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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KELLNER, BING, LUPARDO, GOTTFRIED, MAGNARELLI, JAFFEE, HEVESI -- Multi-Sponsored by -- M. of A. CROUCH, FINCH, GABRYSZAK, ORTIZ, REILLY, SAYWARD -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the limited liability company law and the arts and cultural affairs law, in relation to publication requirements; and to repeal section 206 of the limited liability company law, relating to affidavits of publication

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

- 1 Section 1. The opening paragraph of subdivision (e) of section 1006 of  
2 the limited liability company law, as amended by chapter 375 of the laws  
3 of 1998, is amended to read as follows:  
4 In connection with any conversion approved under subdivision (c) of  
5 this section, the partnership or limited partnership shall file with the  
6 department of state a signed certificate entitled "Certificate of  
7 Conversion of ... (name partnership or limited partnership) to ... (name  
8 of limited liability company) under section one thousand six of the  
9 Limited Liability Company Law" [and shall also satisfy the publication  
10 requirements of section two hundred six of this chapter]. Such certif-  
11 icate shall include either:  
12 S 2. Section 206 of the limited liability company law is REPEALED.  
13 S 3. Subdivision (s) of section 1101 of the limited liability company  
14 law, as amended by chapter 767 of the laws of 2005, is amended to read  
15 as follows:  
16 (s) For filing a certificate of publication with affidavits of publi-  
17 cation annexed thereto pursuant to section [two hundred six,] eight  
18 hundred two, twelve hundred three or thirteen hundred six of this chap-  
19 ter, fifty dollars.

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

LBD00495-01-1

1 S 4. Section 209 of the limited liability company law is amended to  
2 read as follows:

3 S 209. Filing with the department of state. A signed articles of  
4 organization and any signed certificate of amendment or other certif-  
5 icates filed pursuant to this chapter or of any judicial decree of  
6 amendment or cancellation shall be delivered to the department of state.  
7 If the instrument that is delivered to the department of state for  
8 filing complies as to form with the requirements of law and the filing  
9 fee required by any statute of this state in connection therewith has  
10 been paid, the instrument shall be filed and indexed by the department  
11 of state. The department of state shall not review such articles or  
12 certificates for legal sufficiency; its review shall be limited to  
13 determining that the form has been completed. THE DEPARTMENT OF STATE  
14 SHALL PROMULGATE RULES AND REGULATIONS FOR THE ON-LINE FILING OF SUCH  
15 ARTICLES OR CERTIFICATES FILED PURSUANT TO THIS CHAPTER OR SUCH AMEND-  
16 MENT OR CANCELLATION THEREOF.

17 S 5. Section 1101 of the limited liability company law is amended by  
18 adding a new subdivision (w) to read as follows:

19 (W) FOR THE ON-LINE FILING OF ANY DOCUMENTS REQUIRED TO BE FILED WITH  
20 THE DEPARTMENT PURSUANT TO THIS CHAPTER, FIFTY DOLLARS.

21 S 6. Subdivisions (a-1) and (e-1) of section 102 of the limited  
22 liability company law, subdivision (a-1) as amended by chapter 44 of the  
23 laws of 2006 and subdivision (e-1) as added by chapter 767 of the laws  
24 of 2005, are amended to read as follows:

25 (a-1) "Affidavit of publication" means the affidavit of the printer or  
26 publisher of a newspaper in which a publication pursuant to sections  
27 [two hundred six,] eight hundred two, one thousand two hundred three,  
28 and one thousand three hundred six of this chapter has been made. The  
29 affidavit of publication shall be in a form substantially as follows:

30 "Affidavit of Publication Under Section \_\_\_\_\_ (specify applicable  
31 section) of the Limited Liability Company Law  
32 State of New York,  
33 County of \_\_\_\_\_, ss.:

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

42 \_\_\_\_\_ (signature)  
43 \_\_\_\_\_(printed name),  
44 (jurat)"

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

1 (e-1) "Certificate of publication" means a certificate presented on  
 2 behalf of the applicable limited liability company to the department of  
 3 state together with the affidavits of publication pursuant to section  
 4 [two hundred six,] eight hundred two, one thousand two hundred three, or  
 5 one thousand three hundred six of this chapter. The certificate of  
 6 publication shall be in a form substantially as follows:

7 "Certificate of Publication of \_\_\_\_\_ (name of limited liability  
 8 company) Under Section \_\_\_\_\_ (specify applicable section) of the Limit-  
 9 ed Liability Company Law

10 The undersigned is the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of  
 11 limited liability company). The published notices described in the  
 12 annexed affidavits of publication contain all of the information  
 13 required by the above-mentioned section of the Limited Liability Company  
 14 Law. The newspapers described in such affidavits of publication satisfy  
 15 the requirements set forth in the Limited Liability Company Law and the  
 16 designation made by the county clerk. I certify the foregoing statements  
 17 to be true under penalties of perjury.

18 Date  
 19 Signature  
 20 Printed Name"

21 S 7. Subdivision 4 of section 23.03 of the arts and cultural affairs  
 22 law, as amended by chapter 767 of the laws of 2005, is amended to read  
 23 as follows:

24 4. A limited partnership that is a theatrical production company is  
 25 exempt from the requirement for publishing its certificate or notice  
 26 under sections ninety-one, 121-201 and 121-902 of the partnership law so  
 27 long as the words "limited partnership" appear in its name. A limited  
 28 liability company that is a theatrical production company is exempt from  
 29 the requirement for publishing its articles of organization, application  
 30 for authority or a notice containing the substance thereof under  
 31 [sections two hundred six and] SECTION eight hundred two of the limited  
 32 liability company law so long as the words "limited liability company"  
 33 appear in its name.

34 S 8. This act shall take effect immediately.