

2232

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

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.

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

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

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

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

10 ARTICLE 2-A

11 WAGE LIEN

12 SECTION 39-AA. WAGE LIEN.

13 39-BB. ESTABLISHING A LIEN FOR WAGE CLAIMS.

14 39-CC. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON REAL PROPERTY.

15 39-DD. ENFORCEMENT OF A LIEN FOR WAGE CLAIMS ON PERSONAL PROPER-
16 TY.

17 39-EE. REGULATIONS.

18 39-FF. RIGHTS.

19 39-GG. FORCE AND EFFECT.

20 39-HH. OPERATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 PURSUANT TO THE LABOR LAW, THE FAIR LABOR STANDARDS ACT, OR ANY EMPLOY-
2 MENT CONTRACT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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