

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.

LBD11504-01-5

1 ration, each amendment thereto, and any certificate of merger, consol-  
2 idation or dissolution involving such corporation to the office of chil-  
3 dren and family services within thirty days after RECEIPT OF  
4 CONFIRMATION OF the filing of such certificate, amendment, merger,  
5 consolidation or dissolution with the department of state. This require-  
6 ment shall also apply to any foreign corporation filing an application  
7 for authority under section thirteen hundred four of this chapter, any  
8 amendments thereto, and any surrender of authority or termination of  
9 authority in this state of such corporation.

10 (d) Every corporation whose certificate of incorporation includes  
11 among its purposes the operation of a school; a college, university or  
12 other entity providing post secondary education; a library; or a museum  
13 or historical society shall have endorsed thereon or annexed thereto the  
14 approval of the commissioner of education, or in the case of a college  
15 or a university, the written authorization of the Regents OF THE UNIVER-  
16 SITY OF THE STATE OF NEW YORK. Any other corporation the certificate of  
17 incorporation of which includes a purpose for which a corporation might  
18 be chartered by the regents of the university of the State of New York  
19 shall [provide] MAIL a certified copy of the certificate of incorpo-  
20 ration to the commissioner of education within thirty [business] days  
21 after [the corporation receives confirmation from the department of  
22 state that the certificate has been accepted for] RECEIPT OF CONFIRMA-  
23 TION OF filing.

24 S 4. Section 606 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 606. Waivers of notice.

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

40 S 5. Paragraphs (a) and (c) of section 614 of the not-for-profit  
41 corporation law, paragraph (a) as amended by chapter 549 of the laws of  
42 2013, are amended to read as follows:

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

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

8 S 9. Subparagraphs 7 and 9 of paragraph (a) of section 1304 of the  
9 not-for-profit corporation law, subparagraph 7 as renumbered by chapter  
10 590 of the laws of 1982 and subparagraph 9 as amended by section 8 of  
11 part D of chapter 58 of the laws of 2006, are amended to read as  
12 follows:

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

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

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

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

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

45 (b) No loans, other than through the purchase of bonds, debentures, or  
46 similar obligations of the type customarily sold in public offerings, or  
47 through ordinary deposit of funds in a bank, shall be made by a not-for-  
48 profit corporation which is certified as a provider of services pursuant  
49 to this article to its employee who receives an annual salary in excess  
50 of thirty thousand dollars, or to any other corporation, firm, associ-  
51 ation or other entity in which such employee is a director or officer or  
52 employee or holds a direct or indirect substantial financial interest,  
53 except a loan by one corporation incorporated as a charitable corpo-  
54 ration as defined in paragraph (a) of section one hundred two (Defi-  
55 nitions) of the not-for-profit corporation law to another [type B] CHAR-  
56 ITABLE 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.