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

2232--C

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

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

LBD00429-05-5

BY THE COMMISSIONER, A CLAIM FOR WAGES DUE TO AN EMPLOYEE PURSUANT TO AN EMPLOYMENT CONTRACT THAT WERE UNPAID IN VIOLATION OF THAT CONTRACT, OR A CLAIM THAT AN EMPLOYEE HAS SUFFERED A VIOLATION OF 29 U.S.C. S 206.

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

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

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

3. AS USED IN THIS ARTICLE AND UNLESS OTHERWISE SPECIFIED, A LIEN SHALL MEAN AN EMPLOYEE'S LIEN OR A MECHANIC'S LIEN.

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

(1) [Such] A MECHANIC'S OR EMPLOYEE'S lien AND EMPLOYEE'S LIEN AGAINST REAL PROPERTY shall extend to the owner's right, title or interest in the real property and improvements, existing at the time of filing the notice of lien, or thereafter acquired, except as hereinafter in this article provided. If an owner assigns his interest in such real property by a general assignment for the benefit of creditors, within thirty days prior to such filing, the lien shall extend to the interest thus assigned. If any part of the real property subjected to such lien be removed by the owner or by any other person, at any time before the discharge thereof, such removal shall not affect the rights of the lienor, either in respect to the remaining real property, or the part so removed. If labor is performed for, or materials furnished to, a contractor or subcontractor for an improvement, the MECHANIC'S lien

shall not be for a sum greater than the sum earned and unpaid on the contract at the time of filing the notice of lien, and any sum subsequently earned thereon. In no case shall the owner be liable to pay by 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 or materials furnished; and provided further where the notice of MECHANIC'S lien is for retainage, the notice of MECHANIC'S lien may be filed within ninety days after the date the retainage was due to be released; except that in the case of a MECHANIC'S lien by a real estate broker, the notice of MECHANIC'S lien may be filed only after the performance of the brokerage services and execution of lease by both lessor and lessee and only if a copy of the alleged written agreement of employment or compensation is annexed to the notice of lien, provided that where the payment pursuant to the written agreement of employment or compensation is to be made in installments, then a notice of lien may be filed within eight months after the final payment is due, but in no event later than a date five years after the first payment was made. For purposes of this section, the term "single family dwelling" shall not include a dwelling unit which is a part of a subdivision that has been filed with a municipality in which the subdivision is located when at the time the lien is filed, such property in the subdivision is owned by the developer for purposes other than his personal residence. For purposes of this section, "developer" shall mean and include any private individual, partnership, trust or corporation which improves two or more parcels of real property with single family dwellings pursuant to a common scheme or plan. [The]

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

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

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

S 11. Service of copy of notice of lien. 1. Within five days before or thirty days after filing the notice of A MECHANIC'S lien, the lienor shall serve a copy of such notice upon the owner, if a natural person, (a) by delivering the same to him personally, or if the owner cannot be found, to his agent or attorney, or (b) by leaving it at his last known place of residence in the city or town in which the real property or some part thereof is situated, with a person of suitable age and discretion, or (c) by registered or certified mail addressed to his last known place of residence, or (d) if such owner has no such residence in

such city or town, or cannot be found, and he has no agent or attorney, by affixing a copy thereof conspicuously on such property, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon; if the owner be a corporation, said service shall be made (i) by delivering such copy to and leaving the same with the president, vice-president, secretary or clerk to the corporation, the cashier, treasurer or a director or managing agent thereof, personally, within the state, or (ii) if such officer cannot be found within the state by affixing a copy thereof conspicuously on such property between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, or (iii) by registered or certified mail addressed to its last known place of business. Failure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien. Until service of the notice has been made, as above provided, an owner, without knowledge of the lien, shall be protected in any payment made in good faith to any contractor or other person claiming a lien.

2. WITHIN FIVE DAYS BEFORE OR THIRTY DAYS AFTER FILING THE NOTICE OF AN EMPLOYEE'S LIEN, THE LIENOR SHALL SERVE A COPY OF SUCH NOTICE UPON THE EMPLOYER, IF A NATURAL PERSON, (A) BY DELIVERING THE SAME TO HIM PERSONALLY, OR IF THE EMPLOYER CANNOT BE FOUND, TO HIS AGENT OR ATTORNEY, OR (B) BY LEAVING IT AS HIS LAST KNOWN PLACE OF RESIDENCE OR BUSINESS, WITH A PERSON OF SUITABLE AGE AND DISCRETION, OR (C) BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO HIS LAST KNOWN PLACE OF RESIDENCE OR BUSINESS, OR (D) IF SUCH EMPLOYER OWNS REAL PROPERTY, BY AFFIXING A COPY THEREOF CONSPICUOUSLY ON SUCH PROPERTY, BETWEEN THE HOURS OF NINE O'CLOCK IN THE FORENOON AND FOUR O'CLOCK IN THE AFTERNOON. THE LIENOR ALSO SHALL, WITHIN THIRTY DAYS AFTER FILING THE NOTICE OF EMPLOYEE'S LIEN, AFFIX A COPY THEREOF CONSPICUOUSLY ON THE REAL PROPERTY IDENTIFIED IN THE NOTICE OF EMPLOYEE'S LIEN, BETWEEN THE HOURS OF NINE O'CLOCK IN THE FORENOON AND FOUR O'CLOCK IN THE AFTERNOON. IF THE EMPLOYER BE A CORPORATION, SAID SERVICE SHALL BE MADE (I) BY DELIVERING SUCH COPY TO AND LEAVING THE SAME WITH THE PRESIDENT, VICE-PRESIDENT, SECRETARY OR CLERK TO THE CORPORATION, THE CASHIER, TREASURER OR A DIRECTOR OR MANAGING AGENT THEREOF, PERSONALLY, WITHIN THE STATE, OR (II) IF SUCH OFFICER CANNOT BE FOUND WITHIN THE STATE BY AFFIXING A COPY THEREOF CONSPICUOUSLY ON SUCH PROPERTY BETWEEN THE HOURS OF NINE O'CLOCK IN THE FORENOON AND FOUR O'CLOCK IN THE AFTERNOON, OR (III) BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO ITS LAST KNOWN PLACE OF BUSINESS, OR (IV) BY DELIVERY TO THE SECRETARY OF THE DEPARTMENT OF STATE IN THE SAME MANNER AS REQUIRED BY PARAGRAPH ONE OF SUBDIVISION (B) OF SECTION 306 OF THE BUSINESS CORPORATION LAW. FAILURE TO FILE PROOF OF SUCH A SERVICE WITH THE COUNTY CLERK WITHIN THIRTY-FIVE DAYS AFTER THE NOTICE OF LIEN IS FILED SHALL TERMINATE THE NOTICE AS A LIEN. UNTIL SERVICE OF THE NOTICE HAS BEEN MADE, AS ABOVE PROVIDED, AN OWNER, WITHOUT KNOWLEDGE OF THE LIEN, SHALL BE PROTECTED IN ANY PAYMENT MADE IN GOOD FAITH TO ANY OTHER PERSON CLAIMING A LIEN.

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

S 11-b. Copy of notice of MECHANIC'S lien to a contractor or subcontractor. Within five days before or thirty days after filing a notice of MECHANIC'S lien in accordance with section ten of this chapter or the filing of an amendment of notice of MECHANIC'S lien in accordance with section twelve-a of this [chapter] ARTICLE the lienor shall serve a copy of such notice or amendment by certified mail on the contractor, subcontractor, assignee or legal representative for whom he was employed or to

whom he furnished materials or if the lienor is a contractor or subcontractor to the person, firm or corporation with whom the contract was made. A lienor having a direct contractual relationship with a subcontractor or a sub-subcontractor but not with a contractor shall also serve a copy of such notice or amendment by certified mail to the contractor. Failure to file proof of such a service with the county clerk within thirty-five days after the notice of lien is filed shall terminate the notice as a lien. Any lienor, or a person acting on behalf of a lienor, who fails to serve a copy of the notice of MECHANIC'S lien as required by this section shall be liable for reasonable attorney's fees, costs and expenses, as determined by the court, incurred in obtaining such copy.

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

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

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

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

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

S 17. Duration of lien. 1. (A) No MECHANIC'S lien specified in this article shall be a lien for a longer period than one year after the notice of lien has been filed, unless within that time an action is commenced to foreclose the lien, and a notice of the pendency of such action, whether in a court of record or in a court not of record, is filed with the county clerk of the county in which the notice of lien is filed, containing the names of the parties to the action, the object of the action, a brief description of the real property affected thereby, and the time of filing the notice of lien; or unless an extension to such lien, except for a lien on real property improved or to be improved with a single family dwelling, is filed with the county clerk of the county in which the notice of lien is filed within one year from the filing of the original notice of lien, continuing such lien and such lien shall be redocketed as of the date of filing such extension. Such extension shall contain the names of the lienor and the owner of the real property against whose interest therein such lien is claimed, a brief description of the real property affected by such lien, the amount of such lien, and the date of filing the notice of lien. No lien shall be continued by such extension for more than one year from the filing thereof. In the event an action is not commenced to foreclose the lien within such extended period, such lien shall be extinguished unless an order be granted by a court of record or a judge or justice thereof, continuing such lien, and such lien shall be redocketed as of the date of granting such order and a statement made that such lien is continued by virtue of such order. A lien on real property improved or to be improved with a single family dwelling may only be extended by an order of a court of record, or a judge or justice thereof. No lien shall be continued by court order for more than one year from the granting thereof, but a new order and entry may be made in each of two successive years. If a lienor is made a party defendant in an action to enforce another lien, and the plaintiff or such defendant has filed a notice of the pendency of the action within the time prescribed in this section, the lien of such defendant is thereby continued. Such action shall be deemed an action to enforce the lien of such defendant lienor. The failure to file a notice of pendency of action shall not abate the action as to any person liable for the payment of the debt specified in the notice of lien, and the action may be prosecuted to judgment against such person. The provisions of this section in regard to continuing liens shall apply to liens discharged by deposit or by order on the filing of an undertaking. Where a lien is discharged by deposit or by order, a notice of pendency of action shall not be filed.

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

2. (A) NO EMPLOYEE'S LIEN ON REAL PROPERTY SHALL BE A LIEN FOR A LONGER PERIOD THAN ONE YEAR AFTER THE NOTICE OF LIEN HAS BEEN FILED, UNLESS AN EXTENSION TO SUCH LIEN IS FILED WITH THE COUNTY CLERK OF THE COUNTY IN WHICH THE NOTICE OF LIEN IS FILED WITHIN ONE YEAR FROM THE FILING OF THE ORIGINAL NOTICE OF LIEN, CONTINUING SUCH LIEN AND SUCH LIEN SHALL BE REDOCKETED AS OF THE DATE OF FILING SUCH EXTENSION. SUCH EXTENSION SHALL CONTAIN THE NAMES OF THE LIENOR AND THE OWNER OF THE REAL PROPERTY AGAINST WHOSE INTEREST THEREIN SUCH LIEN IS CLAIMED, A BRIEF DESCRIPTION

OF THE PROPERTY AFFECTED BY SUCH LIEN, THE AMOUNT OF SUCH LIEN, AND THE DATE OF FILING THE NOTICE OF LIEN. NO LIEN SHALL BE CONTINUED BY SUCH EXTENSION FOR MORE THAN ONE YEAR FROM THE FILING THEREOF. IN THE EVENT AN ACTION IS NOT COMMENCED TO OBTAIN JUDGMENT ON THE WAGE CLAIM OR TO FORECLOSE THE LIEN WITHIN SUCH EXTENDED PERIOD, SUCH LIEN SHALL BE EXTINGUISHED UNLESS AN ORDER BE GRANTED BY A COURT OF RECORD OR A JUDGE OR JUSTICE THEREOF, CONTINUING SUCH LIEN, AND SUCH LIEN SHALL BE REDOCKETED AS OF THE DATE OF GRANTING SUCH ORDER AND A STATEMENT MADE THAT SUCH LIEN IS CONTINUED BY VIRTUE OF SUCH ORDER.

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

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

(D) NOTWITHSTANDING THE FOREGOING, IF A LIENOR COMMENCES A FORECLOSURE ACTION OR AN ACTION TO OBTAIN A JUDGMENT ON THE WAGE CLAIM WITHIN ONE YEAR FROM THE FILING OF THE NOTICE OF LIEN ON REAL PROPERTY OR THE RECORDING OF THE FINANCING STATEMENT CREATING LIEN ON PERSONAL PROPERTY, THE LIEN SHALL BE EXTENDED DURING THE PENDENCY OF THE ACTION AND FOR ONE HUNDRED TWENTY DAYS FOLLOWING THE ENTRY OF FINAL JUDGMENT IN SUCH ACTION, UNLESS THE ACTION RESULTS IN A FINAL JUDGMENT OR ADMINISTRATIVE ORDER IN THE LIENOR'S FAVOR ON THE WAGE CLAIMS AND THE LIENOR COMMENCES A FORECLOSURE ACTION, IN WHICH INSTANCE THE LIEN SHALL BE VALID DURING THE PENDENCY OF THE FORECLOSURE ACTION. IF A LIEN IS EXTENDED DUE TO THE PENDENCY OF A FORECLOSURE ACTION OR AN ACTION TO OBTAIN A JUDGMENT ON THE WAGE CLAIM, THE LIENOR SHALL FILE A NOTICE OF SUCH PENDENCY AND EXTENSION WITH THE COUNTY CLERK OF THE COUNTY IN WHICH THE NOTICE OF LIEN IS FILED, CONTAINING THE NAMES OF THE PARTIES TO THE ACTION, THE OBJECT OF THE ACTION, A BRIEF DESCRIPTION OF THE PROPERTY AFFECTED THEREBY, AND THE TIME OF FILING THE NOTICE OF LIEN, OR IN THE CASE OF A LIEN ON PERSONAL PROPERTY SHALL FILE SUCH NOTICE WITH THE OFFICE AUTHORIZED TO ACCEPT FINANCING STATEMENTS PURSUANT TO SECTION 9-501 OF THE

UNIFORM COMMERCIAL CODE. FOR PURPOSES OF THIS SECTION, AN ACTION TO OBTAIN JUDGMENT ON A WAGE CLAIM INCLUDES AN ACTION BROUGHT IN ANY COURT OF COMPETENT JURISDICTION OR THE SUBMISSION OF A COMPLAINT TO THE DEPARTMENT OF LABOR. AN ACTION ALSO INCLUDES AN INVESTIGATION OF WAGE CLAIMS BY THE COMMISSIONER OF LABOR OR THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, REGARDLESS OF WHETHER SUCH INVESTIGATION WAS INITIATED BY A COMPLAINT.

(E) A LIEN, THE DURATION OF WHICH HAS BEEN EXTENDED BY THE FILING OF A NOTICE OF THE PENDENCY OF AN ACTION AS ABOVE PROVIDED, SHALL NEVERTHELESS TERMINATE AS A LIEN AFTER SUCH NOTICE HAS BEEN CANCELED AS PROVIDED IN SECTION SIXTY-FIVE HUNDRED FOURTEEN OF THE CIVIL PRACTICE LAW AND RULES OR HAS CEASED TO BE EFFECTIVE AS CONSTRUCTIVE NOTICE AS PROVIDED IN SECTION SIXTY-FIVE HUNDRED THIRTEEN OF THE CIVIL PRACTICE LAW AND RULES.

S 12. Subdivisions 2 and 4 of section 19 of the lien law, subdivision 2 as amended by chapter 310 of the laws of 1962, and subdivision 4 as added by chapter 582 of the laws of 2002, paragraph (a) of subdivision 4 as further amended by section 104 of part A of chapter 62 of the laws of 2011, are amended to read as follows:

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

(4) Either before or after the beginning of an action by the EMPLOYER, owner or contractor executing a bond or undertaking in an amount equal to one hundred ten percent of such lien conditioned for the payment of any judgment which may be rendered against the property OR EMPLOYER for the enforcement of the lien:

a. The execution of any such bond or undertaking by any fidelity or surety company authorized by the laws of this state to transact business, shall be sufficient; and where a certificate of qualification has been issued by the superintendent of financial services under the provisions of section one thousand one hundred eleven of the insurance law, and has not been revoked, no justification or notice thereof shall be necessary. Any such company may execute any such bond or undertaking as surety by the hand of its officers, or attorney, duly authorized thereto by resolution of its board of directors, a certified copy of which resolution, under the seal of said company, shall be filed with each bond or undertaking. Any such bond or undertaking shall be filed with the clerk of the county in which the notice of lien is filed, and a copy shall be served upon the adverse party. The undertaking is effective when so served and filed. If a certificate of qualification issued pursuant to subsections (b), (c) and (d) of section one thousand one hundred eleven of the insurance law is not filed with the undertaking, a party may except, to the sufficiency of a surety and by a written notice of exception served upon the adverse party within ten days after receipt, a copy of the undertaking. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs. Where no exception to sureties is

taken within ten days or where exceptions taken are set aside, the undertaking shall be allowed.

b. In the case of bonds or undertakings not executed pursuant to paragraph a of this subdivision, the EMPLOYER, owner or contractor shall execute an undertaking with two or more sufficient sureties, who shall be free holders, to the clerk of the county where the premises are situated. The sureties must together justify in at least double the sum named in the undertaking. A copy of the undertaking, with notice that the sureties will justify before the court, or a judge or justice thereof, at the time and place therein mentioned, must be served upon the lienor or his attorney, not less than five days before such time. Upon the approval of the undertaking by the court, judge or justice an order shall be made by such court, judge or justice discharging such lien.

c. If the lienor cannot be found, or does not appear by attorney, service under this subsection may be made by leaving a copy of such undertaking and notice at the lienor's place of residence, or if a corporation at its principal place of business within the state as stated in the notice of lien, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said notice of lien and is not known, then in such manner as the court may direct. The premises, if any, described in the notice of lien as the lienor's residence or place of business shall be deemed to be his said residence or its place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person servicing the papers or directing the service had knowledge to the contrary. Notwithstanding the other provisions of this subdivision relating to service of notice, in any case where the mailing address of the lienor is outside the state such service may be made by registered or certified mail, return receipt requested, to such lienor at the mailing address contained in the notice of lien.

d. Except as otherwise provided in this subdivision, the provisions of article twenty-five of the civil practice law and rules regulating undertakings is applicable to a bond or undertaking given for the discharge of a lien on account of private improvements OR OF AN EMPLOYEE'S LIEN.

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

S 24. Enforcement of [mechanic's] lien. (1) REAL PROPERTY. The [mechanics'] liens ON REAL PROPERTY specified in this article may be enforced against the property specified in the notice of lien and which is subject thereto and against any person liable for the debt upon which the lien is founded, as prescribed in article three of this chapter.

(2) PERSONAL PROPERTY. AN EMPLOYEE'S LIEN ON PERSONAL PROPERTY SPECIFIED IN THIS ARTICLE MAY IMMEDIATELY BE ENFORCED AGAINST THE PROPERTY THROUGH A FORECLOSURE AS PRESCRIBED IN ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE, OR UPON JUDGMENT OBTAINED BY THE EMPLOYEE, COMMISSIONER OF LABOR OR ATTORNEY GENERAL OF THE STATE OF NEW YORK, MAY BE ENFORCED IN ANY MANNER AVAILABLE TO THE JUDGMENT CREDITOR PURSUANT TO ARTICLE NINE OF THE UNIFORM COMMERCIAL CODE OR OTHER APPLICABLE LAWS.

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

S 26. Subordination of liens after agreement with owner. In case an owner of real property shall execute to one or more persons, or a corporation, as trustee or trustees, a bond and mortgage or a note and mortgage affecting such property in whole or in part, or an assignment of the moneys due or to become due under a contract for a building loan in

relation to such property, and in case such mortgage, if any, shall be recorded in the office of the register of the county where such real property is situated, or if such county has no register then in the office of the clerk of such county, and in case such assignment, if any, shall be filed in the office of the clerk of the county where such real property is situated; and in case lienors having [mechanics'] liens against said real property, notices of which have been filed up to and not later than fifteen days after the recording of such mortgage or the filing of such assignment, and which liens have not been discharged as in this article provided, shall, to the extent of at least fifty-five per centum of the aggregate amount for which such notices of liens have been so filed, approve such bond and mortgage or such note and mortgage, if any, and such assignment, if any, by an instrument or instruments in writing, duly acknowledged and filed in the office of such county clerk, then all mechanics' liens for labor performed or material furnished prior to the recording of such mortgage or filing of such assignment, whether notices thereof have been theretofore or are thereafter filed and which have not been discharged as in this article provided, shall be subordinate to the lien of such trust bond and mortgage or such trust note and mortgage to the extent of the aggregate amount of all certificates of interest therein issued by such trustee or trustees, or their successors, for moneys loaned, materials furnished, labor performed and any other indebtedness incurred after said trust mortgage shall have been recorded, and for expenses in connection with said trust mortgage, and shall also be subordinate to the lien of the bond and mortgage or note and mortgage, given to secure the amount agreed to be advanced under such contract for a building loan to the extent of the amount which shall be advanced by the holder of such bond and mortgage or such note and mortgage to the trustee or trustees, or their successors, under such assignment. The provisions of this section shall apply to all bonds and mortgages and notes and mortgages and all assignments of moneys due, or to become due under building loan contracts executed by such owner, in like manner, and recorded or filed, from time to time as hereinbefore provided. In case of an assignment to trustees under the provisions of this section, the trustees and their successors shall be the agents of the assignor to receive and receipt for any and all sums advanced by the holder of the building loan bond and mortgage or the building loan note and mortgage under the building loan contract and such assignment. No lienor shall have any priority over the bond and mortgage or note and mortgage given to secure the money agreed to be advanced under a building loan contract or over the advances made thereunder, by reason of any act preceding the making and approval of such assignment.

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

S 38. Itemized statement may be required of lienor. A lienor who has filed a notice of MECHANIC'S lien shall, on demand in writing, deliver to the owner or contractor making such demand a statement in writing which shall set forth the items of labor and/or material and the value thereof which make up the amount for which he claims a lien, and which shall also set forth the terms of the contract under which such items were furnished. A LIENOR WHO HAS FILED A NOTICE OF EMPLOYEE LIEN SHALL, ON DEMAND IN WRITING, DELIVER TO THE EMPLOYER MAKING SUCH DEMAND A STATEMENT IN WRITING WHICH SHALL SET FORTH THE ITEMS OF THE WAGE CLAIM AND THE VALUE THEREOF WHICH MAKE UP THE AMOUNT FOR WHICH HE CLAIMS A LIEN. The statement shall be verified by the lienor or his agent in the form required for the verification of notices in section nine of this

[chapter] ARTICLE. If the lienor shall fail to comply with such a demand within five days after the same shall have been made by the EMPLOYER, owner or contractor, or if the lienor delivers an insufficient statement, the person aggrieved may petition the supreme court of this state or any justice thereof, or the county court of the county where the premises are situated, or the county judge of such county for an order directing the lienor within a time specified in the order to deliver to the petitioner the statement required by this section. Two days' notice in writing of such application shall be served upon the lienor. Such service shall be made in the manner provided by law for the personal service of a summons. The court or a justice or judge thereof shall hear the parties and upon being satisfied that the lienor has failed, neglected or refused to comply with the requirements of this section shall have an appropriate order directing such compliance. In case the lienor fails to comply with the order so made within the time specified, then upon five days' notice to the lienor, served in the manner provided by law for the personal service of a summons, the court or a justice or judge thereof may make an order cancelling the lien.

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

S 39. Lien wilfully exaggerated is void. In any action or proceeding to enforce a [mechanic's] lien upon a private or public improvement or in which the validity of the lien is an issue, if the court shall find that a lienor has wilfully exaggerated the amount for which he claims a lien as stated in his notice of lien, his lien shall be declared to be void and no recovery shall be had thereon. No such lienor shall have a right to file any other or further lien for the same claim. A second or subsequent lien filed in contravention of this section may be vacated upon application to the court on two days' notice.

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

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

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

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

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

S 43. Action in a court of record; consolidation of actions. The provisions of the real property actions and proceedings law relating to actions for the foreclosure of a mortgage upon real property, and the sale and the distribution of the proceeds thereof apply to actions in a court of record, to enforce mechanics' liens AND EMPLOYEES' LIENS on real property, except as otherwise provided in this article. If actions are brought by different lienors in a court of record, the court in which the first action was brought, may, upon its own motion, or upon

the application of any party in any of such actions, consolidate all of such actions.

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

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

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

S 50. Execution. Execution may be issued upon a judgment obtained in an action to enforce a mechanic's lien OR AN EMPLOYEE'S LIEN against real property in a court not of record, which shall direct the officer to sell the title and interest of the owner in the premises, upon which the lien set forth in the complaint existed at the time of filing the notice of lien.

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

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

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

S 59. Vacating of a [mechanic's] lien; cancellation of bond; return of deposit, by order of court. 1. A mechanic's lien notice of which has been filed on real property or a bond given to discharge the same may be vacated and cancelled or a deposit made to discharge a lien pursuant to section twenty may be returned, by an order of a court of record. Before such order shall be granted, a notice shall be served upon the lienor, either personally or by leaving it as his last known place of residence, with a person of suitable age, with directions to deliver it to the lienor. Such notice shall require the lienor to commence an action to enforce the lien, within a time specified in the notice, not less than thirty days from the time of service, or show cause at a special term of a court of record, or at a county court, in a county in which the property is situated, at a time and place specified therein, why the notice of lien filed or the bond given should not be vacated and cancelled, or the deposit returned, as the case may be. Proof of such service and that

the lienor has not commenced the action to foreclose such lien, as directed in the notice, shall be made by affidavit, at the time of applying for such order.

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

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

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

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

3. Each employee and his or her authorized representative shall be notified in writing, OF THE TERMINATION OF THE COMMISSIONER'S INVESTIGATION OF THE EMPLOYEE'S COMPLAINT AND THE RESULT OF SUCH INVESTIGATION, of any award and collection of back wages and civil penalties, and of

any intent to seek criminal penalties. In the event that criminal penalties are sought the employee and his or her authorized representative shall be notified of the outcome of prosecution.

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

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

S 27. Subdivision 5 of section 6201 of the civil practice law and 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 from taking any property levied upon into his actual custody, pending further order of the court.

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

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

2. ON A MOTION FOR AN ATTACHMENT PURSUANT TO SUBDIVISION SIX OF SECTION 6201, THE COURT SHALL ORDER THAT THE PLAINTIFF GIVE AN ACCESSIBLE UNDERTAKING OF NO MORE THAN FIVE HUNDRED DOLLARS, OR IN THE ALTERNATIVE, MAY WAIVE THE UNDERTAKING ALTOGETHER. The attorney for the plaintiff shall not be liable to the sheriff for such fees. The surety on the undertaking shall not be discharged except upon notice to the sheriff.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding the provisions of subdivisions (a) and (b) of this section, the ten members with the largest percentage ownership interest, as determined as of the beginning of the period during which the unpaid services referred to in this section are performed, of every limited liability company, shall jointly and severally be personally liable for all debts, wages or salaries due and owing to any of its laborers, servants or employees, for services performed by them for such limited

liability company. [Before such laborer, servant or employee shall charge such member for such services, he or she shall give notice in writing to such member that he or she intends to hold such member liable under this section. Such notice shall be given within one hundred eighty days after termination of such services. An action to enforce such liability shall be commenced within ninety days after the return of an execution unsatisfied against the limited liability company upon a judgment recovered against it for such services.] A member who has paid more than his or her pro rata share under this section shall be entitled to contribution pro rata from the other members liable under this section with respect to the excess so paid, over and above his or her pro rata share, and may sue them jointly or severally or any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this subdivision, "pro rata" means in proportion to percentage ownership interest. Before a member may claim contribution from other members under this section, he or she shall give them notice in writing that he or she intends to hold them so liable to him or her.

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

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

S 36. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, section thirty-four of this act shall take effect on the same date and in the same manner as section 11 of chapter 537 of the laws of 2014, takes effect. The procedures and rights created in this act may be used by employees, laborers or servants in connection with claims for liabilities that arose prior to the effective date.