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I N S E N A T E

(PREFILED)

January 8, 2014

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

AN ACT to amend the education law and the not-for-profit corporation law, in relation to implementing the non-profit revitalization act of 2013, and to repeal certain provisions of chapter 549 of the laws of 2013 enacting the non-profit revitalization act of 2013 relating to reform of charitable organizations, and the not-for-profit corporation law relating to reform of charitable organizations

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

1 Section 1. Section 216 of the education law, as amended by chapter 549  
2 of the laws of 2013, is amended to read as follows:  
3 S 216. Charters. Under such name, with such number of trustees or  
4 other managers, and with such powers, privileges and duties, and subject  
5 to such limitations and restrictions in all respects as the regents may  
6 prescribe in conformity to law, they may, by an instrument under their  
7 seal and recorded in their office, incorporate any university, college,  
8 academy, library, museum, or other institution or association for the  
9 promotion of science, literature, art, history or other department of  
10 knowledge, or of education in any way, associations of teachers,  
11 students, graduates of educational institutions, and other associations  
12 whose approved purposes are, in whole or in part, of educational or  
13 cultural value deemed worthy of recognition and encouragement by the  
14 university. No school; college; university or other entity providing  
15 post secondary education; library; or museum or historical society shall  
16 be incorporated under the business corporation law, the not-for-profit  
17 corporation law, or any other general law without the consent of the  
18 commissioner or, in the case of a college or university, without the  
19 written authorization of the Regents. ANY OTHER ENTITY INCORPORATED FOR  
20 EDUCATIONAL PURPOSES MAY BE FORMED UNDER THE BUSINESS CORPORATION LAW OR  
21 THE NOT-FOR-PROFIT CORPORATION LAW WITHOUT THE CONSENT OF THE COMMIS-  
22 SIONER, PROVIDED THAT SUCH INSTITUTION OR ASSOCIATION SUBMITS A CERTI-  
23 FIED COPY OF THE CERTIFICATE OF INCORPORATION TO THE COMMISSIONER WITHIN

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

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1 THIRTY DAYS AFTER THE CORPORATION RECEIVES CONFIRMATION FROM THE DEPART-  
2 MENT OF STATE THAT THE CERTIFICATE HAS BEEN ACCEPTED FOR FILING.

3 No individual, association, partnership, company or corporation not  
4 authorized by special charter from the legislature of this state or by  
5 charter from the regents to operate a museum, or arboretum shall know-  
6 ingly use, advertise or transact business under the names "museum," or  
7 "arboretum," or any name, title or descriptive material indicating or  
8 tending to imply that said individual, association, partnership, company  
9 or corporation conducts, carries on, or is such a business when it is  
10 not, or that it is authorized to operate as such, unless the right to do  
11 so has been granted by the regents or the commissioner in writing. Any  
12 violation of this paragraph shall be a misdemeanor. Notwithstanding any  
13 other provision of this section, an individual, association, partner-  
14 ship, company or corporation doing business under any of such names on  
15 the effective date of this paragraph may come into compliance with this  
16 paragraph by obtaining consent of the regents or the commissioner within  
17 one year of such effective date.

18 S 2. Subparagraph 3-b of paragraph (a) of section 102 of the not-for-  
19 profit corporation law, as added by chapter 549 of the laws of 2013, is  
20 amended to read as follows:

21 (3-b) "Charitable purposes" of a corporation means ONE OR MORE OF THE  
22 FOLLOWING purposes [contained in the certificate of incorporation of the  
23 corporation that are]: charitable, educational, religious, scientific,  
24 literary, cultural or for the prevention of cruelty to children or  
25 animals.

26 S 3. Paragraph (a) of section 103 of the not-for-profit corporation  
27 law, as amended by chapter 549 of the laws of 2013, is amended to read  
28 as follows:

29 (a) Except as otherwise provided in this section, this chapter  
30 applies to every domestic corporation as herein defined, and to every  
31 foreign corporation as herein defined which is authorized to conduct or  
32 which conducts any activities in this state. This chapter also applies  
33 to any other domestic corporation or foreign corporation of any kind to  
34 the extent, if any, provided under this chapter or any law governing  
35 such corporation and, if no such provision for application is made, to  
36 the extent, if any, that the membership corporations law applied to such  
37 corporation as of the effective date of this chapter. A corporation  
38 formed by a special act of this state which has as its principal purpose  
39 an education purpose and which is a member of the university of the  
40 state of New York, is an "education corporation" under section two  
41 hundred sixteen-a of the education law.

42 To the extent that the membership corporations law or the general  
43 corporation law applied to it as of the effective date of this chapter,  
44 the corresponding provisions of this chapter apply to a corporation  
45 heretofore formed by or pursuant to a special act of this state other  
46 than a religious corporation or an "education corporation" under clause  
47 (b) of subdivision one of section two hundred sixteen-a of the education  
48 law, if (1) its principal purpose is a religious, charitable or educa-  
49 tion purpose, and (2) it is operated, supervised or controlled by or in  
50 connection with a religious organization. ANY SUCH CORPORATION MAY AT  
51 ANY TIME AFTER THE EFFECTIVE DATE OF THIS CHAPTER FILE A RESTATED  
52 CERTIFICATE OF INCORPORATION UNDER SECTION 805 (RESTATED CERTIFICATE OF  
53 INCORPORATION) INCLUDING A STATEMENT THAT IT ELECTS TO HAVE THIS CHAPTER  
54 APPLY IN ALL RESPECTS TO IT. THE RESTATED CERTIFICATE OF INCORPORATION  
55 SHALL CONFORM WITH THE REQUIREMENTS OF SECTION 402 (CERTIFICATE OF  
56 INCORPORATION; CONTENTS) FOR NEW CORPORATIONS. UPON THE FILING OF SUCH

1 CERTIFICATE BY THE DEPARTMENT OF STATE, THIS CHAPTER SHALL APPLY IN ALL  
2 RESPECTS TO SUCH CORPORATION.

3 This chapter also applies to any other corporation of any kind, formed  
4 not-for-profit under any other chapter of the laws of this state except  
5 a chapter of the consolidated laws, to the extent that provisions of  
6 this chapter do not conflict with the provisions of such unconsolidated  
7 law. If an applicable provision of such unconsolidated law relates to a  
8 matter embraced in this chapter but is not in conflict therewith, both  
9 provisions shall apply. Any corporation to which this chapter is made  
10 applicable by this paragraph shall be treated as a "corporation" or  
11 "domestic corporation" as such terms are used in this chapter, except  
12 that the purposes of any such corporation formed or formable under such  
13 unconsolidated law shall not thereby be extended. For the purpose of  
14 this paragraph, the effective date of this chapter as to corporations to  
15 which this chapter is made applicable by this paragraph shall be Septem-  
16 ber one, nineteen hundred seventy-three.

17 S 4. Paragraphs (d), (e) and (f) of section 103 of the not-for-profit  
18 corporation law are relettered paragraphs (e), (f) and (g) and a new  
19 paragraph (d) is added to read as follows:

20 (D) A CORPORATION WHOSE FORMATION UNDER THIS CHAPTER IS AUTHORIZED BY  
21 ANOTHER CORPORATE LAW IS, UNLESS OTHERWISE PROVIDED BY SUCH CORPORATE  
22 LAW, SUBJECT TO ALL THE PROVISIONS OF THIS CHAPTER THAT ARE APPLICABLE  
23 TO A CHARITABLE CORPORATION FORMED UNDER THIS CHAPTER.

24 S 5. Section 105 of the not-for-profit corporation law, as amended by  
25 chapter 549 of the laws of 2013, is amended to read as follows:

26 S 105. Certificates; corrections.

27 (a) CORRECTIONS PRIOR TO FILING BY DEPARTMENT OF STATE. Any certif-  
28 icate or other instrument relating to a domestic or foreign corporation  
29 submitted to the department of state under this chapter may be corrected  
30 with respect to any typographical, or similar non-material error appar-  
31 ent on the face of the certificate or instrument, prior to the filing of  
32 such certificate or instrument by the department of state. Such  
33 correction shall be effected by the department of state upon authori-  
34 zation in writing [or by electronic mail] by the incorporator[, or  
35 following incorporation, by any person authorized by the corporation] IN  
36 A FORM ACCEPTABLE TO THE DEPARTMENT. SUCH AUTHORIZATION MAY BE DELIVERED  
37 BY MAIL OR SENT BY ELECTRONIC MAIL TO THE DEPARTMENT.

38 (b) CORRECTIONS FOLLOWING INCORPORATION. Any certificate or other  
39 instrument relating to a domestic or foreign corporation filed by the  
40 department of state under this chapter may be corrected with respect to  
41 any typographical or similar non-material error apparent on the face or  
42 defect in the execution thereof including the deletion of any matter not  
43 permitted to be stated therein. A certificate, entitled "Certificate of  
44 correction of..... (correct title of certificate and name of corpo-  
45 ration)" shall be signed and delivered to the department of state BY  
46 MAIL OR ELECTRONIC MAIL. It shall set forth the name of the corpo-  
47 ration, the date the certificate to be corrected was filed by the  
48 department of state, the provision in the certificate as corrected or  
49 eliminated and if the execution was defective, the proper execution. The  
50 filing of the certificate by the department of state shall not alter the  
51 effective time of the instrument being corrected, which shall remain as  
52 its original effective time, and shall not affect any right or liability  
53 accrued or incurred before such filing.

54 (C) A corporate name may not be changed or corrected under this  
55 section other than to correct any typographical or similar non-material  
56 error.

1 S 6. Paragraph (d) of section 201 of the not-for-profit corporation  
2 law, as added by chapter 549 of the laws of 2013, is amended to read as  
3 follows:

4 (d) A type D not-for-profit corporation formed prior to July first,  
5 two thousand fourteen for charitable purposes [as that term is defined  
6 in this chapter] shall be deemed a charitable corporation. Any  
7 submission or filing by such corporation to any person or entity shall  
8 be deemed to have been submitted or filed by a charitable corporation,  
9 and any reference in any such filing or submission referring to the  
10 status of such corporation as a type D corporation shall be deemed to  
11 refer to a charitable corporation. Any other type D not-for-profit  
12 corporations formed prior to July first, two thousand fourteen shall be  
13 deemed a non-charitable corporation. Any submission or filing by such  
14 corporation to any person or entity shall be deemed to have been submit-  
15 ted or filed by a non-charitable corporation, and any reference in any  
16 such filing or submission referring to the status of such corporation as  
17 a type D corporation shall be deemed to refer to a non-charitable corpo-  
18 ration.

19 S 7. Section 43 of chapter 549 of the laws of 2013 enacting the non-  
20 profit revitalization act of 2013 relating to reform of charitable  
21 organizations, is REPEALED.

22 S 8. Paragraphs (b) and (c) of section 306 of the not-for-profit  
23 corporation law, as amended by chapter 549 of the laws of 2013, are  
24 amended to read as follows:

25 (b) Service of process on the secretary of state as agent of a domes-  
26 tic corporation FORMED UNDER ARTICLE FOUR OF THIS CHAPTER or an author-  
27 ized foreign corporation shall be made by personally delivering to and  
28 leaving with the SECRETARY OF STATE OR HIS OR HER deputy [of the secre-  
29 tary of state], or with any person authorized by the secretary of state  
30 to receive such service, at the office of the department of state in the  
31 city of Albany, duplicate copies of such process together with the stat-  
32 utory fee, which fee shall be a taxable disbursement. Service of proc-  
33 ess on such corporation shall be complete when the secretary of state is  
34 so served. The secretary of state shall promptly send one of such copies  
35 by certified mail, return receipt requested, to such corporation, at the  
36 post office address, on file in the department of state, specified for  
37 the purpose. If a domestic corporation FORMED UNDER ARTICLE FOUR OF THIS  
38 CHAPTER or an authorized foreign corporation has no such address on file  
39 in the department of state, the secretary of state shall so mail such  
40 copy to such corporation at the address of its office within this state  
41 on file in the department.

42 (c) If an action or special proceeding is instituted in a court of  
43 limited jurisdiction, service of process may be made in the manner  
44 provided in this section if the office of the domestic corporation  
45 FORMED UNDER ARTICLE FOUR OF THIS CHAPTER or foreign corporation is  
46 within the territorial jurisdiction of the court.

47 S 9. Subparagraph 2 of paragraph (a) of section 402 of the not-for-  
48 profit corporation law, as amended by chapter 549 of the laws of 2013,  
49 is amended and a new subparagraph 2-b is added to read as follows:

50 (2) That the corporation is a corporation as defined in subparagraph  
51 [(a) (5)] (5) OF PARAGRAPH (A) of section 102 (Definitions)[,].

52 (2-A) the purpose or purposes for which it is formed, IT BEING SUFFI-  
53 CIENT TO STATE THAT THE PURPOSE OF THE CORPORATION IS ANY PURPOSE FOR  
54 WHICH CORPORATIONS MAY BE ORGANIZED UNDER THIS CHAPTER AS A CHARITABLE  
55 OR NON-CHARITABLE CORPORATION, and whether it is a charitable corpo-  
56 ration or a non-charitable corporation under section 201 (Purposes).

1 Any corporation may also set forth any activities that it intends to  
2 carry out in furtherance of such purpose or purposes; provided that this  
3 subparagraph shall not be interpreted to require that the certificate of  
4 incorporation set forth such activities or otherwise state how the  
5 corporation's purposes will be achieved.

6 (2-B) IF IT IS NOT FORMED TO ENGAGE IN ANY ACTIVITY OR FOR ANY PURPOSE  
7 REQUIRING CONSENT OR APPROVAL OF ANY STATE OFFICIAL, DEPARTMENT, BOARD,  
8 AGENCY OR OTHER BODY, A STATEMENT THAT NO SUCH CONSENT OR APPROVAL IS  
9 REQUIRED. SUCH STATEMENT SHALL BE DEEMED CONCLUSIVE FOR PURPOSES OF  
10 FILING BY THE DEPARTMENT OF STATE. IF SUBSEQUENT TO SUBMITTING THE  
11 CERTIFICATE OF INCORPORATION FOR FILING, THE CORPORATION PLANS TO ENGAGE  
12 IN ANY ACTIVITY REQUIRING CONSENT OR APPROVAL PURSUANT TO SECTION 404  
13 (APPROVALS, NOTICES AND CONSENTS) OF THIS CHAPTER, THE CORPORATION SHALL  
14 OBTAIN SUCH CONSENT OR APPROVAL AND ACCORDINGLY AMEND ITS CERTIFICATE OF  
15 INCORPORATION PURSUANT TO ARTICLE EIGHT OF THIS CHAPTER.

16 S 10. Paragraph (w) of section 404 of the not-for-profit corporation  
17 law, as added by chapter 549 of the laws of 2013, is REPEALED.

18 S 11. Subparagraph 6 of paragraph (a) of section 803 of the not-for-  
19 profit corporation law, as amended by chapter 168 of the laws of 1982  
20 and as renumbered by chapter 145 of the laws of 1983, is amended to read  
21 as follows:

22 (6) A designation of the secretary of state as agent of the corpo-  
23 ration upon whom process against it may be served and the post office  
24 address within or without this state to which the secretary of state  
25 shall mail a copy of any process against it served upon [him] THE SECRE-  
26 TARY.

27 S 12. This act shall take effect on the same date and in the same  
28 manner as chapter 549 of the laws of 2013, takes effect.