

4596--A

2013-2014 Regular Sessions

I N S E N A T E

April 12, 2013

Introduced by Sens. LAVALLE, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, the business corporation law, the partnership law and the limited liability company law, in relation to certified public accountants

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

1 Section 1. Subdivision 2 of section 7408 of the education law, as
2 amended by chapter 651 of the laws of 2008, is amended to read as
3 follows:
4 2. A. No firm shall use the words "certified public accountant" or
5 "certified public accountants" or the letters "CPA" or "CPAs" in
6 connection with its name unless the sole proprietor of such firm or each
7 partner of a partnership or limited liability partnership, member of a
8 limited liability company or shareholder of a professional service
9 corporation engaged within the United States in the practice of public
10 accountancy is in good standing as a certified public accountant of one
11 or more of the states of the United States. NOTWITHSTANDING ANY OTHER
12 PROVISIONS OF LAW, AN APPLICANT FOR INITIAL ISSUANCE OR RENEWAL OF A
13 FIRM PERMIT TO PRACTICE UNDER THIS SECTION SHALL BE REQUIRED TO SHOW (1)
14 THAT A SIMPLE MAJORITY OF THE OWNERSHIP OF THE FIRM, IN TERMS OF FINAN-
15 CIAL INTERESTS, INCLUDING OWNERSHIP-BASED COMPENSATION, AND VOTING
16 RIGHTS HELD BY THE FIRM'S OWNERS, BELONGS TO INDIVIDUALS LICENSED TO
17 PRACTICE PUBLIC ACCOUNTANCY IN SOME STATE, AND (2) THAT ALL PARTNERS OF
18 A PARTNERSHIP OR LIMITED LIABILITY PARTNERSHIP, OR MEMBERS OF A LIMITED
19 LIABILITY COMPANY, OR SHAREHOLDERS OF A PROFESSIONAL SERVICE CORPORATION
20 WHOSE PRINCIPAL PLACE OF BUSINESS IS IN THIS STATE, AND WHO ARE ENGAGED
21 IN THE PRACTICE OF PUBLIC ACCOUNTANCY IN THIS STATE, HOLD A VALID

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

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LICENSE ISSUED UNDER SECTION SEVENTY-FOUR HUNDRED FOUR OF THIS ARTICLE OR ARE PUBLIC ACCOUNTANTS LICENSED UNDER SECTION SEVENTY-FOUR HUNDRED FIVE OF THIS ARTICLE. ALTHOUGH FIRMS MAY INCLUDE NON-LICENSEE OWNERS, THE FIRM AND ITS OWNERS MUST COMPLY WITH RULES PROMULGATED BY THE BOARD. NOTWITHSTANDING THE FOREGOING, A FIRM REGISTERED UNDER THIS SECTION MAY NOT HAVE NON-LICENSEE OWNERS IF THE FIRM'S NAME INCLUDES THE WORDS "CERTIFIED PUBLIC ACCOUNTANT," OR "CERTIFIED PUBLIC ACCOUNTANTS," OR THE ABBREVIATIONS "CPA" OR "CPAS."

B. EACH NON-LICENSEE OWNER OF A FIRM THAT IS REGISTERED UNDER THIS SECTION SHALL BE (1) A NATURAL PERSON WHO ACTIVELY PARTICIPATES IN THE BUSINESS OF THE FIRM OR ITS AFFILIATED ENTITIES, OR (2) AN ENTITY, INCLUDING, BUT NOT LIMITED TO, A PARTNERSHIP OR PROFESSIONAL CORPORATION, PROVIDED EACH BENEFICIAL OWNER OF AN EQUITY INTEREST IN SUCH ENTITY IS A NATURAL PERSON WHO ACTIVELY PARTICIPATES IN THE BUSINESS CONDUCTED BY THE FIRM OR ITS AFFILIATED ENTITIES. FOR PURPOSES OF THIS SUBDIVISION, "ACTIVELY PARTICIPATE" MEANS TO PROVIDE SERVICES TO CLIENTS OR TO OTHERWISE INDIVIDUALLY TAKE PART IN THE DAY-TO-DAY BUSINESS OR MANAGEMENT OF THE FIRM.

S 2. Section 1503 of the business corporation law is amended by adding a new paragraph (h) to read as follows:

(H) ANY FIRM ESTABLISHED FOR THE BUSINESS PURPOSE OF LAWFULLY ENGAGING IN THE PRACTICE OF PUBLIC ACCOUNTANCY THAT IS REGISTERED UNDER SECTION SEVENTY-FOUR HUNDRED EIGHT OF THE EDUCATION LAW MAY BE INCORPORATED AS A PROFESSIONAL SERVICE CORPORATION UNDER THIS ARTICLE. SUCH A FIRM SHALL HAVE ATTACHED TO ITS CERTIFICATE OF INCORPORATION A CERTIFICATE OR CERTIFICATES DEMONSTRATING THE FIRM'S COMPLIANCE WITH PARAGRAPH A OF SUBDIVISION TWO OF SECTION SEVENTY-FOUR HUNDRED EIGHT OF THE EDUCATION LAW, IN LIEU OF THE CERTIFICATE OR CERTIFICATES REQUIRED BY SUBPARAGRAPH (II) OF PARAGRAPH (B) OF THIS SECTION.

S 3. Paragraph (d) of section 1525 of the business corporation law, as added by chapter 505 of the laws of 1983, is amended to read as follows:

(d) "Foreign professional service corporation" means a professional service corporation, whether or not denominated as such, organized under the laws of a jurisdiction other than this state, all of the shareholders, directors and officers of which are authorized and licensed to practice the profession for which such corporation is licensed to do business; except that all shareholders, directors and officers of a foreign professional service corporation which provides health services in this state shall be licensed in this state. ANY FIRM ESTABLISHED FOR THE BUSINESS PURPOSE OF LAWFULLY ENGAGING IN THE PRACTICE OF PUBLIC ACCOUNTANCY THAT IS LICENSED UNDER SECTION SEVENTY-FOUR HUNDRED EIGHT OF THE EDUCATION LAW MAY BE INCORPORATED AS A FOREIGN PROFESSIONAL SERVICE CORPORATION UNDER THIS ARTICLE.

S 4. The fourteenth undesignated paragraph of section 2 of the partnership law, as added by chapter 576 of the laws of 1994, is amended to read as follows:

"Professional partnership" means (1) a partnership without limited partners each of whose partners is a professional authorized by law to render a professional service within this state, (2) a partnership without limited partners each of whose partners is a professional, at least one of whom is authorized by law to render a professional service within this state or (3) a partnership without limited partners authorized by, or holding a license, certificate, registration or permit issued by the licensing authority pursuant to the education law to render a professional service within this state; except that all partners of a professional partnership that provides medical services in this state must be

1 licensed pursuant to article 131 of the education law to practice medi-
2 cine in this state and all partners of a professional partnership that
3 provides dental services in this state must be licensed pursuant to
4 article 133 of the education law to practice dentistry in this state;
5 [and further] except that all partners of a professional partnership
6 that provides professional engineering, land surveying, architectural
7 and/or landscape architectural services in this state must be licensed
8 pursuant to article 145, article 147 and/or article 148 of the education
9 law to practice one or more of such professions in this state; AND
10 FURTHER EXCEPT THAT ALL PARTNERS OF A PROFESSIONAL PARTNERSHIP THAT
11 PROVIDES PUBLIC ACCOUNTANCY SERVICES, WHOSE PRINCIPAL PLACE OF BUSINESS
12 IS IN THIS STATE AND WHO PROVIDE PUBLIC ACCOUNTANCY SERVICES, MUST BE
13 LICENSED PURSUANT TO ARTICLE 149 OF THE EDUCATION LAW TO PRACTICE PUBLIC
14 ACCOUNTANCY IN THIS STATE.

15 S 5. Subdivision (q) of section 121-1500 of the partnership law, as
16 amended by chapter 554 of the laws of 2013, is amended to read as
17 follows:

18 (q) Each partner of a registered limited liability partnership formed
19 to provide medical services in this state must be licensed pursuant to
20 article 131 of the education law to practice medicine in this state and
21 each partner of a registered limited liability partnership formed to
22 provide dental services in this state must be licensed pursuant to arti-
23 cle 133 of the education law to practice dentistry in this state. Each
24 partner of a registered limited liability partnership formed to provide
25 veterinary services in this state must be licensed pursuant to article
26 135 of the education law to practice veterinary medicine in this state.
27 EACH PARTNER OF A REGISTERED LIMITED LIABILITY PARTNERSHIP FORMED TO
28 PROVIDE PUBLIC ACCOUNTANCY SERVICES, WHOSE PRINCIPAL PLACE OF BUSINESS
29 IS IN THIS STATE AND WHO PROVIDES PUBLIC ACCOUNTANCY SERVICES, MUST BE
30 LICENSED PURSUANT TO ARTICLE 149 OF THE EDUCATION LAW TO PRACTICE PUBLIC
31 ACCOUNTANCY IN THIS STATE. Each partner of a registered limited liabil-
32 ity partnership formed to provide professional engineering, land survey-
33 ing, architectural and/or landscape architectural services in this state
34 must be licensed pursuant to article 145, article 147 and/or article 148
35 of the education law to practice one or more of such professions in this
36 state. Each partner of a registered limited liability partnership formed
37 to provide licensed clinical social work services in this state must be
38 licensed pursuant to article 154 of the education law to practice clin-
39 ical social work in this state. Each partner of a registered limited
40 liability partnership formed to provide creative arts therapy services
41 in this state must be licensed pursuant to article 163 of the education
42 law to practice creative arts therapy in this state. Each partner of a
43 registered limited liability partnership formed to provide marriage and
44 family therapy services in this state must be licensed pursuant to arti-
45 cle 163 of the education law to practice marriage and family therapy in
46 this state. Each partner of a registered limited liability partnership
47 formed to provide mental health counseling services in this state must
48 be licensed pursuant to article 163 of the education law to practice
49 mental health counseling in this state. Each partner of a registered
50 limited liability partnership formed to provide psychoanalysis services
51 in this state must be licensed pursuant to article 163 of the education
52 law to practice psychoanalysis in this state. Each partner of a regis-
53 tered limited liability partnership formed to provide applied behavior
54 analysis service in this state must be licensed or certified pursuant to
55 article 167 of the education law to practice applied behavior analysis
56 in this state.

1 S 6. Subdivision (q) of section 121-1502 of the partnership law, as
2 amended by chapter 554 of the laws of 2013, is amended to read as
3 follows:

4 (q) Each partner of a foreign limited liability partnership which
5 provides medical services in this state must be licensed pursuant to
6 article 131 of the education law to practice medicine in the state and
7 each partner of a foreign limited liability partnership which provides
8 dental services in the state must be licensed pursuant to article 133 of
9 the education law to practice dentistry in this state. Each partner of a
10 foreign limited liability partnership which provides veterinary service
11 in the state shall be licensed pursuant to article 135 of the education
12 law to practice veterinary medicine in this state. Each partner of a
13 foreign limited liability partnership which provides professional engi-
14 neering, land surveying, architectural and/or landscape architectural
15 services in this state must be licensed pursuant to article 145, article
16 147 and/or article 148 of the education law to practice one or more of
17 such professions. EACH PARTNER OF A REGISTERED FOREIGN LIMITED LIABIL-
18 ITY PARTNERSHIP FORMED TO PROVIDE PUBLIC ACCOUNTANCY SERVICES, WHOSE
19 PRINCIPAL PLACE OF BUSINESS IS IN THIS STATE AND WHO PROVIDES PUBLIC
20 ACCOUNTANCY SERVICES, MUST BE LICENSED PURSUANT TO ARTICLE 149 OF THE
21 EDUCATION LAW TO PRACTICE PUBLIC ACCOUNTANCY IN THIS STATE. Each partner
22 of a foreign limited liability partnership which provides licensed clin-
23 ical social work services in this state must be licensed pursuant to
24 article 154 of the education law to practice licensed clinical social
25 work in this state. Each partner of a foreign limited liability partner-
26 ship which provides creative arts therapy services in this state must be
27 licensed pursuant to article 163 of the education law to practice crea-
28 tive arts therapy in this state. Each partner of a foreign limited
29 liability partnership which provides marriage and family therapy
30 services in this state must be licensed pursuant to article 163 of the
31 education law to practice marriage and family therapy in this state.
32 Each partner of a foreign limited liability partnership which provides
33 mental health counseling services in this state must be licensed pursu-
34 ant to article 163 of the education law to practice mental health coun-
35 seling in this state. Each partner of a foreign limited liability part-
36 nership which provides psychoanalysis services in this state must be
37 licensed pursuant to article 163 of the education law to practice
38 psychoanalysis in this state. Each partner of a foreign limited liabil-
39 ity partnership which provides applied behavior analysis services in
40 this state must be licensed or certified pursuant to article 167 of the
41 education law to practice applied behavior analysis in this state.

42 S 7. Subdivision (h) of section 121-101 of the partnership law, as
43 added by chapter 950 of the laws of 1990, is amended to read as follows:

44 (h) "Limited partnership" and "domestic limited partnership" mean,
45 unless the context otherwise requires, a partnership (i) formed by two
46 or more persons pursuant to this article or which complies with subdivi-
47 sion (a) of section 121-1202 of this article and (ii) having one or more
48 general partners and one or more limited partners. ANY FIRM ESTABLISHED
49 FOR THE BUSINESS PURPOSE OF LAWFULLY ENGAGING IN THE PRACTICE OF PUBLIC
50 ACCOUNTANCY THAT IS LICENSED UNDER SECTION SEVENTY-FOUR HUNDRED EIGHT OF
51 ARTICLE 149 OF THE EDUCATION LAW MAY BE FORMED AS A LIMITED PARTNERSHIP
52 UNDER THIS ARTICLE.

53 S 8. Subdivision (b) of section 1207 of the limited liability company
54 law, as amended by chapter 554 of the laws of 2013, is amended to read
55 as follows:

(b) With respect to a professional service limited liability company formed to provide medical services as such services are defined in article 131 of the education law, each member of such limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in this state. With respect to a professional service limited liability company formed to provide dental services as such services are defined in article 133 of the education law, each member of such limited liability company must be licensed pursuant to article 133 of the education law to practice dentistry in this state. With respect to a professional service limited liability company formed to provide veterinary services as such services are defined in article 135 of the education law, each member of such limited liability company must be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural and/or landscape architectural services as such services are defined in article 145, article 147 and article 148 of the education law, each member of such limited liability company must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE PUBLIC ACCOUNTANCY SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 149 OF THE EDUCATION LAW EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY WHOSE PRINCIPAL PLACE OF BUSINESS IS IN THIS STATE AND WHO PROVIDES PUBLIC ACCOUNTANCY SERVICES, MUST BE LICENSED PURSUANT TO ARTICLE 149 OF THE EDUCATION LAW TO PRACTICE PUBLIC ACCOUNTANCY IN THIS STATE. With respect to a professional service limited liability company formed to provide licensed clinical social work services as such services are defined in article 154 of the education law, each member of such limited liability company shall be licensed pursuant to article 154 of the education law to practice licensed clinical social work in this state. With respect to a professional service limited liability company formed to provide creative arts therapy services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice creative arts therapy in this state. With respect to a professional service limited liability company formed to provide marriage and family therapy services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice marriage and family therapy in this state. With respect to a professional service limited liability company formed to provide mental health counseling services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice mental health counseling in this state. With respect to a professional service limited liability company formed to provide psychoanalysis services as such services are defined in article 163 of the education law, each member of such limited liability company must be licensed pursuant to article 163 of the education law to practice psychoanalysis in this state. With respect to a professional service limited liability company formed to provide applied behavior analysis services as such services are defined in article 167 of the education law, each member of such limited liability company must be licensed or certified pursuant to article 167 of the education law to practice applied behavior analysis in this state.

1 S 9. Subdivisions (a) and (f) of section 1301 of the limited liability
2 company law, subdivision (a) as amended by chapter 554 of the laws of
3 2013 and subdivision (f) as amended by chapter 170 of the laws of 1996,
4 are amended to read as follows:

5 (a) "Foreign professional service limited liability company" means a
6 professional service limited liability company, whether or not denomi-
7 nated as such, organized under the laws of a jurisdiction other than
8 this state, (i) each of whose members and managers, if any, is a profes-
9 sional authorized by law to render a professional service within this
10 state and who is or has been engaged in the practice of such profession
11 in such professional service limited liability company or a predecessor
12 entity, or will engage in the practice of such profession in the profes-
13 sional service limited liability company within thirty days of the date
14 such professional becomes a member, or each of whose members and manag-
15 ers, if any, is a professional at least one of such members is author-
16 ized by law to render a professional service within this state and who
17 is or has been engaged in the practice of such profession in such
18 professional service limited liability company or a predecessor entity,
19 or will engage in the practice of such profession in the professional
20 service limited liability company within thirty days of the date such
21 professional becomes a member, or (ii) authorized by, or holding a
22 license, certificate, registration or permit issued by the licensing
23 authority pursuant to, the education law to render a professional
24 service within this state; except that all members and managers, if any,
25 of a foreign professional service limited liability company that
26 provides health services in this state shall be licensed in this state.
27 With respect to a foreign professional service limited liability company
28 which provides veterinary services as such services are defined in arti-
29 cle 135 of the education law, each member of such foreign professional
30 service limited liability company shall be licensed pursuant to article
31 135 of the education law to practice veterinary medicine. With respect
32 to a foreign professional service limited liability company which
33 provides medical services as such services are defined in article 131 of
34 the education law, each member of such foreign professional service
35 limited liability company must be licensed pursuant to article 131 of
36 the education law to practice medicine in this state. With respect to a
37 foreign professional service limited liability company which provides
38 dental services as such services are defined in article 133 of the
39 education law, each member of such foreign professional service limited
40 liability company must be licensed pursuant to article 133 of the educa-
41 tion law to practice dentistry in this state. With respect to a foreign
42 professional service limited liability company which provides profes-
43 sional engineering, land surveying, architectural and/or landscape
44 architectural services as such services are defined in article 145,
45 article 147 and article 148 of the education law, each member of such
46 foreign professional service limited liability company must be licensed
47 pursuant to article 145, article 147 and/or article 148 of the education
48 law to practice one or more of such professions in this state. WITH
49 RESPECT TO A FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY
50 WHICH PROVIDES PUBLIC ACCOUNTANCY SERVICES AS SUCH SERVICES ARE DEFINED
51 IN ARTICLE 149 OF THE EDUCATION LAW, EACH MEMBER OF SUCH FOREIGN PROFES-
52 SIONAL SERVICE LIMITED LIABILITY COMPANY WHOSE PRINCIPAL PLACE OF BUSI-
53 NESS IS IN THIS STATE AND WHO PROVIDES PUBLIC ACCOUNTANCY SERVICES,
54 SHALL BE LICENSED PURSUANT TO ARTICLE 149 OF THE EDUCATION LAW TO PRAC-
55 TICE PUBLIC ACCOUNTANCY IN THIS STATE. With respect to a foreign profes-
56 sional service limited liability company which provides licensed clin-

1 ical social work services as such services are defined in article 154 of
2 the education law, each member of such foreign professional service
3 limited liability company shall be licensed pursuant to article 154 of
4 the education law to practice clinical social work in this state. With
5 respect to a foreign professional service limited liability company
6 which provides creative arts therapy services as such services are
7 defined in article 163 of the education law, each member of such foreign
8 professional service limited liability company must be licensed pursuant
9 to article 163 of the education law to practice creative arts therapy in
10 this state. With respect to a foreign professional service limited
11 liability company which provides marriage and family therapy services as
12 such services are defined in article 163 of the education law, each
13 member of such foreign professional service limited liability company
14 must be licensed pursuant to article 163 of the education law to prac-
15 tice marriage and family therapy in this state. With respect to a
16 foreign professional service limited liability company which provides
17 mental health counseling services as such services are defined in arti-
18 cle 163 of the education law, each member of such foreign professional
19 service limited liability company must be licensed pursuant to article
20 163 of the education law to practice mental health counseling in this
21 state. With respect to a foreign professional service limited liability
22 company which provides psychoanalysis services as such services are
23 defined in article 163 of the education law, each member of such foreign
24 professional service limited liability company must be licensed pursuant
25 to article 163 of the education law to practice psychoanalysis in this
26 state. With respect to a foreign professional service limited liability
27 company which provides applied behavior analysis services as such
28 services are defined in article 167 of the education law, each member of
29 such foreign professional service limited liability company must be
30 licensed or certified pursuant to article 167 of the education law to
31 practice applied behavior analysis in this state.

32 (f) "Professional partnership" means (1) a partnership without limited
33 partners each of whose partners is a professional authorized by law to
34 render a professional service within this state, (2) a partnership with-
35 out limited partners each of whose partners is a professional, at least
36 one of whom is authorized by law to render a professional service within
37 this state or (3) a partnership without limited partners authorized by,
38 or holding a license, certificate, registration or permit issued by the
39 licensing authority pursuant to the education law to render a profes-
40 sional service within this state; except that all partners of a profes-
41 sional partnership that provides medical services in this state must be
42 licensed pursuant to article 131 of the education law to practice medi-
43 cine in this state and all partners of a professional partnership that
44 provides dental services in this state must be licensed pursuant to
45 article 133 of the education law to practice dentistry in this state;
46 except that all partners of a professional partnership that provides
47 veterinary services in this state must be licensed pursuant to article
48 135 of the education law to practice veterinary medicine in this state;
49 and further except that all partners of a professional partnership that
50 provides professional engineering, land surveying, architectural, and/or
51 landscape architectural services in this state must be licensed pursuant
52 to article 145, article 147 and/or article 148 of the education law to
53 practice one or more of such professions. WITH RESPECT TO A PROFES-
54 SIONAL PARTNERSHIP WHICH PROVIDES PUBLIC ACCOUNTANCY SERVICES AS SUCH
55 SERVICES ARE DEFINED IN ARTICLE 149 OF THE EDUCATION LAW, EACH MEMBER OF
56 SUCH PROFESSIONAL PARTNERSHIP WHOSE PRINCIPAL PLACE OF BUSINESS IS IN

1 THIS STATE AND WHO PROVIDES PUBLIC ACCOUNTANCY SERVICES, SHALL BE
2 LICENSED PURSUANT TO ARTICLE 149 OF THE EDUCATION LAW TO PRACTICE PUBLIC
3 ACCOUNTANCY.
4 S 10. This act shall take effect immediately.