

4308

2011-2012 Regular Sessions

I N S E N A T E

March 28, 2011

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

AN ACT to amend the business corporation law, in relation to providing that the surviving business entity in the case of a merger between a professional service corporation and a professional service limited liability company may be a professional service limited liability company

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

1 Section 1. Section 1501 of the business corporation law, as added by
2 chapter 974 of the laws of 1970, is amended to read as follows:
3 S 1501. Definitions.
4 As used in this article, unless the context otherwise requires, the
5 term: (a) "licensing authority" means the regents of the university of
6 the state of New York or the state education department, as the case may
7 be, in the case of all professions licensed under title eight of the
8 education law, and the appropriate appellate division of the supreme
9 court in the case of the profession of law.
10 (b) "Profession" includes any practice as an attorney and counselor-
11 at-law, or as a licensed physician, and those occupations designated in
12 title eight of the education law.
13 (c) "Professional service" means any type of service to the public
14 which may be lawfully rendered by a member of a profession within the
15 purview of his OR HER profession.
16 (d) "Professional service corporation" means a corporation organized
17 under this article.
18 (e) "Officer" does not include the secretary or an assistant secretary
19 of a corporation having only one shareholder.
20 (F) "OTHER BUSINESS ENTITY" MEANS ANY PERSON OTHER THAN A NATURAL
21 PERSON, GENERAL PARTNERSHIP OR A DOMESTIC OR FOREIGN BUSINESS CORPO-

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

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1 RATION, AND INCLUDES A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY
2 FORMED PURSUANT TO THE PROVISIONS OF THE NEW YORK LIMITED LIABILITY
3 COMPANY LAW.

4 S 2. Section 1516 of the business corporation law, as amended by chap-
5 ter 851 of the laws of 1992, is amended to read as follows:

6 S 1516. Corporate mergers, consolidations and other reorganizations.

7 (A) Notwithstanding any inconsistent provision of this article, a
8 professional service corporation, pursuant to the provisions of article
9 nine of this chapter, may be merged or consolidated with another corpo-
10 ration formed pursuant to the provisions of this chapter or with a
11 corporation authorized and registered to practice the same profession
12 pursuant to the applicable provisions of subdivision six of section
13 seventy-two hundred nine of the education law (engineer or land
14 surveyor) or subdivision four of section seventy-three hundred seven of
15 the education law (architect) of article one hundred forty-five of the
16 education law, or with a foreign corporation, OR OTHER BUSINESS ENTITY
17 PRACTICING THE SAME PROFESSION OR PROFESSIONS IN THIS STATE OR THE STATE
18 OF ITS FORMATION, or may be otherwise reorganized, provided that the
19 corporation which survives or which is formed pursuant thereto is a
20 professional service corporation, A PROFESSIONAL SERVICE LIMITED LIABIL-
21 ITY COMPANY or a foreign professional service corporation practicing the
22 same profession or professions in this state or the state of incorpo-
23 ration or, if one of the original corporations is authorized to practice
24 pursuant to the provisions of either subdivision six of section [seven
25 thousand two] SEVENTY-TWO hundred nine or subdivision four of section
26 [seven thousand three] SEVENTY-THREE hundred seven, a corporation
27 authorized and registered to practice the same profession pursuant to
28 the applicable provisions of subdivision six of section seventy-two
29 hundred nine of the education law (engineer or land surveyor) or subdi-
30 vision four of section seventy-three hundred seven of the education law
31 (architect) of article one hundred forty-five of the education law.

32 [The] (B) IF THE SURVIVING BUSINESS ENTITY IS A PROFESSIONAL CORPO-
33 RATION, THE restrictions on the issuance, transfer or sale of shares of
34 a professional service corporation shall be suspended for a period not
35 exceeding thirty days with respect to any issuance, transfer or sale of
36 shares made pursuant to such merger, consolidation or reorganization,
37 provided that: (i) no person who would not be eligible to be a share-
38 holder in the absence of this section shall vote the shares of or
39 receive any distribution from such corporation; (ii) after such merger,
40 consolidation or reorganization, any professional service corporation
41 which survives or which is created thereby shall be subject to all of
42 the provisions of this article[,]; and (iii) shares thereafter only may
43 be held by persons who are eligible to receive shares of such profes-
44 sional service corporation or such other corporation authorized and
45 registered to practice the same profession pursuant to the applicable
46 provisions of subdivision six of section seventy-two hundred nine of the
47 education law (engineer or land surveyor) or subdivision four of section
48 seventy-three hundred seven of the education law (architect) of article
49 one hundred forty-five of the education law, which survives. Nothing
50 herein contained shall be construed as permitting the practice of a
51 profession in this state by a corporation which is not incorporated
52 pursuant to the provisions of this article or authorized to do business
53 in this state pursuant to the provisions of article fifteen-A of this
54 chapter or authorized and registered to practice a profession pursuant
55 to the applicable provisions of article one hundred forty-five of the
56 education law. For the purposes of this section, other reorganizations

1 shall be limited to those reorganizations defined in paragraph one of
2 subsection (a) of section three hundred sixty-eight of the internal
3 revenue code.

4 (C) IF THE SURVIVING BUSINESS ENTITY IS A PROFESSIONAL SERVICE LIMITED
5 LIABILITY COMPANY, THE RESTRICTIONS ON THE ISSUANCE, TRANSFER OR SALE OF
6 MEMBERSHIP INTERESTS OF A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY
7 OTHER THAN THE REQUIREMENTS OF THE FIRST TWO SENTENCES OF SUBDIVISION
8 (C) OF SECTION TWELVE HUNDRED ELEVEN OF THE LIMITED LIABILITY COMPANY
9 LAW, SHALL BE SUSPENDED FOR A PERIOD NOT EXCEEDING THIRTY DAYS WITH
10 RESPECT TO ANY ISSUANCE, TRANSFER OR SALE OF MEMBERSHIP INTERESTS MADE
11 PURSUANT TO SUCH MERGER OR CONSOLIDATION, PROVIDED THAT: (I) NO PERSON
12 OR BUSINESS ENTITY WHO WOULD NOT BE ELIGIBLE TO BE A MEMBER IN THE
13 ABSENCE OF THIS SECTION SHALL VOTE OR RECEIVE ANY DISTRIBUTION FROM SUCH
14 LIMITED LIABILITY COMPANY; (II) AFTER SUCH MERGER OR CONSOLIDATION, ANY
15 PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY THAT SURVIVES OR THAT IS
16 CREATED THEREBY SHALL BE SUBJECT TO ALL THE PROVISIONS OF THE LIMITED
17 LIABILITY COMPANY LAW; AND (III) MEMBERSHIP INTERESTS THEREAFTER MAY BE
18 HELD ONLY BY PERSONS OR BUSINESS ENTITIES WHO ARE ELIGIBLE TO BE A
19 MEMBER OF SUCH PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY. NOTHING
20 HEREIN CONTAINED SHALL BE CONSTRUED AS PERMITTING THE PRACTICE OF A
21 PROFESSION IN THIS STATE BY A LIMITED LIABILITY COMPANY THAT IS NOT
22 FORMED PURSUANT TO THE PROVISIONS OF THE LIMITED LIABILITY COMPANY LAW
23 OR AUTHORIZED TO DO BUSINESS IN THE STATE PURSUANT TO THE PROVISIONS OF
24 ARTICLE THIRTEEN OF THE LIMITED LIABILITY COMPANY LAW.

25 S 3. This act shall take effect immediately.