

678

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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Introduced by M. of A. MAGNARELLI -- Multi-Sponsored by -- M. of A.  
PEOPLES-STOKES, REILLY -- read once and referred 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 ASSEM-  
BLY, 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.

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

LBD03146-01-1

(F) "OTHER BUSINESS ENTITY" MEANS ANY PERSON OTHER THAN A NATURAL PERSON, GENERAL PARTNERSHIP OR A DOMESTIC OR FOREIGN BUSINESS CORPORATION, AND INCLUDES A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED PURSUANT TO THE PROVISIONS OF THE NEW YORK LIMITED LIABILITY COMPANY LAW.

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

S 1516. Corporate mergers, consolidations and other reorganizations.

(A) Notwithstanding any inconsistent provision of this article, a professional service corporation, pursuant to the provisions of article nine of this chapter, may be merged or consolidated with another corporation formed pursuant to the provisions of this chapter or with a corporation authorized and registered to practice the same profession pursuant to the applicable provisions of subdivision six of section seventy-two hundred nine of the education law (engineer or land surveyor) or subdivision four of section seventy-three hundred seven of the education law (architect) of article one hundred forty-five of the education law, or with a foreign corporation, OR OTHER BUSINESS ENTITY PRACTICING THE SAME PROFESSION OR PROFESSIONS IN THIS STATE OR THE STATE OF ITS FORMATION, or may be otherwise reorganized, provided that the corporation which survives or which is formed pursuant thereto is a professional service corporation, A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY or a foreign professional service corporation practicing the same profession or professions in this state or the state of incorporation or, if one of the original corporations is authorized to practice pursuant to the provisions of either subdivision six of section [seven thousand two] SEVENTY-TWO hundred nine or subdivision four of section [seven thousand three] SEVENTY-THREE hundred seven, a corporation authorized and registered to practice the same profession pursuant to the applicable provisions of subdivision six of section seventy-two hundred nine of the education law (engineer or land surveyor) or subdivision four of section seventy-three hundred seven of the education law (architect) of article one hundred forty-five of the education law.

[The] (B) IF THE SURVIVING BUSINESS ENTITY IS A PROFESSIONAL CORPORATION, THE restrictions on the issuance, transfer or sale of shares of a professional service corporation shall be suspended for a period not exceeding thirty days with respect to any issuance, transfer or sale of shares made pursuant to such merger, consolidation or reorganization, provided that: (i) no person who would not be eligible to be a shareholder in the absence of this section shall vote the shares of or receive any distribution from such corporation; (ii) after such merger, consolidation or reorganization, any professional service corporation which survives or which is created thereby shall be subject to all of the provisions of this article[,]; and (iii) shares thereafter only may be held by persons who are eligible to receive shares of such professional service corporation or such other corporation authorized and registered to practice the same profession pursuant to the applicable provisions of subdivision six of section seventy-two hundred nine of the education law (engineer or land surveyor) or subdivision four of section seventy-three hundred seven of the education law (architect) of article one hundred forty-five of the education law, which survives. Nothing herein contained shall be construed as permitting the practice of a profession in this state by a corporation which is not incorporated pursuant to the provisions of this article or authorized to do business in this state pursuant to the provisions of article fifteen-A of this chapter or authorized and registered to practice a profession pursuant

1 to the applicable provisions of article one hundred forty-five of the  
2 education law. For the purposes of this section, other reorganizations  
3 shall be limited to those reorganizations defined in paragraph one of  
4 subsection (a) of section three hundred sixty-eight of the internal  
5 revenue code.

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

27 S 3. This act shall take effect immediately.