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

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2009-2010 Regular Sessions

I N S E N A T E

March 10, 2009

Introduced by Sen. STACHOWSKI -- 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, the limited liability company law and the partnership law, in relation to authorizing certain health care providers to form professional service entities

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

Section 1. Paragraph (a) of section 1503 of the business corporation law, as added by chapter 974 of the laws of 1970, is amended to read as follows:

(a) Notwithstanding any other provision of law, one or more individuals duly authorized by law to render the same professional service within the state may organize, or cause to be organized, a professional service corporation for pecuniary profit under this article for the purpose of rendering the same professional service, [except] PROVIDED that one or more individuals duly authorized by law to practice professional engineering, architecture, landscape architecture or land surveying within the state may organize, or cause to be organized, a professional service corporation for pecuniary profit under this article for the purpose of rendering such professional services as such individuals are authorized to practice, AND, FURTHER, PROVIDED THAT ONE OR MORE INDIVIDUALS DULY LICENSED BY LAW TO PRACTICE MEDICINE AND WHO ARE CERTIFIED BY THE AMERICAN BOARD OF OPHTHALMOLOGY, AND INDIVIDUALS LICENSED BY LAW TO PRACTICE OPTOMETRY AND/OR OPHTHALMIC DISPENSING WITHIN THE STATE MAY ORGANIZE, OR CAUSE TO BE ORGANIZED, A PROFESSIONAL SERVICE CORPORATION FOR PECUNIARY PROFIT UNDER THIS ARTICLE FOR THE PURPOSE OF RENDERING PROFESSIONAL SERVICES AS SUCH INDIVIDUALS ARE AUTHORIZED TO PRACTICE.

S 2. Section 1529 of the business corporation law, as amended by chapter 576 of the laws of 1994, is amended to read as follows:

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

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S 1529. Business corporation law applicable.

Except for the provisions of sections thirteen hundred three, thirteen hundred four, thirteen hundred sixteen, thirteen hundred seventeen and thirteen hundred twenty, this chapter shall be applicable to a foreign professional service corporation to the extent that the provisions thereof are not in conflict with the provisions of this article. A foreign professional service corporation may practice in this state, or may consolidate or merge with another corporation, or may be a member of a professional service limited liability company, a foreign professional service limited liability company, a registered limited liability partnership or foreign limited liability partnership, only if all of the professions practiced by such corporations, limited liability companies or limited liability partnerships could be practiced by a single professional service corporation organized in this state; and, further, only if such foreign professional service corporation is domiciled in a state or territory of the United States the laws of which, at the time of application by such corporation under section fifteen hundred thirty of this article, contain a reciprocal provision under which professional service corporations domiciled in this state may similarly apply for the privilege of doing business in any such state or territory[; provided further however, that nothing herein].

(A) NOTHING IN THIS SECTION shall authorize a foreign professional service corporation practicing professional engineering, land surveying, architecture and/or landscape architecture to be a member or partner of a professional service limited liability company, a foreign professional service limited liability company, a registered limited liability partnership or a foreign limited liability partnership unless all of the shareholders, directors and officers of such foreign professional service corporation are licensed to practice one or more of such professions in this state.

(B) NOTHING IN THIS SECTION SHALL AUTHORIZE A FOREIGN PROFESSIONAL SERVICE CORPORATION ORGANIZED TO PRACTICE MEDICINE WITH OPTOMETRY AND/OR OPHTHALMIC DISPENSING TO BE A MEMBER OR PARTNER OF A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY, A FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY, A REGISTERED LIMITED LIABILITY PARTNERSHIP OR A FOREIGN LIMITED LIABILITY PARTNERSHIP UNLESS ALL OF THE SHAREHOLDERS, DIRECTORS AND OFFICERS OF SUCH FOREIGN PROFESSIONAL SERVICE CORPORATION ARE LICENSED TO PRACTICE ONE OR MORE OF SUCH PROFESSIONS IN THIS STATE; PROVIDED, HOWEVER, THAT ANY SHAREHOLDER, DIRECTOR OR OFFICER LICENSED TO PRACTICE MEDICINE IN THIS STATE SHALL ALSO BE CERTIFIED BY THE AMERICAN BOARD OF OPHTHALMOLOGY.

S 3. Subdivision (a) of section 1203 of the limited liability company law, as separately amended by chapters 420 and 676 of the laws of 2002, is amended to read as follows:

(a) Notwithstanding the education law or any other provision of law, one or more professionals each of whom is authorized by law to render a professional service within the state, or one or more professionals, at least one of whom is authorized by law to render a professional service within the state, may form, or cause to be formed, a professional service limited liability company for pecuniary profit under this article for the purpose of rendering the professional service or services as such professionals are authorized to practice. With respect to a professional service limited liability company formed to provide medical services as such services are defined in article 131 of the education law, each member of such limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in

this state; PROVIDED, HOWEVER, THAT WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE MEDICAL SERVICES DEFINED IN ARTICLE 131 OF THE EDUCATION LAW WITH SERVICES DEFINED IN ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 131 AND CERTIFIED BY THE AMERICAN BOARD OF OPHTHALMOLOGY, AND/OR LICENSED PURSUANT TO ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW TO PRACTICE ONE OR MORE OF SUCH PROFESSIONS IN THIS STATE. With respect to a professional service limited liability company formed to provide dental services as such services are defined in article 133 of the education law, each member of such limited liability company must be licensed pursuant to article 133 of the education law to practice dentistry in this state. With respect to a professional service limited liability company formed to provide veterinary services as such services are defined in article 135 of the education law, each member of such limited liability company must be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural and/or landscape architectural services as such services are defined in article 145, article 147 and article 148 of the education law, each member of such limited liability company must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. With respect to a professional service limited liability company formed to provide licensed clinical social work services as such services are defined in article 154 of the education law, each member of such limited liability company shall be licensed pursuant to article 154 of the education law to practice licensed clinical social work in this state. With respect to a professional service limited liability company formed to provide creative arts therapy services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. With respect to a professional service limited liability company formed to provide marriage and family therapy services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. With respect to a professional service limited liability company formed to provide mental health counseling services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. With respect to a professional service limited liability company formed to provide psychoanalysis services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state. In addition to engaging in such profession or professions, a professional service limited liability company may engage in any other business or activities as to which a limited liability company may be formed under section two hundred one of this chapter. Notwithstanding any other provision of this section, a professional service limited liability company (i) authorized to practice law may only engage in another profession or business or activities or (ii) which is engaged in a profession or other business or activities other than law may only

engage in the practice of law, to the extent not prohibited by any other law of this state or any rule adopted by the appropriate appellate division of the supreme court or the court of appeals.

S 4. Subdivision (b) of section 1207 of the limited liability company law, as separately amended by chapters 420 and 676 of the laws of 2002, is amended to read as follows:

(b) With respect to a professional service limited liability company formed to provide medical services as such services are defined in article 131 of the education law, each member of such limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in this state; PROVIDED, HOWEVER, THAT WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE SERVICES DEFINED IN ARTICLE 131 OF THE EDUCATION LAW WITH SERVICES DEFINED IN ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 131 AND CERTIFIED BY THE AMERICAN BOARD OF OPHTHALMOLOGY, AND/OR LICENSED PURSUANT TO ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW TO PRACTICE ONE OR MORE OF SUCH PROFESSIONS IN THIS STATE. With respect to a professional service limited liability company formed to provide dental services as such services are defined in article 133 of the education law, each member of such limited liability company must be licensed pursuant to article 133 of the education law to practice dentistry in this state. With respect to a professional service limited liability company formed to provide veterinary services as such services are defined in article 135 of the education law, each member of such limited liability company must be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural and/or landscape architectural services as such services are defined in article 145, article 147 and article 148 of the education law, each member of such limited liability company must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. With respect to a professional service limited liability company formed to provide licensed clinical social work services as such services are defined in article 154 of the education law, each member of such limited liability company shall be licensed pursuant to article 154 of the education law to practice licensed clinical social work in this state. With respect to a professional service limited liability company formed to provide creative arts therapy services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. With respect to a professional service limited liability company formed to provide marriage and family therapy services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. With respect to a professional service limited liability company formed to provide mental health counseling services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. With respect to a professional service limited liability company formed to provide psychoanalysis services as such services are defined in article 163 of the education law, each member of

such limited liability company must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state.

S 5. Subdivision (a) of section 1301 of the limited liability company law, as separately amended by chapters 420 and 676 of the laws of 2002, is amended to read as follows:

(a) "Foreign professional service limited liability company" means a professional service limited liability company, whether or not denominated as such, organized under the laws of a jurisdiction other than this state, (i) each of whose members and managers, if any, is a professional authorized by law to render a professional service within this state and who is or has been engaged in the practice of such profession in such professional service limited liability company or a predecessor entity, or will engage in the practice of such profession in the professional service limited liability company within thirty days of the date such professional becomes a member, or each of whose members and managers, if any, is a professional at least one of such members is authorized by law to render a professional service within this state and who is or has been engaged in the practice of such profession in such professional service limited liability company or a predecessor entity, or will engage in the practice of such profession in the professional service limited liability company within thirty days of the date such professional becomes a member, or (ii) authorized by, or holding a license, certificate, registration or permit issued by the licensing authority pursuant to, the education law to render a professional service within this state; except that all members and managers, if any, of a foreign professional service limited liability company that provides health services in this state shall be licensed in this state. With respect to a foreign professional service limited liability company which provides veterinary services as such services are defined in article 135 of the education law, each member of such foreign professional service limited liability company shall be licensed pursuant to article 135 of the education law to practice veterinary medicine. With respect to a foreign professional service limited liability company which provides medical services as such services are defined in article 131 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in this state; PROVIDED, HOWEVER, THAT WITH RESPECT TO A FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE SERVICES DEFINED IN ARTICLE 131 OF THE EDUCATION LAW WITH SERVICES DEFINED IN ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW, EACH MEMBER OF SUCH FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 131 AND CERTIFIED BY THE AMERICAN BOARD OF OPHTHALMOLOGY, AND/OR LICENSED PURSUANT TO ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW TO PRACTICE ONE OR MORE OF SUCH PROFESSIONS IN THIS STATE. With respect to a foreign professional service limited liability company which provides dental services as such services are defined in article 133 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 133 of the education law to practice dentistry in this state. With respect to a foreign professional service limited liability company which provides professional engineering, land surveying, architectural and/or landscape architectural services as such services are defined in article 145, article 147 and article 148 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to

practice one or more of such professions in this state. With respect to a foreign professional service limited liability company which provides licensed clinical social work services as such services are defined in article 154 of the education law, each member of such foreign professional service limited liability company shall be licensed pursuant to article 154 of the education law to practice clinical social work in this state. With respect to a foreign professional service limited liability company which provides creative arts therapy services as such services are defined in article 163 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. With respect to a foreign professional service limited liability company which provides marriage and family therapy services as such services are defined in article 163 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. With respect to a foreign professional service limited liability company which provides mental health counseling services as such services are defined in article 163 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. With respect to a foreign professional service limited liability company which provides psychoanalysis services as such services are defined in article 163 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state.

S 6. Subdivision (q) of section 121-1500 of the partnership law, as separately amended by chapters 420 and 676 of the laws of 2002, is amended to read as follows:

(q) Each partner of a registered limited liability partnership formed to provide medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in this state and each partner of a registered limited liability partnership formed to provide dental services in this state must be licensed pursuant to article 133 of the education law to practice dentistry in this state; PROVIDED, HOWEVER, THAT WITH RESPECT TO A REGISTERED LIMITED LIABILITY PARTNERSHIP FORMED TO PROVIDE SERVICES DEFINED IN ARTICLE 131 OF THE EDUCATION LAW WITH SERVICES DEFINED IN ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW, EACH MEMBER OF SUCH REGISTERED LIMITED LIABILITY PARTNERSHIP MUST BE LICENSED PURSUANT TO ARTICLE 131 AND CERTIFIED BY THE AMERICAN BOARD OF OPHTHALMOLOGY, AND/OR LICENSED PURSUANT TO ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW TO PRACTICE ONE OR MORE OF SUCH PROFESSIONS IN THIS STATE. Each partner of a registered limited liability partnership formed to provide veterinary services in this state must be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a registered limited liability partnership formed to provide professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. Each partner of a registered limited liability partnership formed to provide licensed clinical social work services in this state must be licensed pursuant to article 154 of the education law to practice clinical social work in this state. Each part-

ner of a registered limited liability partnership formed to provide creative arts therapy services in this state must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. Each partner of a registered limited liability partnership formed to provide marriage and family therapy services in this state must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. Each partner of a registered limited liability partnership formed to provide mental health counseling services in this state must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. Each partner of a registered limited liability partnership formed to provide psychoanalysis services in this state must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state.

S 7. Subdivision (q) of section 121-1502 of the partnership law, as amended by chapter 230 of the laws of 2004, is amended to read as follows:

(q) Each partner of a foreign limited liability partnership which provides medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in the state and each partner of a foreign limited liability partnership which provides dental services in the state must be licensed pursuant to article 133 of the education law to practice dentistry in this state; PROVIDED, HOWEVER, THAT WITH RESPECT TO A FOREIGN LIMITED LIABILITY PARTNERSHIP FORMED TO PROVIDE SERVICES DEFINED IN ARTICLE 131 OF THE EDUCATION LAW WITH SERVICES DEFINED IN ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW, EACH MEMBER OF SUCH FOREIGN LIMITED LIABILITY PARTNERSHIP MUST BE LICENSED PURSUANT TO ARTICLE 131 AND CERTIFIED BY THE AMERICAN BOARD OF OPHTHALMOLOGY, AND/OR LICENSED PURSUANT TO ARTICLE 143 AND/OR ARTICLE 144 OF THE EDUCATION LAW TO PRACTICE ONE OR MORE OF SUCH PROFESSIONS IN THIS STATE. Each partner of a foreign limited liability partnership which provides veterinary service in the state shall be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a foreign limited liability partnership which provides professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions. Each partner of a foreign limited liability partnership which provides licensed clinical social work services in this state must be licensed pursuant to article 154 of the education law to practice licensed clinical social work in this state. Each partner of a foreign limited liability partnership which provides creative arts therapy services in this state must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. Each partner of a foreign limited liability partnership which provides marriage and family therapy services in this state must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. Each partner of a foreign limited liability partnership which provides mental health counseling services in this state must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. Each partner of a foreign limited liability partnership which provides psychoanalysis services in this state must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state.

S 8. This act shall take effect immediately.