STATE OF NEW YORK

3360

2017-2018 Regular Sessions

IN SENATE

January 23, 2017

Introduced by Sens. KRUEGER, HOYLMAN -- 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, 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:

Section 1. The opening paragraph of subdivision (e) of section 1006 of the limited liability company law, as amended by chapter 375 of the laws of 1998, is amended to read as follows:

In connection with any conversion approved under subdivision (c) of this section, the partnership or limited partnership shall file with the department of state a signed certificate entitled "Certificate of Conversion of ... (name partnership or limited partnership) to ... (name of limited liability company) under section one thousand six of the Limited Liability Company Law" [~~and shall also satisfy the publication requirements of section two hundred six of this chapter~~]. Such certificate shall include either:

§ 2. Section 206 of the limited liability company law is REPEALED.

§ 3. Subdivision (s) of section 1101 of the limited liability company law, as amended by chapter 767 of the laws of 2005, is amended to read as follows:

(s) For filing a certificate of publication with affidavits of publication annexed thereto pursuant to section [~~two hundred six,~~] eight hundred two, twelve hundred three or thirteen hundred six of this chapter, fifty dollars.

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

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

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§ 209. Filing with the department of state. **(a)** 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 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.

(b) The department of state shall make such instruments available on its state register website, and must maintain electronic copies of the instrument in a fully searchable format that is available to the public. The department shall also transmit a copy of such instrument to the department of law within seven days of filing. The department of law shall publish the instrument on its "NY Open Government" website or analogous website no more than seven days after receipt from the department of state.

(c) The department of state shall publish notice of article filings on its state register website, which shall include without limitation: (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 the formation is not the date of filing of the articles of organization, the date of formation of the limited liability company; (3) the county within this state, in which the office of the limited liability company is located; (4) the street address of the principal business location, if any; (5) 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; (6) 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; (7) 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 (8) the character or purpose of the business of such limited liability company.

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

(w) For the electronic publication of any documents required to be filed with the department pursuant to section two hundred nine of this chapter, fifty dollars.

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

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

"Affidavit of Publication Under Section _____ (specify applicable section) of the Limited Liability Company Law

State of New York,
County of _____, ss.:

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

_____ (signature)
_____(printed name),
(jurat)"

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

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

"Certificate of Publication of _____ (name of limited liability company) Under Section _____ (specify applicable section) of the Limited Liability Company Law

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

Date
Signature
Printed Name"

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

4. A limited partnership that is a theatrical production company is exempt from the requirement for publishing its certificate or notice under sections ninety-one, 121-201 and 121-902 of the partnership law so long as the words "limited partnership" appear in its name. A limited liability company that is a theatrical production company is exempt from the requirement for publishing its articles of organization, application for authority or a notice containing the substance thereof under [~~sections two hundred six and~~] **section** eight hundred two of the limited

liability company law so long as the words "limited liability company" appear in its name.

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

§ 89-i. Department of state modernization fund. 1. There is hereby established in the custody of the comptroller a special fund to be known as the "department of state modernization fund". The moneys in such fund shall be available for payment of any and all costs and expenditures incurred in performing modernization and security of the department of state website, and for exploring alternatives to physical publication of documents required to be filed pursuant to article eleven of the limited liability company law, including costs and expenses incidental and appurtenant thereto.

2. Moneys in the fund shall be kept separately from and shall not be commingled with any other moneys in the custody of the state comptroller.

3. The fund shall consist of the revenues required to be deposited therein pursuant to the provisions of subdivision (w) of section eleven hundred one of the limited liability company law, and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

4. The moneys in such fund shall be appropriated by the legislature and paid out on the warrant of the state comptroller.

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

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

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

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