STATE OF NEW YORK

10141

IN ASSEMBLY

May 2, 2022

Introduced by M. of A. DILAN -- (at request of the Department of State) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the business corporation law, the limited liability company law, the not-for-profit corporation law and the partnership law, in relation to filing of certificates of resignation by persons designated to receive service of process with the department of state when identity theft is at issue

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

Section 1. Paragraph (b) of section 104-A of the business corporation law, as amended by chapter 469 of the laws of 1997, is amended to read as follows:

(b) For the resignation of a registered agent for service of process pursuant to **paragraph (c) of** section three hundred five of this chapter, and for the resignation for receipt for process pursuant to **paragraph (a) of** section three hundred six-A of this chapter, sixty dollars. **No fee shall be collected for the resignation of a registered agent for service of process pursuant to paragraph (e) of section three hundred five of this chapter or for the resignation for receipt for process pursuant to paragraph (f) of section three hundred six-A of this chapter.**

§ 2. Section 305 of the business corporation law is amended by adding a new paragraph (e) to read as follows:

(e) A registered agent who did not authorize their designation as such may resign as such agent. A certificate entitled "certificate of resignation of registered agent of ...(name of designating corporation) under section 305 of the business corporation law" shall be signed and delivered to the department of state. It shall set forth:

(1) That the registered agent resigns as registered agent for the designating corporation.

(2) That the registered agent did not authorize its designation as registered agent by the designating corporation.

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

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(3) The name of the corporation and the date the certificate of incorporation or application for authority was filed by the department of state.

§ 3. Section 306-A of the business corporation law is amended by adding a new paragraph (f) to read as follows:

(f) (1) The party (or his/her legal representative) whose post office address has been supplied by a domestic corporation or authorized foreign corporation as its address for process without authorization may resign. A certificate entitled "Certificate of Resignation for Receipt of Process under Section 306-A of the Business Corporation Law" shall be signed by such party and delivered to the department of state. It shall set forth:

(i) The name of the corporation and the date the certificate of incorporation or application for authority was filed by the department of state.

(ii) That the address of the party has been designated by the corporation as the post office address to which the secretary of state shall mail a copy of any process served on the secretary of state as agent for such corporation, and that such party wishes to resign.

(iii) That such party did not authorize the designating corporation to designate such party as the addressee for service of process.

(2) Upon the filing of a certificate of resignation for receipt of process with the secretary of state under this paragraph, its authority to do business in this state shall be suspended unless the corporation has previously filed a statement under section four hundred eight of this chapter, in which case the address of the principal executive office stated in the last filed statement, shall constitute the new address for process of the corporation provided such address is different from the previous address for process, and the corporation shall not be deemed suspended.

(3) The filing by the department of state of a certificate of amendment or change or a statement under section four hundred eight of this chapter providing for a new address by a designating corporation shall annul the suspension and its authority to do business in this state shall be restored and continue as if no suspension had occurred.

§ 4. Section 301-A of the limited liability company law is amended by adding a new subdivision (f) to read as follows:

(f) (1) The party (or his/her legal representative) whose post office address has been supplied by a domestic limited liability company or authorized foreign limited liability company as its address for process without authorization may resign. A certificate entitled "Certificate of Resignation for Receipt of Process under Section 301-A of the Limited Liability Company Law" shall be signed by such party and delivered to the department of state. It shall set forth:

(i) That such party resigns as the addressee for service of process for the designating limited liability company.

(ii) That such party did not authorize the designating limited liability company to designate such party as the addressee for service of process.

(iii) The name of the limited liability company and date the articles of organization or application for authority was filed by the department of state.

(2) Upon the filing of a certificate of resignation for receipt of process with the secretary of state under this subdivision, its authority to do business in this state shall be suspended.

(3) The filing by the department of state of a certificate of amendment or change providing for a new address by a designating limited liability company shall annul the suspension and its authority to do business in this state shall be restored and continue as if no suspension had occurred.

§ 5. Section 302 of the limited liability company law is amended by adding a new subdivision (f) to read as follows:

(f) A registered agent who did not authorize their designation as such may resign as such agent. A certificate entitled "certificate of resignation of registered agent of ... (name of designating limited liability company) under section 302 of the Limited Liability Company Law" shall be signed and delivered to the department of state. It shall set forth:

(1) That the registered agent resigns as registered agent for the designating limited liability company.

(2) That the registered agent did not authorize its designation as registered agent by the designating limited liability company.

(3) The name of the limited liability company and date the articles of organization or application for authority was filed by the department of state.

§ 6. Subdivisions (e) and (t) of section 1101 of the limited liability company law, subdivision (t) as added by chapter 448 of the laws of 1998, are amended to read as follows:

(e) For the resignation of a registered agent for service of process pursuant to subdivision (d) of section three hundred two of this chapter, twenty dollars. No fee shall be collected for the resignation of a registered agent pursuant to subdivision (f) of section three hundred two of this chapter.

(t) For filing a certificate of resignation for receipt for process pursuant to subdivision (a) of section three hundred one-A of this chapter, ten dollars. No fee shall be collected for filing a certificate of resignation for receipt for process pursuant to subdivision (f) of section three hundred one-A of this chapter.

§ 7. Paragraph (c) of section 104-A of the not-for-profit corporation law, as amended by chapter 166 of the laws of 1991, is amended and a new paragraph (t) is added to read as follows:

(c) For the resignation of a registered agent for service of process pursuant to paragraph (c) of section three hundred five of this chapter, thirty dollars. No fee shall be collected for the resignation of a registered agent for service of process pursuant to paragraph (e) of section three hundred five of this chapter.

(t) For filing a certificate of resignation for receipt of process pursuant to paragraph (a) of section three hundred six-b of this chapter, five dollars. No fee shall be collected for filing a certificate of resignation for receipt of process pursuant to paragraph (f) of section three hundred six-b of this chapter.

§ 8. Section 305 of the not-for-profit corporation law is amended by adding a new paragraph (e) to read as follows:

(e) A registered agent who did not authorize their designation as such may resign as such agent. A certificate entitled "certificate of resignation of registered agent of ... (name of designating corporation) under section 305 of the not-for-profit corporation law" shall be signed and delivered to the department of state. It shall set forth:

(1) That the registered agent resigns as registered agent for the designating corporation.

(2) That the registered agent did not authorize its designation as registered agent by the designating corporation.

(3) The name of the corporation and the date the certificate of incorporation or application for authority was filed by the department of state.

§ 9. The not-for-profit corporation law is amended by adding a new section 306-b to read as follows:

§ 306-b. Resignation for receipt of process.

(a) The party (or his/her legal representative) whose post office address has been supplied by a domestic corporation or authorized foreign corporation as its address for process may resign. A certificate entitled "Certificate of Resignation for Receipt of Process under Section 306-B of the Not-for-Profit Corporation Law" shall be signed by such party and delivered to the department of state. It shall provide:

(1) The name of the corporation and the date that its certificate of incorporation or application of authority was filed by the department of state.

(2) That the address of the party has been designated by the corporation as the post office address to which a person shall mail a copy of any process served on the secretary of state as agent for such corporation, and that such party wishes to resign.

(3) That sixty days prior to the filing of the certificate of resignation for receipt of process with the department of state the party has sent a copy of the certificate of resignation for receipt of process by registered or certified mail to the address of the registered agent of the designating corporation, if other than the party filing the certificate of resignation for receipt of process, or if the designating corporation has no registered agent, then to the last address of the designating corporation known to the party, specifying the address to which the copy was sent. If there is no registered agent and no known address of the designating corporation, the party shall attach an affidavit to the certificate stating that a diligent but unsuccessful search was made by the party to locate the corporation, specifying what efforts were made.

(4) That the designating corporation is required to deliver to the department of state a certificate of amendment or change providing for the designation by the corporation of a new address and that upon its failure to file such certificate, its authority to conduct activities in this state shall be suspended.

(b) Upon the failure of the designating corporation to file a certificate of amendment or change providing for the designation by the corporation of the new address after the filing of a certificate of resignation for receipt of process with the secretary of state, its authority to conduct activities in this state shall be suspended.

(c) The filing by the department of state of a certificate of amendment or change providing for a new address by a designating corporation shall annul the suspension and its authority to conduct activities in this state shall be restored and continue as if no suspension had occurred.

(d) The resignation for receipt of process shall become effective upon the filing by the department of state of a certificate of resignation for receipt of process.

(e) (1) In any case in which a corporation suspended pursuant to this section would be subject to the personal or other jurisdiction of the courts of this state under article three of the civil practice law and rules, process against such corporation may be served upon the secretary of state as its agent pursuant to this section. Such process may issue in any court in this state having jurisdiction of the subject matter.

(2) Service of such process upon the secretary of state shall be made by personally delivering to and leaving with the secretary of state or deputy thereof, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, a copy of such process together with the statutory fee, which fee shall be a taxable disbursement. Such service shall be sufficient if notice thereof and a copy of the process are:

(i) delivered personally within or without this state to such corporation by a person and in a manner authorized to serve process by law of the jurisdiction in which service is made, or

(ii) sent by or on behalf of the plaintiff to such corporation by registered or certified mail with return receipt requested to the last address of such corporation known to the plaintiff.

(3) (i) Where service of a copy of process was effected by personal service, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after such service, with the clerk of the court in which the action or special proceeding is pending. Service of process shall complete ten days after such papers are filed with the clerk of the court.

(ii) Where service of a copy of process was effected by mailing in accordance with this section, proof of service shall be by affidavit of compliance with this section filed, together with the process, within thirty days after receipt of the return receipt signed by the corporation, or other official proof of delivery or of the original envelope mailed. If a copy of the process is mailed in accordance with this section, there shall be filed with the affidavit of compliance either the return receipt signed by such corporation or other official proof of delivery, if acceptance was refused by it, the original envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process together with notice of the mailing by registered or certified mail and refusal to accept shall be promptly sent to such corporation at the same address by ordinary mail and the affidavit of compliance shall so state. Service of process shall be complete ten days after such papers are filed with the clerk of the court. The refusal to accept delivery of the registered or certified mail or to sign the return receipt shall not affect the validity of the service and such corporation refusing to accept such registered or certified mail shall be charged with knowledge of the contents thereof.

(4) Service made as provided in this section without the state shall have the same force as personal service made within this state.

(5) Nothing in this section shall affect the right to serve process in any other manner permitted by law.

(f)(1) The party (or his/her legal representative) whose post office address has been supplied by a domestic corporation or authorized foreign corporation as its address for process without authorization may resign. A certificate entitled "Certificate of Resignation for Receipt of Process under Section 306-B of the Not-for-Profit Corporation Law" shall be signed by such party and delivered to the department of state. It shall set forth:

(i) That such party resigns as the addressee for service of process for the designating corporation.

(ii) That such party did not authorize the designating corporation to designate such party as the addressee for service of process.

(iii) The name of the corporation and the date the certificate of incorporation or application for authority was filed by the department of state.

(2) Upon the filing of a certificate of resignation for receipt of process with the secretary of state under this paragraph, its authority to conduct activities in this state shall be suspended. The filing by the department of state of a certificate of amendment or change providing for a new address by a designating corporation shall annul the suspension and its authority to conduct activities in this state shall be restored and continue as if no suspension had occurred.

§ 10. Section 121-104-A of the partnership law is amended by adding a new subdivision (f) to read as follows:

(f) (1) The party (or his/her legal representative) whose post office address has been supplied by a domestic limited partnership or authorized foreign limited partnership as its address for process without authorization may resign. A certificate entitled "Certificate of Resignation for Receipt of Process under Section 121-104-A of the Revised Limited Partnership Act" shall be signed by such party and delivered to the department of state. It shall set forth:

(i) That such party resigns as the addressee for service of process for the designating limited partnership.

(ii) That such party did not authorize the designating limited partnership to designate such party as the addressee for service of process.

(iii) The name of the limited partnership and the date the certificate of limited partnership or application for authority was filed by the department of state.

(2) Upon the filing of a certificate of resignation for receipt of process with the secretary of state under this subdivision, its authority to do business in this state shall be suspended.

(3) The filing by the department of state of a certificate of amendment or change providing for a new address by a designating limited partnership shall annul the suspension and its authority to do business in this state shall be restored and continue as if no suspension had occurred.

§ 11. Section 121-105 of the partnership law is amended by adding a new subdivision (e) to read as follows:

(e) A registered agent who did not authorize their designation as such may resign as such agent. A certificate entitled "certificate of resignation of registered agent of... (name of designating limited partnership) under subdivision (e) of section 121-105 of the Revised Limited Partnership Act" shall be signed and delivered to the department of state. It shall set forth:

(1) That the registered agent resigns as registered agent for the designating limited partnership.

(2) That the registered agent did not authorize its designation as a registered agent by the designating limited partnership.

(3) The name of the limited partnership and the date the certificate of limited partnership or application for authority was filed by the department of state.

§ 12. Subdivisions (d) and (q) of section 121-1300 of the partnership law, subdivision (d) as amended by chapter 264 of the laws of 1991 and subdivision (q) as added by chapter 448 of the laws of 1998, are amended to read as follows:

(d) For the resignation of a registered agent for service of process pursuant to subdivision (c) of section 121-105 of this article, twenty dollars. No fee shall be collected for the resignation of a registered

agent for service of process pursuant to subdivision (e) of section 121-105 of this article.

(q) For filing a certificate of resignation for receipt for process pursuant to subdivision (a) of section 121-104-A of this article, ten dollars. No fee shall be collected for filing a certificate of resignation for receipt for process pursuant to subdivision (f) of section 121-104-A of this article.

§ 13. Subdivision (g) of section 121-1506 of the partnership law, as amended by chapter 172 of the laws of 1999, is amended and three new subdivisions (a-1), (h) and (i) are added to read as follows:

(g) The filing of a certificate of resignation of a registered agent pursuant to subdivision (a) of this section shall be accompanied by the fee of ten dollars, and the filing of a certificate of resignation for receipt of process pursuant to subdivision (b) of this section shall be accompanied by the fee of ten dollars. No fee shall be collected for the filing of a certificate pursuant to subdivision (a-1) or (h) of this section.

(a-1) A registered agent who did not authorize their designation as such may resign as such agent. A certificate, entitled "certificate of resignation of registered agent of ... (name of designating limited liability partnership) under section 121-1506 of the Partnership Law" shall be signed and delivered to the department of state. It shall set forth:

(1) That the registered agent resigns as registered agent for the designating limited liability partnership.

(2) That the registered agent did not authorize the designation as registered agent by the limited liability partnership.

(3) The name of the limited liability partnership and the date the certificate of registration or notice of registration was filed by the department of state.

(h) The party (or his/her legal representative) whose post office address has been supplied by a domestic limited liability partnership or authorized New York registered foreign limited liability partnership as its address for process without authorization may resign. A certificate entitled "Certificate of Resignation for Receipt of Process under Section 121-1506 of the Partnership Law" shall be signed by such party and delivered to the department of state. It shall set forth:

(1) That such party resigns as the addressee for service of process for the designating limited liability partnership.

(2) That such party did not authorize the designating limited liability partnership to designate such party as the addressee for service of process.

(3) The name of the limited partnership and the date the certificate of limited partnership or application for authority was filed by the department of state.

(i) Upon the filing of a certificate of resignation for receipt of process with the secretary of state under this subdivision, the limited liability partnership's authority to do business in this state shall be suspended. The filing by the department of state of a certificate of amendment providing for a new address by a designating limited liability partnership shall annul the suspension and its authority to do business in this state shall be restored and continue as if no suspension had occurred.

§ 14. This act shall take effect on the one hundred eightieth day after it shall have become a law.