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

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2015-2016 Regular Sessions

I N S E N A T E

February 3, 2015

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the limited liability company law, in relation to the liability of members for wages due to laborers, servants or employees

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

Section 1. The limited liability company law is amended by adding a new section 612 to read as follows:

S 612. LIABILITY OF MEMBERS FOR WAGES DUE TO LABORERS, SERVANTS OR EMPLOYEES. (A) NOTWITHSTANDING THE PROVISIONS OF SECTION SIX HUNDRED NINE OF THIS ARTICLE, THE TEN LARGEST MEMBERS OF A LIMITED LIABILITY COMPANY, 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, 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 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 HIM OR HER LIABLE UNDER THIS SECTION. SUCH NOTICE SHALL BE GIVEN WITHIN ONE HUNDRED EIGHTY DAYS AFTER TERMINATION OF SUCH SERVICES, EXCEPT THAT IF, WITHIN SUCH PERIOD, THE LABORER, SERVANT OR EMPLOYEE DEMANDS AN EXAMINATION OF THE RECORDS UNDER SUBDIVISION (B) OF SECTION ONE THOUSAND ONE HUNDRED TWO OF THIS CHAPTER, SUCH NOTICE MAY BE GIVEN WITHIN SIXTY DAYS AFTER HE OR SHE HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE RECORDS. 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.

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

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(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. THESE SHALL SPECIFICALLY INCLUDE BUT NOT 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 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 BENEFICIAL SHARE INTEREST. BEFORE A MEMBER MAY CLAIM CONTRIBUTION FROM OTHER MEMBERS UNDER THIS SUBDIVISION, SUCH MEMBER SHALL, UNLESS HE OR SHE HAS BEEN GIVEN NOTICE BY A LABORER, SERVANT OR EMPLOYEE UNDER SUBDIVISION (A) OF THIS SECTION, GIVE THEM NOTICE IN WRITING THAT HE OR SHE INTENDS TO HOLD THEM SO LIABLE TO HIM OR HER. SUCH NOTICE SHALL BE GIVEN BY HIM OR HER WITHIN TWENTY DAYS AFTER THE DATE THAT NOTICE WAS GIVEN TO HIM OR HER BY A LABORER, SERVANT OR EMPLOYEE UNDER SUBDIVISION (A) OF THIS SECTION.

S 2. This act shall take effect immediately.