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

5097--A

2013-2014 Regular Sessions

I N S E N A T E

May 8, 2013

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions 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 limited liability company law, in relation to low-profit limited liability companies

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

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

(II) "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 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 SUCH 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 2. Paragraph 7 of subdivision (e) of section 203 of the limited liability company law, as added by chapter 470 of the laws of 1997, is amended to read as follows:

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

(8) any other provisions, not inconsistent with law, that the members elect to include in the articles or organization for the regulation of the internal affairs of the limited liability company, including, but not limited to, (A) the business purpose for which the limited liability company is formed, (B) a statement of whether there are limitations on the authority of members or managers or a class or classes thereof to bind the limited liability company and (C) any provisions that are required or permitted to be included in the operating agreement of the limited liability company pursuant to section four hundred seventeen of this chapter.

S 3. 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 a new subdivision (j) is added to read as follows:

(g) shall not, unless the approval of the state department of social services 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 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[.]; AND

(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.

S 4. Paragraphs 8 and 9 of subdivision (d) of section 211 of the limited liability company law are amended to read as follows:

(8) the discovery of a materially false or inaccurate statement in the articles of organization; [and]

(9) IF THE LIMITED LIABILITY COMPANY IS A LOW-PROFIT LIMITED LIABILITY COMPANY, ITS FAILURE TO MEET ANY OF THE REQUIREMENTS SET OUT IN SUBDIVISION (II) OF SECTION ONE HUNDRED TWO OF THIS ARTICLE; OR

(10) the decision to change any other statement in the articles of organization.

S 5. Paragraphs 4 and 5 of subdivision (a) of section 701 of the limited liability company law, as amended by chapter 420 of the laws of 1999, are amended and a new paragraph 6 is added to read as follows:

(4) at any time there are no members, provided that, unless otherwise provided in the operating agreement, the limited liability company is not dissolved and is not required to be wound up if, within one hundred eighty days or such other period as is provided for in the operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the legal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the legal representative of such member or its assignee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; [or]

(5) the entry of a decree of judicial dissolution under section seven hundred two of this article[.]; OR

(6) 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 (II) 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 6. This act shall take effect immediately.