

8117

2015-2016 Regular Sessions

I N A S S E M B L Y

June 9, 2015

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

AN ACT to amend the not-for-profit corporation law, the education law and the mental hygiene law, in relation to making technical corrections to provisions of law relating to charitable corporations

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

1 Section 1. Subparagraph 10 of paragraph (a) of section 112 of the
2 not-for-profit corporation law, as added by chapter 549 of the laws of
3 2013, is amended to read as follows:
4 (10) To enjoin, void or rescind any related party transaction, [or]
5 seek [additional] damages [or] AND OTHER APPROPRIATE remedies, IN LAW OR
6 EQUITY, IN ADDITION TO ANY ACTIONS pursuant to section 715 (Related
7 party transactions) of this chapter.
8 S 2. Paragraph (d) of section 304 of the not-for-profit corporation
9 law, as amended by chapter 168 of the laws of 1982, is amended to read
10 as follows:
11 (d) Any designated post-office address to which the secretary of state
12 shall mail a copy of process served upon him OR HER as agent of a domes-
13 tic corporation formed under article four of this chapter or foreign
14 corporation, shall continue until the filing of a certificate under this
15 chapter directing the mailing to a different post-office address.
16 S 3. Subparagraph 2 of paragraph (b) and paragraph (d) of section 404
17 of the not-for-profit corporation law, subparagraph 2 of paragraph (b)
18 as added by section 4 of part D of chapter 58 of the laws of 2006 and
19 paragraph (d) as amended by chapter 549 of the laws of 2013, are amended
20 to read as follows:
21 (2) A corporation whose statement of purposes specifically includes
22 the establishment or operation of a child day care center, as that term
23 is defined in section three hundred ninety of the social services law,
24 shall [provide] MAIL a certified copy of the certificate of incorpo-

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

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ration, each amendment thereto, and any certificate of merger, consolidation or dissolution involving such corporation to the office of children and family services within thirty days after RECEIPT OF CONFIRMATION OF the filing of such certificate, amendment, merger, consolidation or dissolution with the department of state. This requirement shall also apply to any foreign corporation filing an application for authority under section thirteen hundred four of this chapter, any amendments thereto, and any surrender of authority or termination of authority in this state of such corporation.

(d) Every corporation whose certificate of incorporation includes among its purposes the operation of a school; a college, university or other entity providing post secondary education; a library; or a museum or historical society shall have endorsed thereon or annexed thereto the approval of the commissioner of education, or in the case of a college or a university, the written authorization of the Regents OF THE UNIVERSITY OF THE STATE OF NEW YORK. Any other corporation the certificate of incorporation of which includes a purpose for which a corporation might be chartered by the regents of the university of the State of New York shall [provide] MAIL a certified copy of the certificate of incorporation to the commissioner of education within thirty [business] days after [the corporation receives confirmation from the department of state that the certificate has been accepted for] RECEIPT OF CONFIRMATION OF filing.

S 4. Section 606 of the not-for-profit corporation law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:
S 606. Waivers of notice.

Notice of meeting need not be given to any member who submits a waiver of notice, in person or by proxy, whether before or after the meeting. Waiver of notice may be written or electronic. If written, the waiver must be executed by the member or the member's authorized officer, director, employee, or agent by signing such waiver or causing his OR HER signature to be affixed to such waiver by any reasonable means, including, but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the member. The attendance of any member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him OR HER.

S 5. Paragraphs (a) and (c) of section 614 of the not-for-profit corporation law, paragraph (a) as amended by chapter 549 of the laws of 2013, are amended to read as follows:

(a) Whenever, under this chapter, members are required or permitted to take any action by vote, such action may be taken without a meeting upon the consent of all of the members entitled to vote thereon, which consent shall set forth the action so taken. Such consent may be written or electronic. If written, the consent must be executed by the member or the member's authorized officer, director, employee or agent by signing such consent or causing his OR HER signature to be affixed to such [waiver] CONSENT by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the member. This paragraph shall not be construed to alter or modify any provision in a certificate of incorporation not inconsistent with this chapter under which the written

1 consent of less than all of the members is sufficient for corporate
2 action.

3 (c) When there are no members of record, such action may be taken on
4 the written consent signed by a majority in interest of the subscribers
5 for capital certificates whose subscriptions have been accepted or their
6 successors in interest or, if no subscription has been accepted, on the
7 written consent signed by the incorporator or a majority of the incorpo-
8 rators. When there are two or more incorporators, if any dies or is for
9 any reason unable to act, the other or others may act. If there is no
10 incorporator able to act, any person for whom an incorporator was acting
11 as agent may act in his OR HER stead, or if such other person also dies
12 or is for any reason unable to act, his OR HER legal representative may
13 act.

14 S 6. Paragraph (c) of section 711 of the not-for-profit corporation
15 law, as amended by chapter 549 of the laws of 2013, is amended to read
16 as follows:

17 (c) Notice of a meeting need not be given to any alternate director,
18 nor to any director who submits a waiver of notice whether before or
19 after the meeting, or who attends the meeting without protesting, prior
20 thereto or at its commencement, the lack of notice to him. Such waiver
21 of notice may be written or electronic. If written, the waiver must be
22 executed by the director signing such waiver or causing his or her
23 signature to be affixed to such waiver by any reasonable means including
24 but not limited to facsimile signature. If electronic, the transmission
25 of the [consent] WAIVER must be sent by electronic mail and set forth,
26 or be submitted with, information from which it can reasonably be deter-
27 mined that the transmission was authorized by the director.

28 S 7. Paragraph (a) of section 909 of the not-for-profit corporation
29 law, as amended by chapter 549 of the laws of 2013, is amended to read
30 as follows:

31 (a) If the purposes of any constituent or consolidated corporation
32 would require the approval or consent of any governmental body or offi-
33 cer or any other person or body under section 404 (Approvals, notices
34 and consents) of this chapter no certificate of merger or consolidation
35 shall be filed pursuant to this article unless such approval or consent
36 is endorsed thereon or annexed thereto. A corporation whose statement of
37 purposes specifically includes the establishment or operation of a child
38 day care center, as that term is defined in section three hundred ninety
39 of the social services law, shall [provide] MAIL a certified copy of any
40 certificate of merger or consolidation involving such corporation to the
41 office of children and family services within thirty days after RECEIPT
42 OF CONFIRMATION OF the filing of such merger or consolidation with the
43 department of state.

44 S 8. Subparagraph 8 of paragraph (a) of section 1003 of the not-for-
45 profit corporation law, as amended by chapter 549 of the laws of 2013,
46 is amended to read as follows:

47 (8) A statement that prior to delivery of such certificate of dissol-
48 ution to the department of state for filing, the plan of dissolution and
49 distribution of assets has been approved by the attorney general or by a
50 justice of the supreme court, if such approval is required pursuant to
51 section 1002 (Authorization of plan) of this article. A copy of the
52 APPROVAL OF THE ATTORNEY GENERAL OR OF THE COURT order shall be attached
53 to the certificate of dissolution. In the case of a corporation, other
54 than a corporation incorporated pursuant to article 15 (Public cemetery
55 corporations), having no assets to distribute, or having no assets to
56 distribute other than a reserve not to exceed twenty-five thousand

dollars for the purpose of paying ordinary and necessary expenses of winding up its affairs including attorney and accountant fees, and liabilities not in excess of ten thousand dollars at the time of dissolution, a statement that a copy of the plan of dissolution which contains the statement prescribed by paragraph (b) of section 1001 (Plan of dissolution and distribution of assets) has been duly filed with the attorney general, if required.

S 9. Subparagraphs 7 and 9 of paragraph (a) of section 1304 of the not-for-profit corporation law, subparagraph 7 as renumbered by chapter 590 of the laws of 1982 and subparagraph 9 as amended by section 8 of part D of chapter 58 of the laws of 2006, are amended to read as follows:

(7) If it is to have a registered agent, [his] THE name and address OF THE AGENT within this state and a statement that the registered agent is to be its agent upon whom process against it may be served.

(9) Any provision required by any governmental body or officer or other person or body as a condition for giving the consent or approval required for the filing of such application for authority, provided such provision is not inconsistent with this chapter or any other statute of this state. A corporation whose statement of purposes to be conducted in this state specifically includes the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of any application for authority and any amendment thereto involving such corporation to the office of children and family services within thirty days after RECEIPT OF CONFIRMATION OF the filing of such application or amendment with the department of state.

S 10. Paragraph c of subdivision 4 of section 216-a of the education law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

c. The following provisions of the not-for-profit corporation law shall not apply to education corporations: section one hundred five, section one hundred fourteen, paragraph (a) of section two hundred one, paragraphs (b) and (c) of section two hundred two, section two hundred five, section three hundred one, section three hundred two, section three hundred three, article four except paragraphs (b) through (p) of section four hundred four and section four hundred five, section five hundred nine, [section five hundred twenty-one to the extent that it refers to paragraph (d) of section seven hundred six,] article eight except section eight hundred four, section nine hundred seven, section one thousand twelve and article fourteen.

S 11. Subdivision (b) of section 16.32 of the mental hygiene law, as amended by chapter 549 of the laws of 2013, is amended to read as follows:

(b) No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by a not-for-profit corporation which is certified as a provider of services pursuant to this article to its employee who receives an annual salary in excess of thirty thousand dollars, or to any other corporation, firm, association or other entity in which such employee is a director or officer or employee or holds a direct or indirect substantial financial interest, except a loan by one corporation incorporated as a charitable corporation as defined in paragraph (a) of section one hundred two (Definitions) of the not-for-profit corporation law to another [type B] CHARITABLE corporation, or a loan for a temporary or emergency purpose which

1 will further the health and welfare of the employee so long as the
2 purpose and amount of such loan are disclosed to and approved by the
3 board of directors of such agency. Such disclosure shall be filed with
4 the secretary of the corporation and entered in the minutes of the meet-
5 ing, and, if approved by such board, such disclosure shall also be
6 forwarded in writing to the commissioner and to the director of communi-
7 ty services of each local governmental unit that has, at the time of
8 such disclosure, a contract with such corporation for the rendition of
9 services pursuant to article forty-one of this chapter. A loan made in
10 violation of this section shall be a violation of the duty to the not-
11 for-profit corporation of the directors or officers authorizing it or
12 participating in it, but the obligation of the borrower with respect to
13 the loan shall not be affected thereby.

14 S 12. Subdivision (b) of section 31.31 of the mental hygiene law, as
15 amended by chapter 549 of the laws of 2013, is amended to read as
16 follows:

17 (b) No loans, other than through the purchase of bonds, debentures, or
18 similar obligations of the type customarily sold in public offerings, or
19 through ordinary deposit of funds in a bank, shall be made by a not-for-
20 profit corporation which is licensed as a provider of services pursuant
21 to this article to its employee who receives an annual salary in excess
22 of thirty thousand dollars, or to any other corporation, firm, associ-
23 ation or other entity in which such employee is a director or officer or
24 employee or holds a direct or indirect substantial financial interest,
25 except a loan by one corporation incorporated as a charitable corpo-
26 ration as defined in paragraph (a) of section one hundred two (Defi-
27 nitions) of the not-for-profit corporation law to another [type B] CHAR-
28 ITABLE corporation, or a loan for a temporary or emergency purpose which
29 will further the health and welfare of the employee so long as the
30 purpose and amount of such loan are disclosed to and approved by the
31 board of directors of such agency. Such disclosure shall be filed with
32 the secretary of the corporation and entered in the minutes of the meet-
33 ing, and, if approved by such board, such disclosure shall also be
34 forwarded in writing to the commissioner and to the director of communi-
35 ty services of each local governmental unit that has, at the time of
36 such disclosure, a contract with such corporation for the rendition of
37 services pursuant to article forty-one of this chapter. A loan made in
38 violation of this section shall be a violation of the duty to the not-
39 for-profit corporation of the directors or officers authorizing it or
40 participating in it, but the obligation of the borrower with respect to
41 the loan shall not be affected thereby.

42 S 13. Severability. If any clause, sentence, paragraph, section or
43 part of this act shall be adjudged by any court of competent jurisdic-
44 tion to be invalid, the judgment shall not affect, impair, or invalidate
45 the remainder thereof, but shall be confined in its operation to the
46 clause, sentence, paragraph, section or part thereof directly involved
47 in the controversy in which the judgment shall have been rendered.

48 S 14. This act shall take effect immediately.