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I N S E N A T E

June 23, 2010

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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-
22 RATION, AND INCLUDES A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY
23 FORMED PURSUANT TO THE PROVISIONS OF THE NEW YORK LIMITED LIABILITY
24 COMPANY LAW.

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

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

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

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

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

1 (C) IF THE SURVIVING BUSINESS ENTITY IS A PROFESSIONAL SERVICE LIMITED
2 LIABILITY COMPANY, THE RESTRICTIONS ON THE ISSUANCE, TRANSFER OR SALE OF
3 MEMBERSHIP INTERESTS OF A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY
4 OTHER THAN THE REQUIREMENTS OF THE FIRST TWO SENTENCES OF SUBDIVISION
5 (C) OF SECTION TWELVE HUNDRED ELEVEN OF THE LIMITED LIABILITY COMPANY
6 LAW, SHALL BE SUSPENDED FOR A PERIOD NOT EXCEEDING THIRTY DAYS WITH
7 RESPECT TO ANY ISSUANCE, TRANSFER OR SALE OF MEMBERSHIP INTERESTS MADE
8 PURSUANT TO SUCH MERGER OR CONSOLIDATION, PROVIDED THAT: (I) NO PERSON
9 OR BUSINESS ENTITY WHO WOULD NOT BE ELIGIBLE TO BE A MEMBER IN THE
10 ABSENCE OF THIS SECTION SHALL VOTE OR RECEIVE ANY DISTRIBUTION FROM SUCH
11 LIMITED LIABILITY COMPANY; (II) AFTER SUCH MERGER OR CONSOLIDATION, ANY
12 PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY THAT SURVIVES OR THAT IS
13 CREATED THEREBY SHALL BE SUBJECT TO ALL THE PROVISIONS OF THE LIMITED
14 LIABILITY COMPANY LAW; AND (III) MEMBERSHIP INTERESTS THEREAFTER MAY BE
15 HELD ONLY BY PERSONS OR BUSINESS ENTITIES WHO ARE ELIGIBLE TO BE A
16 MEMBER OF SUCH PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY. NOTHING
17 HEREIN CONTAINED SHALL BE CONSTRUED AS PERMITTING THE PRACTICE OF A
18 PROFESSION IN THIS STATE BY A LIMITED LIABILITY COMPANY THAT IS NOT
19 FORMED PURSUANT TO THE PROVISIONS OF THE LIMITED LIABILITY COMPANY LAW
20 OR AUTHORIZED TO DO BUSINESS IN THE STATE PURSUANT TO THE PROVISIONS OF
21 ARTICLE THIRTEEN OF THE LIMITED LIABILITY COMPANY LAW.
22 S 3. This act shall take effect immediately.