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

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I N A S S E M B L Y

March 18, 2014

Introduced by M. of A. BRENNAN -- read once and referred to the Committee on Corporations, Authorities and Commissions

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:

Section 1. Section 216 of the education law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

S 216. Charters. Under such name, with such number of trustees or other managers, and with such powers, privileges and duties, and subject to such limitations and restrictions in all respects as the regents may prescribe in conformity to law, they may, by an instrument under their seal and recorded in their office, incorporate any university, college, academy, library, museum, or other institution or association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way, associations of teachers, students, graduates of educational institutions, and other associations whose approved purposes are, in whole or in part, of educational or cultural value deemed worthy of recognition and encouragement by the university. No school; college; university or other entity providing post secondary education; library; or museum or historical society shall be incorporated under the business corporation law, the not-for-profit corporation law, or any other general law without the consent of the commissioner or, in the case of a college or university, without the written authorization of the Regents. ANY OTHER ENTITY INCORPORATED FOR EDUCATIONAL PURPOSES MAY BE FORMED UNDER THE BUSINESS CORPORATION LAW OR THE NOT-FOR-PROFIT CORPORATION LAW WITHOUT THE CONSENT OF THE COMMISSIONER, PROVIDED THAT SUCH INSTITUTION OR ASSOCIATION SUBMITS A CERTIFIED 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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THIRTY DAYS AFTER THE CORPORATION RECEIVES CONFIRMATION FROM THE DEPARTMENT OF STATE THAT THE CERTIFICATE HAS BEEN ACCEPTED FOR FILING.

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

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

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

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

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

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

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

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

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

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

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

S 105. Certificates; corrections.

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

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

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

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

(d) A type D not-for-profit corporation formed prior to July first, two thousand fourteen for charitable purposes [as that term is defined in this chapter] shall be deemed a charitable corporation. Any submission or filing by such corporation to any person or entity shall be deemed to have been submitted or filed by a charitable corporation, and any reference in any such filing or submission referring to the status of such corporation as a type D corporation shall be deemed to refer to a charitable corporation. Any other type D not-for-profit corporations formed prior to July first, two thousand fourteen shall be deemed a non-charitable corporation. Any submission or filing by such corporation to any person or entity shall be deemed to have been submitted or filed by a non-charitable corporation, and any reference in any such filing or submission referring to the status of such corporation as a type D corporation shall be deemed to refer to a non-charitable corporation.

S 7. Section 43 of chapter 549 of the laws of 2013 enacting the not-for-profit revitalization act of 2013 relating to reform of charitable organizations, is REPEALED.

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

(b) Service of process on the secretary of state as agent of a domestic corporation FORMED UNDER ARTICLE FOUR OF THIS CHAPTER or an authorized foreign corporation shall be made by personally delivering to and leaving with the SECRETARY OF STATE OR HIS OR HER deputy [of the secretary of state], or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such corporation shall be complete when the secretary of state is so served. The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such corporation, at the post office address, on file in the department of state, specified for the purpose. If a domestic corporation FORMED UNDER ARTICLE FOUR OF THIS CHAPTER or an authorized foreign corporation has no such address on file in the department of state, the secretary of state shall so mail such copy to such corporation at the address of its office within this state on file in the department.

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

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

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

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

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

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

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

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

(6) A designation of the secretary of state as agent of the corporation upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon [him] THE SECRETARY.

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