

6379--A

Cal. No. 10

I N   S E N A T E

January 8, 2016

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Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

1     Section 1. Paragraph (a) of section 630 of the business corporation  
2     law, as amended by a chapter of the laws of 2015, amending the business  
3     corporation law relating to the applicability of provisions relating to  
4     liability of shareholders for wages due to laborers, servants or employ-  
5     ees for certain foreign corporations, as proposed in legislative bills  
6     numbers S.4476 and A.737, is amended to read as follows:  
7     (a) The ten largest shareholders, as determined by the fair value of  
8     their beneficial interest as of the beginning of the period during which  
9     the unpaid services referred to in this section are performed, of every  
10    domestic corporation [(other than an investment company registered as  
11    such under an act of congress entitled "Investment Company Act of  
12    1940"),] or of any foreign corporation, when the unpaid services were  
13    performed in the state, no shares of which are listed on a national  
14    securities exchange or regularly quoted in an over-the-counter market by  
15    one or more members of a national or an affiliated securities associ-  
16    ation, shall jointly and severally be personally liable for all debts,  
17    wages or salaries due and owing to any of its laborers, servants or  
18    employees other than contractors, for services performed by them for  
19    such corporation. Before such laborer, servant or employee shall charge  
20    such shareholder for such services, he shall give notice in writing to  
21    such shareholder that he intends to hold him liable under this section.  
22    Such notice shall be given within one hundred and eighty days after

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

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1 termination of such services, except that if, within such period, the  
2 laborer, servant or employee demands an examination of the record of  
3 shareholders under paragraph (b) of section 624 (Books and records;  
4 right of inspection, prima facie evidence) of this article, such notice  
5 may be given within sixty days after he has been given the opportunity  
6 to examine the record of shareholders. An action to enforce such  
7 liability shall be commenced within ninety days after the return of an  
8 execution unsatisfied against the corporation upon a judgment recovered  
9 against it for such services. THE PROVISIONS OF THIS PARAGRAPH SHALL  
10 NOT APPLY TO AN INVESTMENT COMPANY REGISTERED AS SUCH UNDER AN ACT OF  
11 CONGRESS ENTITLED "INVESTMENT COMPANY ACT OF 1940."

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

15 (a) In addition to articles 1 (Short title; definitions; application;  
16 certificates; miscellaneous) and 3 (Corporate name and service of proc-  
17 ess) and the other sections of article 13 (FOREIGN CORPORATIONS), the  
18 following provisions, to the extent provided therein, shall apply to a  
19 foreign corporation doing business in this state, its directors, offi-  
20 cers and shareholders:

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

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

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

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

30 (5) Sections 721 ([Exclusivity] NONEXCLUSIVITY of statutory provisions  
31 for indemnification of directors and officers) through [727] 726 (Insur-  
32 ance for indemnification of directors and officers), inclusive.

33 [(5)] (6) Section 808 (Reorganization under act of congress).

34 [(6)] (7) Section 907 (Merger or consolidation of domestic and foreign  
35 corporations).

36 S 3. This act shall take effect on the same date and in the same  
37 manner as a chapter of the laws of 2015, amending the business corpo-  
38 ration law relating to the applicability of provisions relating to  
39 liability of shareholders for wages due to laborers, servants or employ-  
40 ees for certain foreign corporations, as proposed in legislative bills  
41 numbers S.4476 and A.737, takes effect.