STATE OF NEW YORK

5261--B

Cal. No. 331

2021-2022 Regular Sessions

IN SENATE

March 1, 2021

Introduced by Sens. KENNEDY, GALLIVAN, HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- ordered to second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the business corporation law, in relation to providing for expanded ownership in design professional corporations by employee stock ownership plans and non-licensed employees

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

Section 1. Subparagraphs (i) and (ii) of paragraph (b-1) of section 1503 of the business corporation law, as added by chapter 550 of the laws of 2011, are amended to read as follows:

(i) greater than seventy-five percent of the outstanding shares of stock of the corporation are owned by design professionals ***and an ESOP (or ESOPs) with greater than seventy-five percent of the plan's voting trustees or greater than seventy-five percent of the plan's committee members being design professionals***,

(ii) an ESOP, either in part or in its entirety, shall not constitute part of the greater than seventy-five percent owned by design professionals ***unless greater than seventy-five percent of the plan's voting trustees or greater than seventy-five percent of the plan's committee members are design professionals***,

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

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§ 2. Subparagraphs (i) and (ii) of paragraph (b) of section 1507 of the business corporation law, as added by chapter 550 of the laws of 2011, are amended to read as follows:

(i) greater than seventy-five percent of the outstanding shares of stock of the corporation are owned by design professionals **and an ESOP (or ESOPs) with greater than seventy-five percent of the plan's voting trustees or greater than seventy-five percent of the plan's committee members being design professionals**,

(ii) an ESOP, either in part or in its entirety, shall not constitute part of the greater than seventy-five percent owned by design professionals **unless greater than seventy-five percent of the plan's voting trustees or greater than seventy-five percent of the plan's committee members are design professionals**,

§ 3. Subparagraph (i) of paragraph (b) of section 1514 of the business corporation law, as added by chapter 550 of the laws of 2011, is amended to read as follows:

(i) greater than seventy-five percent of the outstanding shares of stock of the corporation are and were owned by design professionals **and an ESOP (or ESOPs) with greater than seventy-five percent of the plan's voting trustees or greater than seventy-five percent of the plan's committee members being design professionals**,

§ 4. Paragraph (a) of section 1505 of the business corporation law, as amended by chapter 550 of the laws of 2011, is amended to read as follows:

(a) **(i)** Each shareholder, employee or agent of a professional service corporation and a design professional service corporation shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or by any person under his direct supervision and control while rendering professional services on behalf of such corporation.

(ii) An employee stock ownership plan owning greater than twenty-five percent of the outstanding shares of a design professional service corporation organized under paragraph (b-1) of section fifteen hundred three of this article shall be under the supervision of the regents of the university of the state of New York, shall register with the state education department and shall be issued a certificate granting such employee stock ownership plan the authority to hold shares of such corporation. Such certificate shall be subject to professional misconduct provisions as set forth in article one hundred thirty of the education law. In addition, the failure to maintain an active registration with the state education department shall also subject such certificate to discipline as provided above. The secretary of state shall be the designated agent for service of process in any disciplinary matter involving a registered employee stock ownership plan.

(iii) Any such employee stock ownership plan shall not influence, or attempt to influence, any decisions that fall within a design professional's scope of practice.

§ 5. This act shall take effect two years after it shall have become a law.