

STATE OF NEW YORK

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2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. L. ROSENTHAL, MOSLEY, GOTTFRIED, OTIS, WEPRIN, ORTIZ, PERRY, DAVILA, DINOWITZ, SIMON, M. G. MILLER, LIFTON, BARRON, SEAWRIGHT, RICHARDSON, BENEDETTO, STECK, BRONSON, CRESPO, HUNTER, ROZIC, COLTON, TAYLOR, PICHARDO, EPSTEIN, REYES, DeSTEFANO, ZEBROWSKI, STIRPE, CARROLL, McMAHON, RAMOS, JAFFEE, CRUZ -- Multi-Sponsored by -- M. of A. COOK, DE LA ROSA, HEVESI, KIM, LENTOL, RIVERA -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 articles one, six, nine-
5 teen and nineteen-A of the labor law, as applicable, or the Fair Labor
6 Standards Act, 29 U.S.C. § 201 et. seq., as applicable.

7 22. Employer. The term "employer", when used in this chapter, shall
8 have the same meaning as "employer" pursuant to articles one, six, nine-

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

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1 teen and nineteen-A of the labor law, as applicable, or the Fair Labor
2 Standards Act, 29 U.S.C. § 201 et. seq., as applicable, except that the
3 term "employer" shall not include a governmental agency.

4 23. Wage claim. The term "wage claim", when used in this chapter,
5 means a claim that an employee has suffered a violation of sections one
6 hundred seventy, one hundred ninety-three, one hundred ninety-six-d, six
7 hundred fifty-two or six hundred seventy-three of the labor law or the
8 related regulations and wage orders promulgated by the commissioner, a
9 claim for wages due to an employee pursuant to an employment contract
10 that were unpaid in violation of that contract, or a claim that an
11 employee has suffered a violation of 29 U.S.C. § 206 or 207.

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

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

36 2. Employee's lien. An employee who has a wage claim as that term is
37 defined in subdivision twenty-three of section two of this chapter shall
38 have a lien on his or her employer's interest in property for the value
39 of that employee's wage claim arising out of the employment, including
40 liquidated damages pursuant to subdivision one-a of section one hundred
41 ninety-eight, section six hundred sixty-three or section six hundred
42 eighty-one of the labor law, or 29 U.S.C. § 216 (b), from the time of
43 filing a notice of such lien as prescribed in this chapter. An employ-
44 ee's lien based on a wage claim may be had against the employer's inter-
45 est in real property and against the employer's interest in personal
46 property that can be sufficiently described within the meaning of
47 section 9-108 of the uniform commercial code, except that an employee's
48 lien shall not extend to deposit accounts or goods as those terms are
49 defined in section 9-102 of the uniform commercial code. The department
50 of labor and the attorney general may obtain an employee's lien for the
51 value of wage claims of the employees who are the subject of their
52 investigations, court actions or administrative agency actions.

53 3. As used in this article and unless otherwise specified, a lien
54 shall mean an employee's lien or a mechanic's lien.

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

4 (1) [~~Such~~] A mechanic's or employee's lien and employee's lien against
5 real property shall extend to the owner's right, title or interest in
6 the real property and improvements, existing at the time of filing the
7 notice of lien, or thereafter acquired, except as hereinafter in this
8 article provided. If an owner assigns his interest in such real property
9 by a general assignment for the benefit of creditors, within thirty days
10 prior to such filing, the lien shall extend to the interest thus
11 assigned. If any part of the real property subjected to such lien be
12 removed by the owner or by any other person, at any time before the
13 discharge thereof, such removal shall not affect the rights of the
14 lienor, either in respect to the remaining real property, or the part so
15 removed. If labor is performed for, or materials furnished to, a
16 contractor or subcontractor for an improvement, the mechanic's lien
17 shall not be for a sum greater than the sum earned and unpaid on the
18 contract at the time of filing the notice of lien, and any sum subse-
19 quently earned thereon. In no case shall the owner be liable to pay by
20 reason of all mechanic's liens created pursuant to this article a sum
21 greater than the value or agreed price of the labor and materials
22 remaining unpaid, at the time of filing notices of such liens, except as
23 hereinafter provided.

24 (2) [~~Such~~] A mechanic's or employee's lien shall not extend to the
25 owner's right, title or interest in real property and improvements,
26 existing at the time of filing the notice of lien if such lien arises
27 from the failure of a lessee of the right to explore, develop or produce
28 natural gas or oil, to pay for, compensate or render value for improve-
29 ments made with the consent or at the request of such lessee by a
30 contractor, subcontractor, materialman, equipment operator or owner,
31 landscaper, nurseryman, or person or corporation who performs labor or
32 furnishes materials for the exploration, development, or production of
33 oil or natural gas or otherwise improves such leased property. Such
34 mechanic's or employee's lien shall extend to the improvements made for
35 the exploration, development and production of oil and natural gas, and
36 the working interest held by a lessee of the right to explore, develop
37 or produce oil and natural gas.

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

40 The proceeds of any insurance which by the terms of the policy are
41 payable to the owner of real property improved, and actually received or
42 to be received by him because of the destruction or removal by fire or
43 other casualty of an improvement on which lienors have performed labor
44 or services or for which they have furnished materials, or upon which an
45 employee has established an employee's lien, shall after the owner has
46 been reimbursed therefrom for premiums paid by him, if any, for such
47 insurance, be subject to liens provided by this act to the same extent
48 and in the same order of priority as the real property would have been
49 had such improvement not been so destroyed or removed.

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

52 1. The name of the lienor, and either the residence of the lienor or
53 the name and business address of the lienor's attorney, if any; and if
54 the lienor is a partnership or a corporation, the business address of
55 such firm, or corporation, the names of partners and principal place of

1 business, and if a foreign corporation, its principal place of business
2 within the state.

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

6 5. The amount unpaid to the lienor for such labor or materials, or the
7 amount of the wage claim if a wage claim is the basis for establishment
8 of the lien, the items of the wage claim and the value thereof which
9 make up the amount for which the lienor claims a lien.

10 § 6. Subdivision 1 of section 10 of the lien law, as amended by chap-
11 ter 367 of the laws of 2011, is amended to read as follows:

12 1. (a) Notice of mechanic's lien may be filed at any time during the
13 progress of the work and the furnishing of the materials, or, within
14 eight months after the completion of the contract, or the final perform-
15 ance of the work, or the final furnishing of the materials, dating from
16 the last item of work performed or materials furnished; provided, howev-
17 er, that where the improvement is related to real property improved or
18 to be improved with a single family dwelling, the notice of mechanic's
19 lien may be filed at any time during the progress of the work and the
20 furnishing of the materials, or, within four months after the completion
21 of the contract, or the final performance of the work, or the final
22 furnishing of the materials, dating from the last item of work performed
23 or materials furnished; and provided further where the notice of mechan-
24 ic's lien is for retainage, the notice of mechanic's lien may be filed
25 within ninety days after the date the retainage was due to be released;
26 except that in the case of a mechanic's lien by a real estate broker,
27 the notice of mechanic's lien may be filed only after the performance of
28 the brokerage services and execution of lease by both lessor and lessee
29 and only if a copy of the alleged written agreement of employment or
30 compensation is annexed to the notice of lien, provided that where the
31 payment pursuant to the written agreement of employment or compensation
32 is to be made in installments, then a notice of lien may be filed within
33 eight months after the final payment is due, but in no event later than
34 a date five years after the first payment was made. For purposes of this
35 section, the term "single family dwelling" shall not include a dwelling
36 unit which is a part of a subdivision that has been filed with a munici-
37 pality in which the subdivision is located when at the time the lien is
38 filed, such property in the subdivision is owned by the developer for
39 purposes other than his personal residence. For purposes of this
40 section, "developer" shall mean and include any private individual,
41 partnership, trust or corporation which improves two or more parcels of
42 real property with single family dwellings pursuant to a common scheme
43 or plan. [~~The~~]

44 (b) Notice of employee's lien may be filed at any time not later than
45 three years following the end of the employment giving rise to the wage
46 claim.

47 (c) A notice of lien, other than for a lien on personal property, must
48 be filed in the clerk's office of the county where the property is situ-
49 ated. If such property is situated in two or more counties, the notice
50 of lien shall be filed in the office of the clerk of each of such coun-
51 ties. The county clerk of each county shall provide and keep a book to
52 be called the "lien docket," which shall be suitably ruled in columns
53 headed "owners," "lienors," "lienor's attorney," "property," "amount,"
54 "time of filing," "proceedings had," in each of which he shall enter the
55 particulars of the notice, properly belonging therein. The date, hour
56 and minute of the filing of each notice of lien shall be entered in the

1 proper column. Except where the county clerk maintains a block index,
2 the names of the owners shall be arranged in such book in alphabetical
3 order. The validity of the lien and the right to file a notice thereof
4 shall not be affected by the death of the owner before notice of the
5 lien is filed. A notice of employee's lien on personal property must be
6 filed, together with a financing statement, in the filing office as set
7 forth in section 9-501 of the uniform commercial code.

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

10 § 11. Service of copy of notice of lien. 1. Within five days before
11 or thirty days after filing the notice of a mechanic's lien, the lienor
12 shall serve a copy of such notice upon the owner, if a natural person,
13 (a) by delivering the same to him personally, or if the owner cannot be
14 found, to his agent or attorney, or (b) by leaving it at his last known
15 place of residence in the city or town in which the real property or
16 some part thereof is situated, with a person of suitable age and
17 discretion, or (c) by registered or certified mail addressed to his last
18 known place of residence, or (d) if such owner has no such residence in
19 such city or town, or cannot be found, and he has no agent or attorney,
20 by affixing a copy thereof conspicuously on such property, between the
21 hours of nine o'clock in the forenoon and four o'clock in the afternoon;
22 if the owner be a corporation, said service shall be made (i) by deliv-
23 ering such copy to and leaving the same with the president, vice-presi-
24 dent, secretary or clerk to the corporation, the cashier, treasurer or a
25 director or managing agent thereof, personally, within the state, or
26 (ii) if such officer cannot be found within the state by affixing a copy
27 thereof conspicuously on such property between the hours of nine o'clock
28 in the forenoon and four o'clock in the afternoon, or (iii) by regis-
29 tered or certified mail addressed to its last known place of business.
30 Failure to file proof of such a service with the county clerk within
31 thirty-five days after the notice of lien is filed shall terminate the
32 notice as a lien. Until service of the notice has been made, as above
33 provided, an owner, without knowledge of the lien, shall be protected in
34 any payment made in good faith to any contractor or other person claim-
35 ing a lien.

36 2. Within five days before or thirty days after filing the notice of
37 an employee's lien, the lienor shall serve a copy of such notice upon
38 the employer, if a natural person, (a) by delivering the same to him
39 personally, or if the employer cannot be found, to his agent or attor-
40 ney, or (b) by leaving it as his last known place of residence or busi-
41 ness, with a person of suitable age and discretion, or (c) by registered
42 or certified mail addressed to his last known place of residence or
43 business, or (d) if such employer owns real property, by affixing a copy
44 thereof conspicuously on such property, between the hours of nine
45 o'clock in the forenoon and four o'clock in the afternoon. The lienor
46 also shall, within thirty days after filing the notice of employee's
47 lien, affix a copy thereof conspicuously on the real property identified
48 in the notice of employee's lien, between the hours of nine o'clock in
49 the forenoon and four o'clock in the afternoon. If the employer be a
50 corporation, said service shall be made (i) by delivering such copy to
51 and leaving the same with the president, vice-president, secretary or
52 clerk to the corporation, the cashier, treasurer or a director or manag-
53 ing agent thereof, personally, within the state, or (ii) if such officer
54 cannot be found within the state by affixing a copy thereof conspicu-
55 ously on such property between the hours of nine o'clock in the forenoon
56 and four o'clock in the afternoon, or (iii) by registered or certified

1 mail addressed to its last known place of business, or (iv) by delivery
2 to the secretary of the department of state in the same manner as
3 required by subparagraph one of paragraph (b) of section three hundred
4 six of the business corporation law. Failure to file proof of such a
5 service with the county clerk within thirty-five days after the notice
6 of lien is filed shall terminate the notice as a lien. Until service of
7 the notice has been made, as above provided, an owner, without knowledge
8 of the lien, shall be protected in any payment made in good faith to any
9 other person claiming a lien.

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

12 § 11-b. Copy of notice of mechanic's lien to a contractor or subcon-
13 tractor. Within five days before or thirty days after filing a notice
14 of mechanic's lien in accordance with section ten of this chapter or the
15 filing of an amendment of notice of mechanic's lien in accordance with
16 section twelve-a of this [~~chapter~~] article the lienor shall serve a copy
17 of such notice or amendment by certified mail on the contractor, subcon-
18 tractor, assignee or legal representative for whom he was employed or to
19 whom he furnished materials or if the lienor is a contractor or subcon-
20 tractor to the person, firm or corporation with whom the contract was
21 made. A lienor having a direct contractual relationship with a subcon-
22 tractor or a sub-subcontractor but not with a contractor shall also
23 serve a copy of such notice or amendment by certified mail to the
24 contractor. Failure to file proof of such a service with the county
25 clerk within thirty-five days after the notice of lien is filed shall
26 terminate the notice as a lien. Any lienor, or a person acting on behalf
27 of a lienor, who fails to serve a copy of the notice of mechanic's lien
28 as required by this section shall be liable for reasonable attorney's
29 fees, costs and expenses, as determined by the court, incurred in
30 obtaining such copy.

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

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

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

41 (1) [~~A~~] An employee's lien, or a lien for materials furnished or labor
42 performed in the improvement of real property, shall have priority over
43 a conveyance, mortgage, judgment or other claim against such property
44 not recorded, docketed or filed at the time of the filing of the notice
45 of such lien, except as hereinafter in this chapter provided; over
46 advances made upon any mortgage or other encumbrance thereon after such
47 filing, except as hereinafter in this article provided; and over the
48 claim of a creditor who has not furnished materials or performed labor
49 upon such property, if such property has been assigned by the owner by a
50 general assignment for the benefit of creditors, within thirty days
51 before the filing of either of such notices; and also over an attachment
52 hereafter issued or a money judgment hereafter recovered upon a claim,
53 which, in whole or in part, was not for materials furnished, labor
54 performed or moneys advanced for the improvement of such real property;
55 and over any claim or lien acquired in any proceedings upon such judg-
56 ment. Such liens shall also have priority over advances made upon a

1 contract by an owner for an improvement of real property which contains
2 an option to the contractor, his successor or assigns to purchase the
3 property, if such advances were made after the time when the labor began
4 or the first item of material was furnished, as stated in the notice of
5 lien. If several buildings are demolished, erected, altered or repaired,
6 or several pieces or parcels of real property are improved, under one
7 contract, and there are conflicting liens thereon, each lienor shall
8 have priority upon the particular part of the real property or upon the
9 particular building or premises where his labor is performed or his
10 materials are used. Persons shall have no priority on account of the
11 time of filing their respective notices of liens, but all liens shall be
12 on a parity except as hereinafter in section fifty-six of this chapter
13 provided; and except that in all cases laborers for daily or weekly
14 wages with a mechanic's lien, and employees with an employee's lien,
15 shall have preference over all other claimants under this article.

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

18 § 17. Duration of lien. 1. (a) No mechanic's lien specified in this
19 article shall be a lien for a longer period than one year after the
20 notice of lien has been filed, unless within that time an action is
21 commenced to foreclose the lien, and a notice of the pendency of such
22 action, whether in a court of record or in a court not of record, is
23 filed with the county clerk of the county in which the notice of lien is
24 filed, containing the names of the parties to the action, the object of
25 the action, a brief description of the real property affected thereby,
26 and the time of filing the notice of lien; or unless an extension to
27 such lien, except for a lien on real property improved or to be improved
28 with a single family dwelling, is filed with the county clerk of the
29 county in which the notice of lien is filed within one year from the
30 filing of the original notice of lien, continuing such lien and such
31 lien shall be redocketed as of the date of filing such extension. Such
32 extension shall contain the names of the lienor and the owner of the
33 real property against whose interest therein such lien is claimed, a
34 brief description of the real property affected by such lien, the amount
35 of such lien, and the date of filing the notice of lien. No lien shall
36 be continued by such extension for more than one year from the filing
37 thereof. In the event an action is not commenced to foreclose the lien
38 within such extended period, such lien shall be extinguished unless an
39 order be granted by a court of record or a judge or justice thereof,
40 continuing such lien, and such lien shall be redocketed as of the date
41 of granting such order and a statement made that such lien is continued
42 by virtue of such order. A lien on real property improved or to be
43 improved with a single family dwelling may only be extended by an order
44 of a court of record, or a judge or justice thereof. No lien shall be
45 continued by court order for more than one year from the granting there-
46 of, but a new order and entry may be made in each of two successive
47 years. If a lienor is made a party defendant in an action to enforce
48 another lien, and the plaintiff or such defendant has filed a notice of
49 the pendency of the action within the time prescribed in this section,
50 the lien of such defendant is thereby continued. Such action shall be
51 deemed an action to enforce the lien of such defendant lienor. The fail-
52 ure to file a notice of pendency of action shall not abate the action as
53 to any person liable for the payment of the debt specified in the notice
54 of lien, and the action may be prosecuted to judgment against such
55 person. The provisions of this section in regard to continuing liens
56 shall apply to liens discharged by deposit or by order on the filing of

1 an undertaking. Where a lien is discharged by deposit or by order, a
2 notice of pendency of action shall not be filed.

3 (b) A lien, the duration of which has been extended by the filing of a
4 notice of the pendency of an action as above provided, shall neverthe-
5 less terminate as a lien after such notice has been canceled as provided
6 in section sixty-five hundred fourteen of the civil practice law and
7 rules or has ceased to be effective as constructive notice as provided
8 in section sixty-five hundred thirteen of the civil practice law and
9 rules.

10 2. (a) No employee's lien on real property shall be a lien for a long-
11 er period than one year after the notice of lien has been filed, unless
12 an extension to such lien is filed with the county clerk of the county
13 in which the notice of lien is filed within one year from the filing of
14 the original notice of lien, continuing such lien and such lien shall be
15 redocketed as of the date of filing such extension. Such extension shall
16 contain the names of the lienor and the owner of the real property
17 against whose interest therein such lien is claimed, a brief description
18 of the property affected by such lien, the amount of such lien, and the
19 date of filing the notice of lien. No lien shall be continued by such
20 extension for more than one year from the filing thereof. In the event
21 an action is not commenced to obtain judgment on the wage claim or to
22 foreclose the lien within such extended period, such lien shall be auto-
23 matically extinguished unless an order be granted by a court of record
24 or a judge or justice thereof, continuing such lien, and such lien shall
25 be redocketed as of the date of granting such order and a statement made
26 that such lien is continued by virtue of such order.

27 (b) No employee's lien on personal property shall be a lien for a
28 longer period than one year after the financing statement has been
29 recorded, unless an extension to such lien, is filed with the filing
30 office in which the financing statement is required to be filed pursuant
31 to section 9-501 of the uniform commercial code within one year from the
32 filing of the original financing statement, continuing such lien. Such
33 extension shall contain the names of the lienor and the owner of the
34 property against whose interest therein such lien is claimed, a brief
35 description of the prior financing statement to be extended, and the
36 date of filing the prior financing statement. No lien shall be contin-
37 ued by such extension for more than one year from the filing thereof. In
38 the event an action is not commenced to obtain judgment on the wage
39 claim or to foreclose the lien within such extended period, such lien
40 shall be automatically extinguished unless an order be granted by a
41 court of record or a judge or justice thereof, continuing such lien, and
42 such lien shall be refiled as of the date of granting such order and a
43 statement made that such lien is continued by virtue of such order.

44 (c) If a lienor is made a party defendant in an action to enforce
45 another lien, and the plaintiff or such defendant has filed a notice of
46 the pendency of the action within the time prescribed in this section,
47 the lien of such defendant is thereby continued. Such action shall be
48 deemed an action to enforce the lien of such defendant lienor. The fail-
49 ure to file a notice of pendency of action shall not abate the action as
50 to any person liable for the payment of the debt specified in the notice
51 of lien, and the action may be prosecuted to judgment against such
52 person. The provisions of this section in regard to continuing liens
53 shall apply to liens discharged by deposit or by order on the filing of
54 an undertaking. Where a lien is discharged by deposit or by order, a
55 notice of pendency of action shall not be filed.

1 (d) Notwithstanding the foregoing, if a lienor commences a foreclosure
2 action or an action to obtain a judgment on the wage claim within one
3 year from the filing of the notice of lien on real property or the
4 recording of the financing statement creating lien on personal property,
5 the lien shall be extended during the pendency of the action and for one
6 hundred twenty days following the entry of final judgment in such
7 action, unless the action results in a final judgment or administrative
8 order in the lienor's favor on the wage claims and the lienor commences
9 a foreclosure action, in which instance the lien shall be valid during
10 the pendency of the foreclosure action, provided, that the lien will be
11 automatically extinguished if, after a dismissal with prejudice of the
12 wage claims on which it is based, the lienor fails to file a notice of
13 appeal within the prescribed period to file a notice of appeal. If a
14 lien is extended due to the pendency of a foreclosure action or an
15 action to obtain a judgment on the wage claim, the lienor shall file a
16 notice of such pendency and extension with the county clerk of the coun-
17 ty in which the notice of lien is filed, containing the names of the
18 parties to the action, the object of the action, a brief description of
19 the property affected thereby, and the time of filing the notice of
20 lien, or in the case of a lien on personal property shall file such
21 notice with the office authorized to accept financing statements pursu-
22 ant to section 9-501 of the uniform commercial code. For purposes of
23 this section, an action to obtain judgment on a wage claim includes an
24 action brought in any court of competent jurisdiction, the submission of
25 a complaint to the department of labor or the submission of a claim to
26 arbitration pursuant to an arbitration agreement. An action also
27 includes an investigation of wage claims by the commissioner of labor or
28 the attorney general of the state of New York, regardless of whether
29 such investigation was initiated by a complaint.

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

37 § 12. Subdivisions 2 and 4 of section 19 of the lien law, subdivision
38 2 as amended by chapter 310 of the laws of 1962, subdivision 4 as added
39 by chapter 582 of the laws of 2002 and paragraph a of subdivision 4 as
40 further amended by section 104 of part A of chapter 62 of the laws of
41 2011, are amended to read as follows:

42 (2) By failure to begin an action to foreclose such lien or to secure
43 an order continuing it, within one year from the time of filing the
44 notice of lien, unless (i) an action be begun within the same period to
45 foreclose a mortgage or another mechanic's lien upon the same property
46 or any part thereof and a notice of pendency of such action is filed
47 according to law, or (ii) an action is commenced to obtain a judgment on
48 a wage claim pursuant to subdivision two of section seventeen of this
49 article, but a lien, the duration of which has been extended by the
50 filing of a notice of the pendency of an action as herein provided,
51 shall nevertheless terminate as a lien after such notice has been
52 cancelled or has ceased to be effective as constructive notice.

53 (4) Either before or after the beginning of an action by the employer,
54 owner or contractor executing a bond or undertaking in an amount equal
55 to one hundred ten percent of such lien conditioned for the payment of

1 any judgment which may be rendered against the property or employer for
2 the enforcement of the lien:

3 a. The execution of any such bond or undertaking by any fidelity or
4 surety company authorized by the laws of this state to transact busi-
5 ness, shall be sufficient; and where a certificate of qualification has
6 been issued by the superintendent of financial services under the
7 provisions of section one thousand one hundred eleven of the insurance
8 law, and has not been revoked, no justification or notice thereof shall
9 be necessary. Any such company may execute any such bond or undertaking
10 as surety by the hand of its officers, or attorney, duly authorized
11 thereto by resolution of its board of directors, a certified copy of
12 which resolution, under the seal of said company, shall be filed with
13 each bond or undertaking. Any such bond or undertaking shall be filed
14 with the clerk of the county in which the notice of lien is filed, and a
15 copy shall be served upon the adverse party. The undertaking is effec-
16 tive when so served and filed. If a certificate of qualification issued
17 pursuant to subsections (b), (c) and (d) of section one thousand one
18 hundred eleven of the insurance law is not filed with the undertaking, a
19 party may except, to the sufficiency of a surety and by a written notice
20 of exception served upon the adverse party within ten days after
21 receipt, a copy of the undertaking. Exceptions deemed by the court to
22 have been taken unnecessarily, or for vexation or delay, may, upon
23 notice, be set aside, with costs. Where no exception to sureties is
24 taken within ten days or where exceptions taken are set aside, the
25 undertaking shall be allowed.

26 b. In the case of bonds or undertakings not executed pursuant to para-
27 graph a of this subdivision, the employer, owner or contractor shall
28 execute an undertaking with two or more sufficient sureties, who shall
29 be free holders, to the clerk of the county where the premises are situ-
30 ated. The sureties must together justify in at least double the sum
31 named in the undertaking. A copy of the undertaking, with notice that
32 the sureties will justify before the court, or a judge or justice there-
33 of, at the time and place therein mentioned, must be served upon the
34 lienor or his attorney, not less than five days before such time. Upon
35 the approval of the undertaking by the court, judge or justice an order
36 shall be made by such court, judge or justice discharging such lien.

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

54 d. Except as otherwise provided in this subdivision, the provisions of
55 article twenty-five of the civil practice law and rules regulating
56 undertakings is applicable to a bond or undertaking given for the

1 discharge of a lien on account of private improvements or of an employ-
2 ee's lien.

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

5 § 24. Enforcement of [~~mechanic's~~] lien. (1) Real property. The
6 [~~mechanics'~~] liens on real property specified in this article may be
7 enforced against the property specified in the notice of lien and which
8 is subject thereto and against any person liable for the debt upon which
9 the lien is founded, as prescribed in article three of this chapter.

10 (2) Personal property. An employee's lien on personal property speci-
11 fied in this article may immediately be enforced against the property
12 through a foreclosure as prescribed in article nine of the uniform
13 commercial code, or upon judgment obtained by the employee, commissioner
14 of labor or attorney general of the state of New York, may be enforced
15 in any manner available to the judgment creditor pursuant to article
16 nine of the uniform commercial code or other applicable laws.

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

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

1 provided. In case of an assignment to trustees under the provisions of
2 this section, the trustees and their successors shall be the agents of
3 the assignor to receive and receipt for any and all sums advanced by the
4 holder of the building loan bond and mortgage or the building loan note
5 and mortgage under the building loan contract and such assignment. No
6 lienor shall have any priority over the bond and mortgage or note and
7 mortgage given to secure the money agreed to be advanced under a build-
8 ing loan contract or over the advances made thereunder, by reason of any
9 act preceding the making and approval of such assignment.

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

12 § 38. Itemized statement may be required of lienor. A lienor who has
13 filed a notice of mechanic's lien shall, on demand in writing, deliver
14 to the owner or contractor making such demand a statement in writing
15 which shall set forth the items of labor and/or material and the value
16 thereof which make up the amount for which he claims a lien, and which
17 shall also set forth the terms of the contract under which such items
18 were furnished. The statement shall be verified by the lienor or his
19 agent in the form required for the verification of notices in section
20 nine of this [~~chapter~~] article. If the lienor shall fail to comply with
21 such a demand within five days after the same shall have been made by
22 the owner or contractor, or if the lienor delivers an insufficient
23 statement, the person aggrieved may petition the supreme court of this
24 state or any justice thereof, or the county court of the county where
25 the premises are situated, or the county judge of such county for an
26 order directing the lienor within a time specified in the order to
27 deliver to the petitioner the statement required by this section. Two
28 days' notice in writing of such application shall be served upon the
29 lienor. Such service shall be made in the manner provided by law for the
30 personal service of a summons. The court or a justice or judge thereof
31 shall hear the parties and upon being satisfied that the lienor has
32 failed, neglected or refused to comply with the requirements of this
33 section shall have an appropriate order directing such compliance. In
34 case the lienor fails to comply with the order so made within the time
35 specified, then upon five days' notice to the lienor, served in the
36 manner provided by law for the personal service of a summons, the court
37 or a justice or judge thereof may make an order cancelling the lien.

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

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

50 § 17. Section 39-a of the lien law, as added by chapter 859 of the
51 laws of 1930, is amended to read as follows:

52 § 39-a. Liability of lienor where lien has been declared void on
53 account of wilful exaggeration. Where in any action or proceeding to
54 enforce a mechanic's lien upon a private or public improvement or an
55 employee's lien the court shall have declared said lien to be void on
56 account of wilful exaggeration the person filing such notice of lien

1 shall be liable in damages to the owner or contractor. The damages which
2 said owner or contractor shall be entitled to recover, shall include the
3 amount of any premium for a bond given to obtain the discharge of the
4 lien or the interest on any money deposited for the purpose of discharg-
5 ing the lien, reasonable attorney's fees for services in securing the
6 discharge of the lien, and, in an action or proceeding to enforce a
7 mechanic's lien, an amount equal to the difference by which the amount
8 claimed to be due or to become due as stated in the notice of lien
9 exceeded the amount actually due or to become due thereon.

10 § 18. Section 40 of the lien law, as amended by chapter 515 of the
11 laws of 1929, is amended to read as follows:

12 § 40. Construction of article. This article is to be construed in
13 connection with article two of this chapter, and provides proceedings
14 for the enforcement of employee's liens on real property, as well as
15 liens for labor performed and materials furnished in the improvement of
16 real property, created by virtue of such article.

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

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

27 § 20. Section 43 of the lien law, as amended by chapter 310 of the
28 laws of 1962, is amended to read as follows:

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

39 § 21. Section 46 of the lien law, as amended by chapter 515 of the
40 laws of 1929, is amended to read as follows:

41 § 46. Action in a court not of record. If an action to enforce a
42 mechanic's lien or employee's lien against real property is brought in a
43 court not of record, it shall be commenced by the personal service upon
44 the owner of a summons and complaint verified in the same manner as a
45 complaint in an action in a court of record. The complaint must set
46 forth substantially the facts contained in the notice of lien, and the
47 substance of the agreement under which the labor was performed or the
48 materials were furnished, or if the lien is based upon a wage claim as
49 defined in section two of this chapter, the basis for such wage claim.

50 The form and contents of the summons shall be the same as provided by
51 law for the commencement of an action upon a contract in such court. The
52 summons must be returnable not less than twelve nor more than twenty
53 days after the date of the summons, or if service is made by publica-
54 tion, after the day of the last publication of the summons. Service
55 must be made at least eight days before the return day.

1 § 22. Section 50 of the lien law, as amended by chapter 515 of the
2 laws of 1929, is amended to read as follows:

3 § 50. Execution. Execution may be issued upon a judgment obtained in
4 an action to enforce a mechanic's lien or an employee's lien against
5 real property in a court not of record, which shall direct the officer
6 to sell the title and interest of the owner in the premises, upon which
7 the lien set forth in the complaint existed at the time of filing the
8 notice of lien.

9 § 23. Section 53 of the lien law, as amended by chapter 515 of the
10 laws of 1929, is amended to read as follows:

11 § 53. Costs and disbursements. If an action is brought to enforce a
12 mechanic's lien or an employee's lien against real property in a court
13 of record, the costs and disbursements shall rest in the discretion of
14 the court, and may be awarded to the prevailing party. The judgment
15 rendered in such an action shall include the amount of such costs and
16 specify to whom and by whom the costs are to be paid. If such action is
17 brought in a court not of record, they shall be the same as allowed in
18 civil actions in such court. The expenses incurred in serving the
19 summons by publication may be added to the amount of costs now allowed
20 in such court.

21 § 24. Section 59 of the lien law, as amended by chapter 515 of the
22 laws of 1929, is amended to read as follows:

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

41 2. An employee's lien notice of which has been filed on real property
42 or a bond given to discharge the same may be vacated and cancelled or a
43 deposit made to discharge a lien pursuant to section twenty of this
44 chapter may be returned, by an order of a court of record. Before such
45 order shall be granted, a notice shall be served upon the lienor, either
46 personally or by leaving it at his last known place of residence or
47 attorney's place of business, with a person of suitable age, with
48 directions to deliver it to the lienor. Such notice shall require the
49 lienor to commence an action to enforce the lien, or to commence an
50 action to obtain judgment on the wage claim upon which the lien was
51 established, within a time specified in the notice, not less than thirty
52 days from the time of service, or show cause at a special term of a
53 court of record, or at a county court, in a county in which the property
54 is situated, at a time and place specified therein, why the notice of
55 lien filed or the bond given should not be vacated and cancelled, or the
56 deposit returned, as the case may be. Proof of such service and that the

1 lienor has not commenced the action to foreclose such lien or an action
2 to obtain judgment on the wage claim upon which the lien was estab-
3 lished, as directed in the notice, shall be made by affidavit, at the
4 time of applying for such order.

5 § 25. Section 62 of the lien law, as amended by chapter 697 of the
6 laws of 1934, is amended to read as follows:

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

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

34 3. Each employee and his or her authorized representative shall be
35 notified in writing, of the termination of the commissioner's investi-
36 gation of the employee's complaint and the result of such investigation,
37 of any award and collection of back wages and civil penalties, and of
38 any intent to seek criminal penalties. In the event that criminal penal-
39 ties are sought the employee and his or her authorized representative
40 shall be notified of the outcome of prosecution.

41 § 27. Subdivision 2 of section 663 of the labor law, as amended by
42 chapter 564 of the laws of 2010, is amended to read as follows:

43 2. By commissioner. On behalf of any employee paid less than the wage
44 to which the employee is entitled under the provisions of this article,
45 the commissioner may bring any legal action necessary, including admin-
46 istrative action, to collect such claim, and the employer shall be
47 required to pay the full amount of the underpayment, plus costs, and
48 unless the employer proves a good faith basis to believe that its under-
49 payment was in compliance with the law, an additional amount as liqui-
50 dated damages. Liquidated damages shall be calculated by the commission-
51 er as no more than one hundred percent of the total amount of
52 underpayments found to be due the employee. In any action brought by the
53 commissioner in a court of competent jurisdiction, liquidated damages
54 shall be calculated as an amount equal to one hundred percent of under-
55 payments found to be due the employee. Each employee or his or her
56 authorized representative shall be notified in writing of the outcome of

1 any legal action brought on the employee's behalf pursuant to this
2 section.

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

7 5. the cause of action is based on a judgment, decree or order of a
8 court of the United States or of any other court which is entitled to
9 full faith and credit in this state, or on a judgment which qualifies
10 for recognition under the provisions of article 53[+] of this chapter;
11 or

12 6. the cause of action is based on wage claims. "Wage claims," when
13 used in this chapter, shall include any claims of violations of articles
14 five, six, and nineteen of the labor law, section two hundred fifteen of
15 the labor law, and the related regulations or wage orders promulgated by
16 the commissioner of labor, including but not limited to any claims of
17 unpaid, minimum, overtime, and spread-of-hours pay, unlawfully retained
18 gratuities, unlawful deductions from wages, unpaid commissions, unpaid
19 benefits and wage supplements, and retaliation, and any claims pursuant
20 to 18 U.S.C. § 1595, 29 U.S.C. § 201 et seq., and/or employment contract
21 as well as the concomitant liquidated damages and penalties authorized
22 pursuant to the labor law, the Fair Labor Standards Act, or any employ-
23 ment contract.

24 § 29. Section 6210 of the civil practice law and rules, as added by
25 chapter 860 of the laws of 1977, is amended to read as follows:

26 § 6210. Order of attachment on notice; temporary restraining order;
27 contents. Upon a motion on notice for an order of attachment, the court
28 may, without notice to the defendant, grant a temporary restraining
29 order prohibiting the transfer of assets by a garnishee as provided in
30 subdivision (b) of section 6214. When attachment is sought pursuant to
31 subdivision six of section 6201, and if the employer contests the
32 motion, the court shall hold a hearing within ten days of when the
33 employer's response to plaintiffs' motion for attachment is due. The
34 contents of the order of attachment granted pursuant to this section
35 shall be as provided in subdivision (a) of section 6211.

36 § 30. Subdivision (b) of section 6211 of the civil practice law and
37 rules, as amended by chapter 566 of the laws of 1985, is amended to read
38 as follows:

39 (b) Confirmation of order. Except where an order of attachment is
40 granted on the ground specified in subdivision one or six of section
41 6201, an order of attachment granted without notice shall provide that
42 within a period not to exceed five days after levy, the plaintiff shall
43 move, on such notice as the court shall direct to the defendant, the
44 garnishee, if any, and the sheriff, for an order confirming the order of
45 attachment. Where an order of attachment without notice is granted on
46 the ground specified in subdivision one or six of section 6201, the
47 court shall direct that the statement required by section 6219 be served
48 within five days, that a copy thereof be served upon the plaintiff, and
49 the plaintiff shall move within ten days after levy for an order
50 confirming the order of attachment. If the plaintiff upon such motion
51 shall show that the statement has not been served and that the plaintiff
52 will be unable to satisfy the requirement of subdivision (b) of section
53 6223 until the statement has been served, the court may grant one exten-
54 sion of the time to move for confirmation for a period not to exceed ten
55 days. If plaintiff fails to make such motion within the required period,
56 the order of attachment and any levy thereunder shall have no further

1 effect and shall be vacated upon motion. Upon the motion to confirm, the
2 provisions of subdivision (b) of section 6223 shall apply. An order of
3 attachment granted without notice may provide that the sheriff refrain
4 from taking any property levied upon into his actual custody, pending
5 further order of the court.

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

10 (b) Undertaking. [~~On~~] 1. Except where an order of attachment is sought
11 on the ground specified in subdivision six of section 6201, on a motion
12 for an order of attachment, the plaintiff shall give an undertaking, in
13 a total amount fixed by the court, but not less than five hundred
14 dollars, a specified part thereof conditioned that the plaintiff shall
15 pay to the defendant all costs and damages, including reasonable attor-
16 ney's fees, which may be sustained by reason of the attachment if the
17 defendant recovers judgment or if it is finally decided that the plain-
18 tiff was not entitled to an attachment of the defendant's property, and
19 the balance conditioned that the plaintiff shall pay to the sheriff all
20 of his allowable fees.

21 2. On a motion for an attachment pursuant to subdivision six of
22 section 6201, the court shall order that the plaintiff give an accessi-
23 ble undertaking of no more than five hundred dollars, or in the alterna-
24 tive, may waive the undertaking altogether. The attorney for the plain-
25 tiff shall not be liable to the sheriff for such fees. The surety on the
26 undertaking shall not be discharged except upon notice to the sheriff.

27 (e) Damages. [~~The~~] Except where an order of attachment is sought on
28 the ground specified in subdivision six of section 6201, the plaintiff
29 shall be liable to the defendant for all costs and damages, including
30 reasonable attorney's fees, which may be sustained by reason of the
31 attachment if the defendant recovers judgment, or if it is finally
32 decided that the plaintiff was not entitled to an attachment of the
33 defendant's property. Plaintiff's liability shall not be limited by the
34 amount of the undertaking.

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

38 (b) Any person who shall have been a shareholder of record of a corpo-
39 ration, or who is or shall have been a laborer, servant or employee,
40 upon at least five days' written demand shall have the right to examine
41 in person or by agent or attorney, during usual business hours, its
42 minutes of the proceedings of its shareholders and record of sharehold-
43 ers and to make extracts therefrom for any purpose reasonably related to
44 such person's interest as a shareholder, laborer, servant or employee,
45 provided the purpose reasonably related to a person's interest as a
46 laborer, servant or employee shall be to obtain the names, addresses,
47 and value of shareholders' interests in the corporation. Holders of
48 voting trust certificates representing shares of the corporation shall
49 be regarded as shareholders for the purpose of this section. Any such
50 agent or attorney shall be authorized in a writing that satisfies the
51 requirements of a writing under paragraph (b) of section 609 (Proxies).
52 A corporation requested to provide information pursuant to this para-
53 graph shall make available such information in written form and in any
54 other format in which such information is maintained by the corporation
55 and shall not be required to provide such information in any other
56 format. If a request made pursuant to this paragraph includes a request

1 to furnish information regarding beneficial owners, the corporation
2 shall make available such information in its possession regarding bene-
3 ficial owners as is provided to the corporation by a registered broker
4 or dealer or a bank, association or other entity that exercises fiduci-
5 ary powers in connection with the forwarding of information to such
6 owners. The corporation shall not be required to obtain information
7 about beneficial owners not in its possession.

8 § 33. Section 630 of the business corporation law, paragraph (a) as
9 amended by chapter 5 of the laws of 2016, paragraph (c) as amended by
10 chapter 746 of the laws of 1963, is amended to read as follows:

11 § 630. Liability of shareholders for wages due to laborers, servants or
12 employees.

13 (a) The ten largest shareholders, as determined by the fair value of
14 their beneficial interest as of the beginning of the period during which
15 the unpaid services referred to in this section are performed, of every
16 domestic corporation or of any foreign corporation, when the unpaid
17 services were performed in the state, no shares of which are listed on a
18 national securities exchange or regularly quoted in an over-the-counter
19 market by one or more members of a national or an affiliated securities
20 association, shall jointly and severally be personally liable for all
21 debts, wages or salaries due and owing to any of its laborers, servants
22 or employees other than contractors, for services performed by them for
23 such corporation. ~~[Before such laborer, servant or employee shall charge
24 such shareholder for such services, he shall give notice in writing to
25 such shareholder that he intends to hold him liable under this section.
26 Such notice shall be given within one hundred and eighty days after
27 termination of such services, except that if, within such period, the
28 laborer, servant or employee demands an examination of the record of
29 shareholders under paragraph (b) of section 624 (Books and records;
30 right of inspection, prima facie evidence) of this article, such notice
31 may be given within sixty days after he has been given the opportunity
32 to examine the record of shareholders. An action to enforce such liabil-
33 ity shall be commenced within ninety days after the return of an
34 execution unsatisfied against the corporation upon a judgment recovered
35 against it for such services.]~~ The provisions of this paragraph shall
36 not apply to an investment company registered as such under an act of
37 congress entitled "Investment Company Act of 1940."

38 (b) For the purposes of this section, wages or salaries shall mean all
39 compensation and benefits payable by an employer to or for the account
40 of the employee for personal services rendered by such employee includ-
41 ing any concomitant liquidated damages, penalties, interest, attorney's
42 fees or costs. These shall specifically include but not be limited to
43 salaries, overtime, vacation, holiday and severance pay; employer
44 contributions to or payments of insurance or welfare benefits; employer
45 contributions to pension or annuity funds; and any other moneys properly
46 due or payable for services rendered by such employee.

47 (c) A shareholder who has paid more than his pro rata share under this
48 section shall be entitled to contribution pro rata from the other share-
49 holders liable under this section with respect to the excess so paid,
50 over and above his pro rata share, and may sue them jointly or severally
51 or any number of them to recover the amount due from them. Such recov-
52 ery may be had in a separate action. As used in this paragraph, "pro
53 rata" means in proportion to beneficial share interest. Before a share-
54 holder may claim contribution from other shareholders under this para-
55 graph, he shall ~~[, unless they have been given notice by a laborer, serv-
56 ant or employee under paragraph (a),]~~ give them notice in writing that

1 he intends to hold them so liable to him. Such notice shall be given by
2 him within twenty days after the date that [~~notice was given to him by~~]
3 he became aware that a laborer, servant or employee may seek to hold him
4 liable under paragraph (a).

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

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

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

34 (e) Any person who is or shall have been a laborer, servant or employ-
35 ee of a limited liability company, upon at least five days' written
36 demand shall have the right to examine in person or by agent or attor-
37 ney, during usual business hours, records described in paragraph two of
38 subdivision (a) of this section throughout the period of time during
39 which such laborer, servant or employee provided services to such compa-
40 ny. A company requested to provide information pursuant to this para-
41 graph shall make available such records in written form and in any other
42 format in which such information is maintained by the company and shall
43 not be required to provide such information in any other format. Upon
44 refusal by the company or by an officer or agent of the company to
45 permit an inspection of the records described in this paragraph, the
46 person making the demand for inspection may apply to the supreme court
47 in the judicial district where the office of the company is located,
48 upon such notice as the court may direct, for an order directing the
49 company, its members or managers to show cause why an order should not
50 be granted permitting such inspection by the applicant. Upon the return
51 day of the order to show cause, the court shall hear the parties summar-
52 ily, by affidavit or otherwise, and if it appears that the applicant is
53 qualified and entitled to such inspection, the court shall grant an
54 order compelling such inspection and awarding such further relief as to
55 the court may seem just and proper. If the applicant is found to be
56 qualified and entitled to such inspection, the company shall pay all

1 reasonable attorney's fees and costs of said applicant related to the
2 demand for inspection of the records.

3 § 36. This act shall take effect on the thirtieth day after it shall
4 have become a law. The procedures and rights created in this act may be
5 used by employees, laborers or servants in connection with claims for
6 liabilities that arose prior to the effective date.