

1101

2009-2010 Regular Sessions

I N   S E N A T E

January 26, 2009

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Introduced by Sen. LANZA -- 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 eliminating certain publication requirements for limited liability companies; to amend the partnership law, in relation to eliminating certain publication requirements for limited partnerships and registered limited partnerships; and to repeal certain provisions of the limited liability company law and the partnership law relating thereto

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

1     Section 1. Subdivisions (a-1) and (e-1) of section 102 of the limited  
2     liability company law are REPEALED.  
3     S 2. Section 206 of the limited liability company law is REPEALED.  
4     S 3. Subdivision (a) of section 802 of the limited liability company  
5     law, the opening paragraph as amended by chapter 375 of the laws of  
6     1998, paragraph 1 as amended by chapter 643 of the laws of 1995 and  
7     paragraph 4 as amended by chapter 470 of the laws of 1997, is amended to  
8     read as follows:  
9     [(a)] Before doing business in this state, a foreign limited liability  
10    company shall apply for authority to do business in this state by  
11    submitting to the department of state (i) a certificate of existence or,  
12    if no such certificate is issued by the jurisdiction of formation, a  
13    certified copy of the articles of organization of the limited liability  
14    company and all subsequent amendments thereto or, if no articles of  
15    organization have been filed, a certified copy of the certificate filed  
16    as its organizational basis and all amendments thereto (if such certifi-  
17    cate or certified copy is in a foreign language, a translation in  
18    English thereof under oath of the translator shall be attached thereto)  
19    and (ii) an application for authority as a foreign limited liability  
20    company entitled "Application for authority of... (name of foreign

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

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limited liability company) under section eight hundred two of the Limited Liability Company Law," signed and setting forth:

[(1)] (A) the name of the foreign limited liability company and, if a foreign liability company's name is not acceptable for authorization pursuant to section two hundred four of this chapter, the fictitious name under which it proposes to apply for authority and do business in this state, which name shall be in compliance with section two hundred four of this chapter and shall be used by the foreign limited liability company in all its dealings with the department of state and in the conduct of its business in this state. The provisions of section one hundred thirty of the general business law shall not apply to any fictitious name filed by a foreign limited liability company pursuant to this section, and a filing under section one hundred thirty of the general business law shall not constitute the adoption of a fictitious name;

[(2)] (B) the jurisdiction and date of its organization;

[(3)] (C) the county within this state in which the office of the foreign limited liability company is to be located or if the foreign limited liability company shall maintain more than one office in this state, the county within the state in which the principal office of the foreign limited liability company is to be located;

[(4)] (D) a designation of the secretary of state as its agent upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her;

[(5)] (E) if it is to have a registered agent, his or her name and address within the state and a statement that the registered agent is to be its agent upon whom process may be served;

[(6)] (F) the address of the office required to be maintained in the jurisdiction of its formation by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited liability company;

[(7)] (G) a statement that the foreign limited liability company is in existence in the jurisdiction of its formation at the time of the filing of such application; and

[(8)] (H) the name and address of the authorized officer in the jurisdiction of its formation where a copy of its articles of organization is filed or, if no public filing of its articles of organization is required by the law of the jurisdiction of formation, a statement that the foreign limited liability company shall provide, on request, a copy thereof with all amendments thereto (if such documents are in a foreign language, a translation in English thereof under oath of the translator shall be attached thereto), and the name and post office address of the person responsible for providing such copies.

S 4. Subdivision (b) of section 802 of the limited liability company law is REPEALED.

S 5. The opening paragraph of subdivision (e) of section 1006 of the limited liability company law, as amended by chapter 375 of the laws of 1998, is amended to read as follows:

In connection with any conversion approved under subdivision (c) of this section, the partnership or limited partnership shall file with the department of state a signed certificate entitled "Certificate of Conversion of ... (name partnership or limited partnership) to ... (name of limited liability company) under section one thousand six of the Limited Liability Company Law" [and shall also satisfy the publication requirements of section two hundred six of this chapter]. Such certificate shall include either:

1 S 6. Subdivision (s) of section 1101 of the limited liability company  
2 law is REPEALED, and subdivisions (t), (u) and (v) are relettered subdivi-  
3 sions (s), (t) and (u).

4 S 7. Paragraph 1 of subdivision (c) of section 1203 of the limited  
5 liability company law is amended to read as follows:

6 [(1)] A certified copy of the articles of organization and of each  
7 amendment thereto and restatement thereof shall be filed by the profes-  
8 sional service limited liability company with the licensing authority  
9 within thirty days after the filing of such certificate or amendment  
10 with the department of state.

11 S 8. Paragraph 2 of subdivision (c) of section 1203 of the limited  
12 liability company law is REPEALED.

13 S 9. Subdivision (d) of section 1306 of the limited liability company  
14 law is REPEALED.

15 S 10. Subdivisions (a-1) and (a-2) of section 121-101 of the partner-  
16 ship law are REPEALED.

17 S 11. Subdivision (c) of section 121-201 of the partnership law is  
18 REPEALED.

19 S 12. Subdivision (d) of section 121-902 of the partnership law is  
20 REPEALED.

21 S 13. Subdivision (f) of section 121-1300 of the partnership law is  
22 REPEALED.

23 S 14. Paragraph (I) of subdivision (a) of section 121-1500 of the  
24 partnership law, as added by chapter 576 of the laws of 1994, the open-  
25 ing paragraph and subparagraph 4 as amended by chapter 643 of the laws  
26 of 1995 and such paragraph as redesignated by chapter 767 of the laws of  
27 2005, is amended to read as follows:

28 [(I)] Notwithstanding the education law or any other provision of law,  
29 (i) a partnership without limited partners each of whose partners is a  
30 professional authorized by law to render a professional service within  
31 this state and who is or has been engaged in the practice of such  
32 profession in such partnership or a predecessor entity, or will engage  
33 in the practice of such profession in the registered limited liability  
34 partnership within thirty days of the date of the effectiveness of the  
35 registration provided for in this subdivision or a partnership without  
36 limited partners each of whose partners is a professional, at least one  
37 of whom is authorized by law to render a professional service within  
38 this state and who is or has been engaged in the practice of such  
39 profession in such partnership or a predecessor entity, or will engage  
40 in the practice of such profession in the registered limited liability  
41 partnership within thirty days of the date of the effectiveness of the  
42 registration provided for in this subdivision, (ii) a partnership with-  
43 out limited partners authorized by, or holding a license, certificate,  
44 registration or permit issued by the licensing authority pursuant to the  
45 education law to render a professional service within this state, which  
46 renders or intends to render professional services within this state, or  
47 (iii) a related limited liability partnership may register as a regis-  
48 tered limited liability partnership by filing with the department of  
49 state a registration which shall set forth:

50 (1) the name of the registered limited liability partnership;

51 (2) the address of the principal office of the partnership without  
52 limited partners;

53 (3) the profession or professions to be practiced by such partnership  
54 without limited partners and a statement that it is eligible to register  
55 as a registered limited liability partnership pursuant to THIS subdivi-  
56 sion [(a) of this section];

(4) a designation of the secretary of state as agent of the partnership without limited partners upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it or served upon it;

(5) if the partnership without limited partners is to have a registered agent, its name and address in this state and a statement that the registered agent is to be the agent of the partnership without limited partners upon whom process against it may be served;

(6) that the partnership without limited partners is filing a registration for status as a registered limited liability partnership;

(7) if the registration of the partnership without limited partners is to be effective on a date later than the time of filing, the date, not to exceed sixty days from the date of such filing, of such proposed effectiveness;

(8) if all or specified partners of the registered limited liability partnership are to be liable in their capacity as partners for all or specified debts, obligations or liabilities of the registered limited liability partnership as authorized pursuant to subdivision (d) of section twenty-six of this chapter, a statement that all or specified partners are so liable for such debts, obligations or liabilities in their capacity as partners of the registered limited liability partnership as authorized pursuant to subdivision (d) of section twenty-six of this chapter; and

(9) any other matters the partnership without limited partners determines to include in the registration.

S 15. Paragraph (II) of subdivision (a) of section 121-1500 of the partnership law is REPEALED.

S 16. Paragraph (I) of subdivision (f) of section 121-1502 of the partnership law, as amended by chapter 643 of the laws of 1995 and as redesignated by chapter 767 of the laws of 2005, is amended to read as follows:

[(I)] Each New York registered foreign limited liability partnership shall, within sixty days prior to the fifth anniversary of the effective date of its notice and every five years thereafter, furnish a statement to the department of state setting forth:

(i) the name under which the New York registered foreign limited liability partnership is carrying on or conducting or transacting business or activities in this state, (ii) the address of the principal office of the New York registered foreign limited liability partnership, (iii) the post office address within or without this state to which the secretary of state shall mail a copy of any process accepted against it served upon him or her, which address shall supersede any previous address on file with the department of state for this purpose, and (iv) a statement that it is a foreign limited liability partnership. The statement shall be executed by one or more partners of the New York registered foreign limited liability partnership. The statement shall be accompanied by a fee of fifty dollars. If a New York registered foreign limited liability partnership shall not timely file the statement required by this subdivision, the department of state may, upon sixty days' notice mailed to the address of such New York registered foreign limited liability partnership as shown in the last notice or statement or certificate of amendment filed by such New York registered foreign limited liability partnership, make a proclamation declaring the status of such New York registered foreign limited liability partnership to be revoked pursuant to this subdivision. The department of state shall file

1 the original proclamation in its office and shall publish a copy thereof  
2 in the state register no later than three months following the date of  
3 such proclamation. Upon the publication of such proclamation in the  
4 manner aforesaid, the status of each New York registered foreign limited  
5 liability partnership named in such proclamation shall be deemed revoked  
6 without further legal proceedings. Any New York registered foreign  
7 limited liability partnership whose status was so revoked may file in  
8 the department of state a certificate of consent certifying that either  
9 a statement required by this subdivision has been filed or accompanies  
10 the certificate of consent and all fees imposed under this chapter on  
11 the New York registered foreign limited liability partnership have been  
12 paid. The filing of such certificate of consent shall have the effect of  
13 annulling all of the proceedings theretofore taken for the revocation of  
14 the status of such New York registered foreign limited liability part-  
15 nership under this subdivision and (1) the New York registered foreign  
16 limited liability partnership shall thereupon have such powers, rights,  
17 duties and obligations as it had on the date of the publication of the  
18 proclamation, with the same force and effect as if such proclamation had  
19 not been made or published and (2) such publication shall not affect the  
20 applicability of the laws of the jurisdiction governing the agreement  
21 under which such New York registered foreign limited liability partner-  
22 ship is operating (including laws governing the liability of partners)  
23 to any debt, obligation or liability incurred, created or assumed from  
24 the date of publication of the proclamation through the date of the  
25 filing of the certificate of consent. The filing of a certificate of  
26 consent shall be accompanied by a fee of fifty dollars and if accompa-  
27 nied by a statement, the fee required by this subdivision. If, after the  
28 publication of such proclamation, it shall be determined by the depart-  
29 ment of state that the name of any New York registered foreign limited  
30 liability partnership was erroneously included in such proclamation, the  
31 department of state shall make appropriate entry on its records, which  
32 entry shall have the effect of annulling all of the proceedings thereto-  
33 fore taken for the revocation of the status of such New York registered  
34 foreign limited liability partnership under this subdivision and (1)  
35 such New York registered foreign limited liability partnership shall  
36 have such powers, rights, duties and obligations as it had on the date  
37 of the publication of the proclamation, with the same force and effect  
38 as if such proclamation had not been made or published and (2) such  
39 publication shall not affect the applicability of the laws of the juris-  
40 diction governing the agreement under which such New York registered  
41 foreign limited liability partnership is operating (including laws  
42 governing the liability of partners) to any debt, obligation or liabil-  
43 ity incurred, created or assumed from the date of publication of the  
44 proclamation through the date of the making of the entry on the records  
45 of the department of state. Whenever a New York registered foreign  
46 limited liability partnership shall have filed a certificate of consent  
47 pursuant to this subdivision or if the name of a New York registered  
48 foreign limited liability partnership was erroneously included in a  
49 proclamation and such proclamation was annulled, the department of state  
50 shall publish a notice thereof in the state register.

51 S 17. Paragraph (II) of subdivision (f) of section 121-1502 of the  
52 partnership law is REPEALED.

53 S 18. Section 121-1507 of the partnership law, as amended by chapter  
54 44 of the laws of 2006, is amended to read as follows:

55 S 121-1507. [Definitions] DEFINITION. For purposes of this article[:

(a) "Partnership", "PARTNERSHIP interest" means: [(i)] (A) a partner's share of the profits and losses of a registered limited liability partnership; and [(ii)] (B) the partner's right to receive distributions of a registered limited liability partnership.

[(b) "Affidavit of publication" means the affidavit of the printer or publisher of a newspaper in which a publication required to be filed pursuant to sections 121-1500 and 121-1502 of this article has been made. The affidavit of publication shall be in a form substantially as follows:

"Affidavit of Publication Under Section \_\_\_\_\_ (specify applicable section) of the Partnership Law

State of New York,

County of \_\_\_\_\_, ss.:

The undersigned is the printer (or publisher) of \_\_\_\_\_ (name of newspaper), a \_\_\_\_\_ (daily or weekly) newspaper published in \_\_\_\_\_, New York. A notice regarding \_\_\_\_\_ (name of limited liability partnership) was published in said newspaper once in each week for six successive weeks, commencing on \_\_\_\_\_ and ending on \_\_\_\_\_. The text of the notice as published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of \_\_\_\_\_ County for this purpose.

\_\_\_\_\_(signature)

\_\_\_\_\_(printed name),

(jurat)"

The text of the notice set forth in or annexed to each affidavit of publication shall: (i) include only the text of the published notice, (ii) be free of extraneous marks, and (iii) if submitted in paper form, be printed on paper of such size, weight and color, and in ink of such color, and in such fonts, and be in such other qualities and form not inconsistent with any other provision of law as, in the judgment of the secretary of state, will not impair the ability of the department of state to include a legible and permanent copy thereof in its official records. Nothing in this subdivision shall be construed as requiring the department of state to accept for filing a document submitted in electronic form.

(c) "Certificate of publication" means a certificate presented on behalf of the applicable limited liability partnership to the department of state together with the affidavits of publication pursuant to section 121-1500 or 121-1502 of this article. The certificate of publication shall be in a form substantially as follows:

"Certificate of Publication of \_\_\_\_\_ (name of limited partnership) Under Section \_\_\_\_\_ (specify applicable section) of the Partnership Law

The undersigned is the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of limited liability partnership). The published notices described in the annexed affidavits of publication contain all of the information required by the above-mentioned section of the partnership law. The newspapers described in such affidavits of publication satisfy the requirements set forth in the partnership law and the designation made by the county clerk. I certify the foregoing statements to be true under penalties of perjury.

Date

Signature

Printed Name"]

S 19. This act shall take effect immediately.