

4274--A

2015-2016 Regular Sessions

I N   S E N A T E

March 11, 2015

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Introduced by Sens. KRUEGER, HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the limited liability company law, the arts and cultural affairs law and the state finance law, in relation to publication requirements; and to repeal section 206 of the limited liability company law and paragraph 2 of subdivision (c) of section 1203 of the limited liability company law, relating to affidavits of publication

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

- 1     Section 1. The opening paragraph of subdivision (e) of section 1006 of  
2     the limited liability company law, as amended by chapter 375 of the laws  
3     of 1998, is amended to read as follows:  
4     In connection with any conversion approved under subdivision (c) of  
5     this section, the partnership or limited partnership shall file with the  
6     department of state a signed certificate entitled "Certificate of  
7     Conversion of ... (name partnership or limited partnership) to ... (name  
8     of limited liability company) under section one thousand six of the  
9     Limited Liability Company Law" [and shall also satisfy the publication  
10    requirements of section two hundred six of this chapter]. Such certif-  
11    icate shall include either:  
12    S 2. Section 206 of the limited liability company law is REPEALED.  
13    S 3. Subdivision (s) of section 1101 of the limited liability company  
14    law, as amended by chapter 767 of the laws of 2005, is amended to read  
15    as follows:  
16    (s) For filing a certificate of publication with affidavits of publi-  
17    cation annexed thereto pursuant to section [two hundred six,] eight  
18    hundred two, twelve hundred three or thirteen hundred six of this chap-  
19    ter, fifty dollars.

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

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1 S 4. Section 209 of the limited liability company law is amended to  
2 read as follows:

3 S 209. Filing with the department of state. (A) A signed articles of  
4 organization and any signed certificate of amendment or other certif-  
5 icates filed pursuant to this chapter or of any judicial decree of  
6 amendment or cancellation shall be delivered to the department of state.  
7 If the instrument that is delivered to the department of state for  
8 filing complies as to form with the requirements of law and the filing  
9 fee required by any statute of this state in connection therewith has  
10 been paid, the instrument shall be filed and indexed by the department  
11 of state. The department of state shall not review such articles or  
12 certificates for legal sufficiency; its review shall be limited to  
13 determining that the form has been completed.

14 (B) THE DEPARTMENT OF STATE SHALL MAKE SUCH INSTRUMENTS AVAILABLE ON  
15 ITS STATE REGISTER WEBSITE, AND MUST MAINTAIN ELECTRONIC COPIES OF THE  
16 INSTRUMENT IN A FULLY SEARCHABLE FORMAT THAT IS AVAILABLE TO THE PUBLIC.  
17 THE DEPARTMENT SHALL ALSO TRANSMIT A COPY OF SUCH INSTRUMENT TO THE  
18 DEPARTMENT OF LAW WITHIN SEVEN DAYS OF FILING. THE DEPARTMENT OF LAW  
19 SHALL PUBLISH THE INSTRUMENT ON ITS "NY OPEN GOVERNMENT" WEBSITE OR  
20 ANALOGOUS WEBSITE NO MORE THAN SEVEN DAYS AFTER RECEIPT FROM THE DEPART-  
21 MENT OF STATE.

22 (C) THE DEPARTMENT OF STATE SHALL PUBLISH NOTICE OF ARTICLE FILINGS ON  
23 ITS STATE REGISTER WEBSITE, WHICH SHALL INCLUDE WITHOUT LIMITATION: (1)  
24 THE NAME OF THE LIMITED LIABILITY COMPANY; (2) THE DATE OF FILING OF THE  
25 ARTICLES OF ORGANIZATION WITH THE DEPARTMENT OF STATE AND, IF THE DATE  
26 OF THE FORMATION IS NOT THE DATE OF FILING OF THE ARTICLES OF ORGANIZA-  
27 TION, THE DATE OF FORMATION OF THE LIMITED LIABILITY COMPANY; (3) THE  
28 COUNTY WITHIN THIS STATE, IN WHICH THE OFFICE OF THE LIMITED LIABILITY  
29 COMPANY IS LOCATED; (4) THE STREET ADDRESS OF THE PRINCIPAL BUSINESS  
30 LOCATION, IF ANY; (5) A STATEMENT THAT THE SECRETARY OF STATE HAS BEEN  
31 DESIGNATED AS AGENT OF THE LIMITED LIABILITY COMPANY UPON WHOM PROCESS  
32 AGAINST IT MAY BE SERVED AND THE POST OFFICE ADDRESS WITHIN OR WITHOUT  
33 THIS STATE TO WHICH THE SECRETARY OF STATE SHALL MAIL A COPY OF ANY  
34 PROCESS AGAINST IT SERVED UPON HIM OR HER; (6) IF THE LIMITED LIABILITY  
35 COMPANY IS TO HAVE A REGISTERED AGENT, HIS OR HER NAME AND ADDRESS WITH-  
36 IN THIS STATE AND A STATEMENT THAT THE REGISTERED AGENT IS TO BE THE  
37 AGENT OF THE LIMITED LIABILITY COMPANY UPON WHOM PROCESS AGAINST IT MAY  
38 BE SERVED; (7) IF THE LIMITED LIABILITY COMPANY IS TO HAVE A SPECIFIC  
39 DATE OF DISSOLUTION IN ADDITION TO THE EVENTS OF DISSOLUTION SET FORTH  
40 IN SECTION SEVEN HUNDRED ONE OF THIS CHAPTER, THE LATEST DATE UPON WHICH  
41 THE LIMITED LIABILITY COMPANY IS TO DISSOLVE; AND (8) THE CHARACTER OR  
42 PURPOSE OF THE BUSINESS OF SUCH LIMITED LIABILITY COMPANY.

43 S 5. Section 1101 of the limited liability company law is amended by  
44 adding a new subdivision (w) to read as follows:

45 (W) FOR THE ELECTRONIC PUBLICATION OF ANY DOCUMENTS REQUIRED TO BE  
46 FILED WITH THE DEPARTMENT PURSUANT TO SECTION TWO HUNDRED NINE OF THIS  
47 CHAPTER, FIFTY DOLLARS.

48 S 6. Subdivisions (a-1) and (e-1) of section 102 of the limited  
49 liability company law, subdivision (a-1) as amended by chapter 44 of the  
50 laws of 2006 and subdivision (e-1) as added by chapter 767 of the laws  
51 of 2005, are amended to read as follows:

52 (a-1) "Affidavit of publication" means the affidavit of the printer or  
53 publisher of a newspaper in which a publication pursuant to sections  
54 [two hundred six,] eight hundred two, one thousand two hundred three,  
55 and one thousand three hundred six of this chapter has been made. The  
56 affidavit of publication shall be in a form substantially as follows:

1 "Affidavit of Publication Under Section \_\_\_\_\_ (specify applicable  
2 section) of the Limited Liability Company Law  
3 State of New York,  
4 County of \_\_\_\_\_, ss.:

5 The undersigned is the printer (or publisher) of \_\_\_\_\_ (name  
6 of newspaper), a \_\_\_\_\_ (daily or weekly) newspaper published in  
7 \_\_\_\_\_, New York. A notice regarding \_\_\_\_\_ (name of  
8 limited liability company) was published in said newspaper once in each  
9 week for six successive weeks, commencing on \_\_\_\_\_ and ending on  
10 \_\_\_\_\_. The text of the notice as published in said newspaper is as  
11 set forth below, or in the annexed exhibit. This newspaper has been  
12 designated by the Clerk of \_\_\_\_\_ County for this purpose.

13 \_\_\_\_\_ (signature)  
14 \_\_\_\_\_ (printed name),  
15 (jurat)"

16 The text of the notice set forth in or annexed to each affidavit of  
17 publication shall: (i) include only the text of the published notice,  
18 (ii) be free of extraneous marks, and (iii) if submitted in paper form,  
19 be printed on paper of such size, weight and color, and in ink of such  
20 color, and in such font, and be in such other qualities and form not  
21 inconsistent with any other provision of law as, in the judgment of the  
22 secretary of state, will not impair the ability of the department of  
23 state to include a legible and permanent copy thereof in its official  
24 records. Nothing in this subdivision shall be construed as requiring the  
25 department of state to accept for filing a document submitted in elec-  
26 tronic form.

27 (e-1) "Certificate of publication" means a certificate presented on  
28 behalf of the applicable limited liability company to the department of  
29 state together with the affidavits of publication pursuant to section  
30 [two hundred six,] eight hundred two, one thousand two hundred three, or  
31 one thousand three hundred six of this chapter. The certificate of  
32 publication shall be in a form substantially as follows:

33 "Certificate of Publication of \_\_\_\_\_ (name of limited liability  
34 company) Under Section \_\_\_\_\_ (specify applicable section) of the Limit-  
35 ed Liability Company Law

36 The undersigned is the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of  
37 limited liability company). The published notices described in the  
38 annexed affidavits of publication contain all of the information  
39 required by the above-mentioned section of the Limited Liability Company  
40 Law. The newspapers described in such affidavits of publication satisfy  
41 the requirements set forth in the Limited Liability Company Law and the  
42 designation made by the county clerk. I certify the foregoing statements  
43 to be true under penalties of perjury.

44 Date

45 Signature

46 Printed Name"

47 S 7. Subdivision 4 of section 23.03 of the arts and cultural affairs  
48 law, as amended by chapter 767 of the laws of 2005, is amended to read  
49 as follows:

50 4. A limited partnership that is a theatrical production company is  
51 exempt from the requirement for publishing its certificate or notice  
52 under sections ninety-one, 121-201 and 121-902 of the partnership law so  
53 long as the words "limited partnership" appear in its name. A limited  
54 liability company that is a theatrical production company is exempt from  
55 the requirement for publishing its articles of organization, application  
56 for authority or a notice containing the substance thereof under

1 [sections two hundred six and] SECTION eight hundred two of the limited  
2 liability company law so long as the words "limited liability company"  
3 appear in its name.

4 S 8. The state finance law is amended by adding a new section 89-i to  
5 read as follows:

6 S 89-I. DEPARTMENT OF STATE MODERNIZATION FUND. 1. THERE IS HEREBY  
7 ESTABLISHED IN THE CUSTODY OF THE COMPTROLLER A SPECIAL FUND TO BE KNOWN  
8 AS THE "DEPARTMENT OF STATE MODERNIZATION FUND". THE MONEYS IN SUCH FUND  
9 SHALL BE AVAILABLE FOR PAYMENT OF ANY AND ALL COSTS AND EXPENDITURES  
10 INCURRED IN PERFORMING MODERNIZATION AND SECURITY OF THE DEPARTMENT OF  
11 STATE WEBSITE, AND FOR EXPLORING ALTERNATIVES TO PHYSICAL PUBLICATION OF  
12 DOCUMENTS REQUIRED TO BE FILED PURSUANT TO ARTICLE ELEVEN OF THE LIMITED  
13 LIABILITY COMPANY LAW, INCLUDING COSTS AND EXPENSES INCIDENTAL AND  
14 APPURTENANT THERETO.

15 2. MONEYS IN THE FUND SHALL BE KEPT SEPARATELY FROM AND SHALL NOT BE  
16 COMMINGLED WITH ANY OTHER MONEYS IN THE CUSTODY OF THE STATE COMP-  
17 TROLLER.

18 3. THE FUND SHALL CONSIST OF THE REVENUES REQUIRED TO BE DEPOSITED  
19 THEREIN PURSUANT TO THE PROVISIONS OF SUBDIVISION (W) OF SECTION ELEVEN  
20 HUNDRED ONE OF THE LIMITED LIABILITY COMPANY LAW, AND ALL OTHER MONEYS  
21 CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT  
22 TO LAW.

23 4. THE MONEYS IN SUCH FUND SHALL BE APPROPRIATED BY THE LEGISLATURE  
24 AND PAID OUT ON THE WARRANT OF THE STATE COMPTROLLER.

25 S 9. Paragraph 2 of subdivision (c) of section 1203 of the limited  
26 liability company law is REPEALED.

27 S 10. Paragraph 1 of subdivision (c) of section 1203 of the limited  
28 liability company law is amended to read as follows:

29 [(1)] A certified copy of the articles of organization and of each  
30 amendment thereto and restatement thereof shall be filed by the profes-  
31 sional service limited liability company with the licensing authority  
32 within thirty days after the filing of such certificate or amendment  
33 with the department of state.

34 S 11. This act shall take effect on the one hundred eightieth day  
35 after it shall have become a law; provided, however, that effective  
36 immediately, the department of state is directed and authorized to  
37 promulgate all rules and regulations necessary to implement the  
38 provisions of this act on or before its effective date.