STATE OF NEW YORK

3325

2017-2018 Regular Sessions

IN SENATE

January 20, 2017

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the limited liability company law, in relation to publication fees and the creation of an electronic database

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section 206 of the limited liability company law, as amended by chapter 44 of the laws of 2006, is amended to read as follows:

(a) Within one hundred twenty days after the effectiveness of the initial articles of organization as determined pursuant to subdivision (d) of section two hundred three of this article, a copy of the same or a notice containing the substance thereof shall be published **on the department of state database pursuant to section two hundred nine of this article and** once in each week for six successive weeks, in two newspapers of the county in which the office of the limited liability company is located, one newspaper to be printed weekly and one newspaper to be printed daily, to be designated by the county clerk **for a flat fee of one hundred fifty dollars to each newspaper so designated**. When such county is located within a city with a population of one million or more, such designation shall be as though the copy or notice were a notice or advertisement of judicial proceedings. Proof of the publication required by this subdivision, consisting of the certificate of publication of the limited liability company with the affidavits of publication of such newspapers annexed thereto, must be filed with the department of state. Notwithstanding any other provision of law, if the office of the limited liability company is located in a county wherein a weekly or daily newspaper of the county, or both, has not been so designated by the county clerk, then the publication herein required shall be made in a weekly or daily newspaper of any county, or both, as the case

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

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may be, which is contiguous to, such county, provided that any such newspaper meets all the other requirements of this subdivision. A copy or notice published in a newspaper other than the newspaper or newspapers designated by the county clerk shall not be deemed to be one of the publications required by this subdivision. The notice shall include: (1) the name of the limited liability company; (2) the date of filing of the articles of organization with the department of state and, if the date of formation is not the date of filing of the articles of organization, the date of the formation of the limited liability company; (3) the county within this state, in which the office of the limited liability company is located; (3-a) the street address of the principal business location, if any; (4) a statement that the secretary of state has been designated as agent of the limited liability company upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him or her; (5) if the limited liability company is to have a registered agent, his or her name and address within this state and a statement that the registered agent is to be the agent of the limited liability company upon whom process against it may be served; (6) if the limited liability company is to have a specific date of dissolution in addition to the events of dissolution set forth in section seven hundred one of this chapter, the latest date upon which the limited liability company is to dissolve; and (7) the character or purpose of the business of such limited liability company. Where, at any time after completion of the first of the six weekly publications required by this subdivision and prior to the completion of the sixth such weekly publication, there is a change in any of the information contained in the copy or notice as published, the limited liability company may complete the remaining publications of the original copy or notice, and the limited liability company shall not be required to publish any further or amended copy or notice. Where, at any time after completion of the six weekly publications required by this subdivision, there is a change to any of the information contained in the copy or notice as published, no further or amended publication or republication shall be required to be made. If within one hundred twenty days after its formation, proof of such publication, consisting of the certificate of publication of the limited liability company with the affidavits of publication of the newspapers annexed thereto has not been filed with the department of state, the authority of such limited liability company to carry on, conduct or transact any business in this state shall be suspended, effective as of the expiration of such one hundred twenty day period. The failure of a limited liability company to cause such copy or notice to be published and such certificate of publication and affidavits of publication to be filed with the department of state within such one hundred twenty day period or the suspension of such limited liability company's authority to carry on, conduct or transact business in this state pursuant to this subdivision shall not limit or impair the validity of any contract or act of such limited liability company, or any right or remedy of any other party under or by virtue of any contract, act or omission of such limited liability company, or the right of any other party to maintain any action or special proceeding on any such contract, act or omission, or right of such limited liability company to defend any action or special proceeding in this state, or result in any member, manager or agent of such limited liability company becoming liable for the contractual obligations or other liabilities of the limited liability company. If, at any time following the suspension

of a limited liability company's authority to carry on, conduct or transact business in this state pursuant to this subdivision, such limited liability company shall cause proof of publication in substantial compliance with the provisions (other than the one hundred twenty day period) of this subdivision, consisting of the certificate of publication of the limited liability company with the affidavits of publication of the newspapers annexed thereto, to be filed with the department of state, such suspension of such limited liability company's authority to carry on, conduct or transact business shall be annulled.

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

§ 209. Filing with the department of state. A signed articles of organization and any signed certificate of amendment or other certificates filed pursuant to this chapter or of any judicial decree of amendment or cancellation shall be delivered to the department of state. If the instrument that is delivered to the department of state for filing complies as to form with the requirements of law and the filing fee required by any statute of this state in connection therewith has been paid, the instrument shall be filed [~~and~~], indexed **and electronically published in an online database** by the department of state. The department of state shall not review such articles or certificates for legal sufficiency; its review shall be limited to determining that the form has been completed.

§ 3. This act shall take effect immediately.