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

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2013-2014 Regular Sessions

I N  S E N A T E

(PREFILED)

January 9, 2013

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

AN ACT to amend the limited liability company law, in relation to establishing the L3C act regarding low-profit limited liability companies

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

Section 1. This act may be known and shall be cited as the "L3C act".

S 2. Section 102 of the limited liability company law is amended by adding a new subdivision (n-1) to read as follows:

(N-1) "LOW-PROFIT LIMITED LIABILITY COMPANY" MEANS A LIMITED LIABILITY COMPANY THAT HAS SET FORTH IN ITS ARTICLES OF ORGANIZATION A BUSINESS PURPOSE THAT SATISFIES, AND THAT IS AT ALL TIMES OPERATED TO SATISFY, EACH OF THE FOLLOWING REQUIREMENTS:

(I) THE LIMITED LIABILITY COMPANY SIGNIFICANTLY FURTHERS THE ACCOMPLISHMENT OF ONE OR MORE CHARITABLE OR EDUCATIONAL PURPOSES WITHIN THE MEANING OF SECTION 170(C)(2)(B) OF THE INTERNAL REVENUE CODE OF 1986 (26 U.S.C. S 170(C)(2)(B)), AND WOULD NOT HAVE BEEN FORMED BUT FOR ITS RELATIONSHIP TO THE ACCOMPLISHMENT OF CHARITABLE OR EDUCATIONAL PURPOSES;

(II) NO SIGNIFICANT PURPOSE OF THE LIMITED LIABILITY COMPANY IS THE PRODUCTION OF INCOME OR THE APPRECIATION OF PROPERTY; PROVIDED, HOWEVER, THAT THE FACT THAT THE LIMITED LIABILITY COMPANY PRODUCES SIGNIFICANT INCOME OR CAPITAL APPRECIATION SHALL NOT, IN THE ABSENCE OF OTHER FACTORS, BE CONCLUSIVE EVIDENCE OF A SIGNIFICANT PURPOSE INVOLVING THE PRODUCTION OF INCOME OR THE APPRECIATION OF PROPERTY; AND

(III) NO PURPOSE OF THE LIMITED LIABILITY COMPANY IS TO ACCOMPLISH ONE OR MORE POLITICAL OR LEGISLATIVE PURPOSES WITHIN THE MEANING OF SECTION 170(C)(2)(D) OF THE INTERNAL REVENUE CODE OF 1986 (26 U.S.C. S 170(C)(2)(D)).

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

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S 3. Paragraph 7 of subdivision (e) of section 203 of the limited liability company law is renumbered paragraph 8 and a new paragraph 7 is added to read as follows:

(7) IF THE COMPANY IS A LOW-PROFIT LIMITED LIABILITY COMPANY, AS DEFINED IN SUBDIVISION (N-1) OF SECTION ONE HUNDRED TWO OF THIS CHAPTER, THAT THE COMPANY IS A LIMITED LIABILITY COMPANY.

S 4. Subdivisions (g), (h) and (i) of section 204 of the limited liability company law, subdivision (i) as added by chapter 316 of the laws of 2005, are amended and three new subdivisions (j), (k) and (l) are added to read as follows:

(g) shall not, unless the approval of the state department of social services OR ITS SUCCESSORS IN FUNCTION is attached to the articles of organization or application for authority, contain the word "blind" or "handicapped." Such approval shall be granted by the state department of social services OR ITS SUCCESSORS IN FUNCTION if in its opinion the word "blind" or "handicapped" as used in the limited liability company's proposed name will not tend to mislead or confuse the public into believing that the limited liability company is organized for charitable or nonprofit purposes related to the blind or the handicapped; [and]

(h) shall not, unless the approval of the attorney general is attached to the articles of organization or application for authority, contain the word "exchange" or any abbreviation or derivative thereof. Such approval shall not be granted by the attorney general if in his or her opinion the use of the word "exchange" in the limited liability company's proposed name would falsely imply that the limited liability company conducts its business at a place where trade is carried on in securities or commodities by brokers, dealers or merchants[.];

(i) shall not contain the following terms: "school," "education," "elementary," "secondary," "kindergarten," "prekindergarten," "preschool," "nursery school," "museum," "history," "historical," "historical society," "arboretum," "library," "college," "university" or other term restricted by section two hundred twenty-four of the education law; "conservatory," "academy," or "institute" or any abbreviation or derivative of such terms, shall have endorsed thereon or annexed thereto the consent of the commissioner of education[.];

(J) SHALL, IN THE CASE OF A LOW-PROFIT LIMITED LIABILITY COMPANY, CONTAIN THE WORDS "LOW-PROFIT LIMITED LIABILITY COMPANY" OR THE ABBREVIATIONS "L3C" OR "L3C", WITH OR WITHOUT PERIODS OR OTHER PUNCTUATION;

(K) SHALL NOT, IN THE CASE OF A LOW-PROFIT LIMITED LIABILITY COMPANY UNLESS THE APPROVAL OF THE STATE DEPARTMENT OF SOCIAL SERVICES OR ITS SUCCESSORS IN FUNCTION IS ATTACHED TO THE ARTICLES OF ORGANIZATION OR APPLICATION FOR AUTHORITY, CONTAIN THE WORD "BLIND" OR "HANDICAPPED." SUCH APPROVAL SHALL BE GRANTED BY THE STATE DEPARTMENT OF SOCIAL SERVICES OR ITS SUCCESSORS IN FUNCTION IF IN ITS OPINION THE WORD "BLIND" OR "HANDICAPPED" AS USED IN THE LIMITED LIABILITY COMPANY'S PROPOSED NAME WILL NOT TEND TO MISLEAD OR CONFUSE THE PUBLIC INTO BELIEVING THAT THE LIMITED LIABILITY COMPANY IS ORGANIZED FOR CHARITABLE OR NONPROFIT PURPOSES RELATED TO THE BLIND OR THE HANDICAPPED; AND

(L) SHALL NOT, IN THE CASE OF A LOW-PROFIT LIMITED LIABILITY COMPANY UNLESS THE APPROVAL OF THE ATTORNEY GENERAL IS ATTACHED TO THE ARTICLES OF ORGANIZATION OR APPLICATION FOR AUTHORITY, CONTAIN THE WORD "EXCHANGE" OR ANY ABBREVIATION OR DERIVATIVE THEREOF. SUCH APPROVAL SHALL NOT BE GRANTED BY THE ATTORNEY GENERAL IF IN HIS OR HER OPINION THE USE OF THE WORD "EXCHANGE" IN THE LIMITED LIABILITY COMPANY'S PROPOSED NAME WOULD FALSELY IMPLY THAT THE LIMITED LIABILITY COMPANY

CONDUCTS ITS BUSINESS AT A PLACE WHERE TRADE IS CARRIED ON IN SECURITIES OR COMMODITIES BY BROKERS, DEALERS OR MERCHANTS.

S 5. Paragraphs 8 and 9 of subdivision (d) of section 211 of the limited liability company law are renumbered paragraphs 9 and 10 and a new paragraph 8 is added to read as follows:

(8) IF THE LIMITED LIABILITY COMPANY IS A LOW-PROFIT LIMITED LIABILITY COMPANY, ITS FAILURE TO MEET ANY OF THE REQUIREMENTS SET OUT IN SUBDIVISION (N-1) OF SECTION ONE HUNDRED TWO OF THIS CHAPTER.

S 6. Paragraph 5 of subdivision (a) of section 701 of the limited liability company law is renumbered paragraph 6 and a new paragraph 5 is added to read as follows:

(5) IF THE LIMITED LIABILITY COMPANY IS A LOW-PROFIT LIMITED LIABILITY COMPANY THAT HAS CEASED TO MEET ANY OF THE REQUIREMENTS SET OUT IN SUBDIVISION (N-1) OF SECTION ONE HUNDRED TWO OF THIS CHAPTER AND HAS FAILED FOR NINETY DAYS AFTER CEASING TO MEET THOSE REQUIREMENTS TO FILE ARTICLES OF AMENDMENT WITH THE DEPARTMENT OF STATE AMENDING ITS NAME TO CONFORM WITH THE REQUIREMENTS OF SECTION TWO HUNDRED FOUR OF THIS CHAPTER GOVERNING LIMITED LIABILITY COMPANY NAMES.

S 7. This act shall take effect immediately.