 ties are sought the employee and his or her authorized representative
36 shall be notified of the outcome of prosecution.

37 S 26. Subdivision 2 of section 663 of the labor law, as amended by
38 chapter 564 of the laws of 2010, is amended to read as follows:

39 2. By commissioner. On behalf of any employee paid less than the wage
40 to which the employee is entitled under the provisions of this article,
41 the commissioner may bring any legal action necessary, including admin-
42 istrative action, to collect such claim, and the employer shall be
43 required to pay the full amount of the underpayment, plus costs, and
44 unless the employer proves a good faith basis to believe that its under-
45 payment was in compliance with the law, an additional amount as liqui-
46 dated damages. Liquidated damages shall be calculated by the commission-
47 er as no more than one hundred percent of the total amount of
48 underpayments found to be due the employee. In any action brought by the
49 commissioner in a court of competent jurisdiction, liquidated damages
50 shall be calculated as an amount equal to one hundred percent of under-
51 payments found to be due the employee. EACH EMPLOYEE OR HIS OR HER
52 AUTHORIZED REPRESENTATIVE SHALL BE NOTIFIED IN WRITING OF THE OUTCOME OF
53 ANY LEGAL ACTION BROUGHT ON THE EMPLOYEE'S BEHALF PURSUANT TO THIS
54 SECTION.

55 S 27. Subdivision 5 of section 6201 of the civil practice law and
56 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 28. 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 29. 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 one OR 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 one OR 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

1 from taking any property levied upon into his actual custody, pending
2 further order of the court.

3 S 30. Subdivisions (b) and (e) of rule 6212 of the civil practice law
4 and rules, subdivision (b) as separately amended by chapters 15 and 860
5 of the laws of 1977 and subdivision (e) as added by chapter 860 of the
6 laws of 1977, are amended to read as follows:

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

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

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

32 S 31. Section 6223 of the civil practice law and rules, as amended by
33 chapter 860 of the laws of 1977, is amended to read as follows:

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

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

54 S 32. Paragraph (b) of section 624 of the business corporation law, as
55 amended by chapter 449 of the laws of 1997, is amended to read as
56 follows:

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

25 S 33. Section 630 of the business corporation law, paragraph (a) as
26 amended by chapter 212 of the laws of 1984, paragraph (c) as amended by
27 chapter 746 of the laws of 1963, is amended to read as follows:

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

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

53 (b) For the purposes of this section, wages or salaries shall mean all
54 compensation and benefits payable by an employer to or for the account
55 of the employee for personal services rendered by such employee INCLUD-
56 ING ANY CONCOMITANT LIQUIDATED DAMAGES, PENALTIES, INTEREST, ATTORNEY'S

1 FEES OR COSTS. These shall specifically include but not be limited to
2 salaries, overtime, vacation, holiday and severance pay; employer
3 contributions to or payments of insurance or welfare benefits; employer
4 contributions to pension or annuity funds; and any other moneys properly
5 due or payable for services rendered by such employee.

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

20 S 34. Subdivision (c) of section 609 of the limited liability company
21 law, as added by chapter 537 of the laws of 2014, is amended to read as
22 follows:

23 (c) Notwithstanding the provisions of subdivisions (a) and (b) of this
24 section, the ten members with the largest percentage ownership interest,
25 as determined as of the beginning of the period during which the unpaid
26 services referred to in this section are performed, of every limited
27 liability company, shall jointly and severally be personally liable for
28 all debts, wages or salaries due and owing to any of its laborers, serv-
29 ants or employees, for services performed by them for such limited
30 liability company. [Before such laborer, servant or employee shall
31 charge such member for such services, he or she shall give notice in
32 writing to such member that he or she intends to hold such member liable
33 under this section. Such notice shall be given within one hundred eighty
34 days after termination of such services. An action to enforce such
35 liability shall be commenced within ninety days after the return of an
36 execution unsatisfied against the limited liability company upon a judg-
37 ment recovered against it for such services.] A member who has paid more
38 than his or her pro rata share under this section shall be entitled to
39 contribution pro rata from the other members liable under this section
40 with respect to the excess so paid, over and above his or her pro rata
41 share, and may sue them jointly or severally or any number of them to
42 recover the amount due from them. Such recovery may be had in a separate
43 action. As used in this subdivision, "pro rata" means in proportion to
44 percentage ownership interest. Before a member may claim contribution
45 from other members under this section, he or she shall give them notice
46 in writing that he or she intends to hold them so liable to him or her.

47 S 35. Section 1102 of the limited liability company law is amended by
48 adding a new subdivision (e) to read as follows:

49 (E) ANY PERSON WHO IS OR SHALL HAVE BEEN A LABORER, SERVANT OR EMPLOY-
50 EE OF A LIMITED LIABILITY COMPANY, UPON AT LEAST FIVE DAYS' WRITTEN
51 DEMAND SHALL HAVE THE RIGHT TO EXAMINE IN PERSON OR BY AGENT OR ATTOR-
52 NEY, DURING USUAL BUSINESS HOURS, RECORDS DESCRIBED IN PARAGRAPH TWO OF
53 SUBDIVISION (A) OF THIS SECTION THROUGHOUT THE PERIOD OF TIME DURING
54 WHICH SUCH LABORER, SERVANT OR EMPLOYEE PROVIDED SERVICES TO SUCH COMPA-
55 NY. A COMPANY REQUESTED TO PROVIDE INFORMATION PURSUANT TO THIS PARA-
56 GRAPH SHALL MAKE AVAILABLE SUCH RECORDS IN WRITTEN FORM AND IN ANY OTHER

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

18 S 36. This act shall take effect on the thirtieth day after it shall
19 have become a law; provided, however, section thirty-four of this act
20 shall take effect on the same date and in the same manner as section 11
21 of chapter 537 of the laws of 2014, takes effect.