

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the business corporation law and the partnership law, in relation to the elimination of the biennial filing fee and five-year statement fee; and to repeal certain provisions of the business corporation law and the limited liability company law relating thereto (Part);

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

1 PART ____

2 Section 1. Paragraph (r) of section 104-A of the business corporation
3 law is REPEALED.

4 § 2. Subparagraphs 3 and 4 of paragraph (a) and paragraphs (b) and (c)
5 of section 306-A of the business corporation law, as added by chapter
6 469 of the laws of 1997, subparagraph 4 of paragraph (a) as amended by
7 chapter 172 of the laws of 1999, paragraphs (b) and (c) as amended by
8 section 2 of part S of chapter 59 of the laws of 2015, are amended to
9 read as follows:

10 (3) That sixty days prior to the filing of the certificate of resigna-
11 tion for receipt of process with the department of state the party has
12 sent a copy of the certificate of resignation for receipt of process by
13 registered or certified mail to the address of the registered agent of
14 the designating corporation, if other than the party filing the certif-
15 icate of resignation[,] for receipt of process, or if the [resigning]
16 designating corporation has no registered agent, then to the last
17 address of the designating corporation known to the party, specifying

1 the address to which the copy was sent. If there is no registered agent
2 and no known address of the designating corporation, the party shall
3 attach an affidavit to the certificate stating that a diligent but
4 unsuccessful search was made by the party to locate the corporation,
5 specifying what efforts were made.

6 (4) That the designating corporation is required to deliver to the
7 department of state a certificate of amendment or change providing for
8 the designation by the corporation of a new address and that upon its
9 failure to file such certificate, its authority to do business in this
10 state shall be suspended[, unless the corporation has previously filed a
11 biennial statement under section four hundred eight of this chapter, in
12 which case the address of the principal executive office stated in the
13 last filed biennial statement shall constitute the new address for proc-
14 ess of the corporation, and no such certificate of amendment or change
15 need be filed].

16 (b) Upon the failure of the designating corporation to file a certif-
17 icate of amendment or change providing for the designation by the corpo-
18 ration of the new address after the filing of a certificate of resigna-
19 tion for receipt of process with the secretary of state, its authority
20 to do business in this state shall be suspended [unless the corporation
21 has previously filed a statement under section four hundred eight of
22 this chapter, in which case the address of the principal executive
23 office stated in the last filed statement, shall constitute the new
24 address for process of the corporation provided such address is differ-
25 ent from the previous address for process, and the corporation shall not
26 be deemed suspended].

27 (c) The filing by the department of state of a certificate of amend-
28 ment or change [or statement under section four hundred eight of this

1 chapter] providing for a new address by a designating corporation shall
2 annul the suspension and its authority to do business in this state
3 shall be restored and continue as if no suspension had occurred.

4 § 3. Section 408 of the business corporation law is REPEALED.

5 § 4. Section 409 of the business corporation law is REPEALED.

6 § 5. Subdivision (e) of section 301 of the limited liability company
7 law is REPEALED.

8 § 6. Subdivision (c) of section 1101 of the limited liability company
9 law is REPEALED.

10 § 7. Subdivision (g) of section 121-1500 of the partnership law, as
11 amended by section 8 of part S of chapter 59 of the laws of 2015, is
12 amended to read as follows:

13 (g) [Each registered limited liability partnership shall, within sixty
14 days prior to the fifth anniversary of the effective date of its regis-
15 tration and every five years thereafter, furnish a statement to the
16 department of state setting forth: (i) the name of the registered limit-
17 ed liability partnership, (ii) the address of the principal office of
18 the registered limited liability partnership, (iii) the post office
19 address within or without this state to which the secretary of state
20 shall mail a copy of any process accepted against it served upon him or
21 her, which address shall supersede any previous address on file with the
22 department of state for this purpose, and (iv) a statement that it is
23 eligible to register as a registered limited liability partnership
24 pursuant to subdivision (a) of this section. The statement shall be
25 executed by one or more partners of the registered limited liability
26 partnership. The statement shall be accompanied by a fee of twenty
27 dollars if submitted directly to the department of state. The commis-
28 sioner of taxation and finance and the secretary of state may agree to

1 allow registered limited liability partnerships to provide the statement
2 specified in this subdivision on tax reports filed with the department
3 of taxation and finance in lieu of statements filed directly with the
4 secretary of state and in a manner prescribed by the commissioner of
5 taxation and finance. If this agreement is made, starting with taxable
6 years beginning on or after January first, two thousand sixteen, each
7 registered limited liability partnership required to file the statement
8 specified in this subdivision that is subject to the filing fee imposed
9 by paragraph three of subsection (c) of section six hundred fifty-eight
10 of the tax law shall provide such statement annually on its filing fee
11 payment form filed with the department of taxation and finance in lieu
12 of filing a statement under this subdivision with the department of
13 state. However, each registered limited liability partnership required
14 to file a statement under this section must continue to file a statement
15 with the department of state as required by this section until the
16 registered limited liability partnership in fact has filed a filing fee
17 payment form with the department of taxation and finance that includes
18 all required information. After that time, the registered limited
19 liability partnership shall continue to provide annually the statement
20 specified in this subdivision on its filing fee payment form in lieu of
21 the statement required by this subdivision. The commissioner of taxation
22 and finance shall deliver the completed statement specified in this
23 subdivision to the department of state for filing. The department of
24 taxation and finance must, to the extent feasible, also include in such
25 delivery the current name of the registered limited liability partner-
26 ship, department of state identification number for such registered
27 limited liability partnership, the name, signature and capacity of the
28 signer of the statement, name and street address of the filer of the

1 statement, and the email address, if any, of the filer of the statement.
2 If a registered limited liability partnership shall not timely file the
3 statement required by this subdivision, the department of state may,
4 upon sixty days' notice mailed to the address of such registered limited
5 liability partnership as shown in the last registration or statement or
6 certificate of amendment filed by such registered limited liability
7 partnership, make a proclamation declaring the registration of such
8 registered limited liability partnership to be revoked pursuant to this
9 subdivision. The department of state shall file the original proclama-
10 tion in its office and shall publish a copy thereof in the state regis-
11 ter no later than three months following the date of such proclamation.
12 This shall not apply to registered limited liability partnerships that
13 have filed a statement with the department of state through the depart-
14 ment of taxation and finance. Upon the publication of such proclamation
15 in the manner aforesaid, the registration of each registered limited
16 liability partnership named in such proclamation shall be deemed revoked
17 without further legal proceedings.] Any registered limited liability
18 partnership whose registration was [so] revoked pursuant to this subdivi-
19 vision as it existed on the day prior to the effective date of the chap-
20 ter of the laws of two thousand nineteen which amended this subdivision
21 may file in the department of state a [statement required by this subdivi-
22 vision] certificate entitled, "Certificate of annulment of revocation of
23 registration of(name of limited liability partnership) pursuant
24 to section 121-1500(g) of the Partnership Law", and shall set forth:
25 (1) The name of the registered limited liability partnership and, if it
26 has been changed, the name under which it was initially registered. (2)
27 The date of the filing of its certificate of registration by the depart-
28 ment of state. (3) That it elects to annul the revocation of its regis-

1 tration. The certificate shall be executed by one or more partners of
2 the registered limited liability partnership. The filing of such
3 [statement] certificate shall have the effect of annulling all of the
4 proceedings theretofore taken for the revocation of the registration of
5 such registered limited liability partnership under this subdivision and
6 (1) the registered limited liability partnership shall thereupon have
7 such powers, rights, duties and obligations as it had on the date of the
8 publication of the proclamation, with the same force and effect as if
9 such proclamation had not been made or published and (2) such publica-
10 tion shall not affect the applicability of the provisions of subdivision
11 (b) of section twenty-six of this chapter to any debt, obligation or
12 liability incurred, created or assumed from the date of publication of
13 the proclamation through the date of the filing of the [statement]
14 certificate with the department of state. [If, after the publication of
15 such proclamation, it shall be determined by the department of state
16 that the name of any registered limited liability partnership was erro-
17 neously included in such proclamation, the department of state shall
18 make appropriate entry on its records, which entry shall have the effect
19 of annulling all of the proceedings theretofore taken for the revocation
20 of the registration of such registered limited liability partnership
21 under this subdivision and (A) such registered limited liability part-
22 nership shall have such powers, rights, duties and obligations as it had
23 on the date of the publication of the proclamation, with the same force
24 and effect as if such proclamation had not been made or published and
25 (B) such publication shall not affect the applicability of the
26 provisions of subdivision (b) of section twenty-six of this chapter to
27 any debt, obligation or liability incurred, created or assumed from the
28 date of publication of the proclamation through the date of the making

1 of the entry on the records of the department of state. Whenever a
2 registered limited liability partnership whose registration was revoked
3 shall have filed a statement pursuant to this subdivision or if the name
4 of a registered limited liability partnership was erroneously included
5 in a proclamation and such proclamation was annulled, the department of
6 state shall publish a notice thereof in the state register.]

7 § 8. Paragraph (I) of subdivision (f) of section 121-1502 of the part-
8 nership law, as amended by section 4 of part S of chapter 59 of the laws
9 of 2015, is amended to read as follows:

10 (I) [Each New York registered foreign limited liability partnership
11 shall, within sixty days prior to the fifth anniversary of the effective
12 date of its notice and every five years thereafter, furnish a statement
13 to the department of state setting forth:

14 (i) the name under which the New York registered foreign limited
15 liability partnership is carrying on or conducting or transacting busi-
16 ness or activities in this state, (ii) the address of the principal
17 office of the New York registered foreign limited liability partnership,
18 (iii) the post office address within or without this state to which the
19 secretary of state shall mail a copy of any process accepted against it
20 served upon him or her, which address shall supersede any previous
21 address on file with the department of state for this purpose, and (iv)
22 a statement that it is a foreign limited liability partnership. The
23 statement shall be executed by one or more partners of the New York
24 registered foreign limited liability partnership. The statement shall be
25 accompanied by a fee of fifty dollars if submitted directly to the
26 department of state. The commissioner of taxation and finance and the
27 secretary of state may agree to allow New York registered foreign limit-
28 ed liability partnerships to provide the statement specified in this

1 paragraph on tax reports filed with the department of taxation and
2 finance in lieu of statements filed directly with the secretary of state
3 and in a manner prescribed by the commissioner of taxation and finance.
4 If this agreement is made, starting with taxable years beginning on or
5 after January first, two thousand sixteen, each New York registered
6 foreign limited liability partnership required to file the statement
7 specified in this paragraph that is subject to the filing fee imposed by
8 paragraph three of subsection (c) of section six hundred fifty-eight of
9 the tax law shall provide such statement annually on its filing fee
10 payment form filed with the department of taxation and finance in lieu
11 of filing a statement under this paragraph directly with the department
12 of state. However, each New York registered foreign limited liability
13 partnership required to file a statement under this section must contin-
14 ue to file a statement with the department of state as required by this
15 section until the New York registered foreign limited liability partner-
16 ship in fact has filed a filing fee payment form with the department of
17 taxation and finance that includes all required information. After that
18 time, the New York registered foreign limited liability partnership
19 shall continue to provide annually the statement specified in this para-
20 graph on its filing fee payment form in lieu of filing the statement
21 required by this paragraph directly with the department of state. The
22 commissioner of taxation and finance shall deliver the completed state-
23 ment specified in this paragraph to the department of state for filing.
24 The department of taxation and finance must, to the extent feasible,
25 also include in such delivery the current name of the New York regis-
26 tered foreign limited liability partnership, department of state iden-
27 tification number for such New York registered foreign limited liability
28 partnership, the name, signature and capacity of the signer of the

1 statement, name and street address of the filer of the statement, and
2 the email address, if any, of the filer of the statement. If a New York
3 registered foreign limited liability partnership shall not timely file
4 the statement required by this subdivision, the department of state may,
5 upon sixty days' notice mailed to the address of such New York regis-
6 tered foreign limited liability partnership as shown in the last notice
7 or statement or certificate of amendment filed by such New York regis-
8 tered foreign limited liability partnership, make a proclamation declar-
9 ing the status of such New York registered foreign limited liability
10 partnership to be revoked pursuant to this subdivision. This shall not
11 apply to New York registered foreign limited liability partnerships that
12 have filed a statement with the department of state through the depart-
13 ment of taxation and finance. The department of state shall file the
14 original proclamation in its office and shall publish a copy thereof in
15 the state register no later than three months following the date of such
16 proclamation. Upon the publication of such proclamation in the manner
17 aforesaid, the status of each New York registered foreign limited
18 liability partnership named in such proclamation shall be deemed revoked
19 without further legal proceedings.] Any New York registered foreign
20 limited liability partnership whose status was [so] revoked pursuant to
21 this paragraph as it existed on the day prior to the effective date of
22 the chapter of the laws of two thousand nineteen which amended this
23 paragraph may file in the department of state a [statement required by
24 this subdivision] certificate entitled, "Certificate of revocation of
25 registration of (name of New York registered foreign limited
26 liability partnership) pursuant to section 121-1502(f)(I) of the Part-
27 nership Law", and shall set forth: (1) The name of the New York regis-
28 tered foreign limited liability partnership and, if it has been changed,

1 the name under which it was initially registered. (2) The date of
2 filing of its notice of registration by the department of state. (3)
3 That it elects to annul the revocation of its registration. The certif-
4 icate shall be executed by one or more partners of the New York regis-
5 tered foreign limited liability partnership. The filing of such [state-
6 ment] certificate shall have the effect of annulling all of the
7 proceedings theretofore taken for the revocation of the status of such
8 New York registered foreign limited liability partnership under this
9 subdivision and (1) the New York registered foreign limited liability
10 partnership shall thereupon have such powers, rights, duties and obli-
11 gations as it had on the date of the publication of the proclamation,
12 with the same force and effect as if such proclamation had not been made
13 or published and (2) such publication shall not affect the applicability
14 of the laws of the jurisdiction governing the agreement under which such
15 New York registered foreign limited liability partnership is operating
16 (including laws governing the liability of partners) to any debt, obli-
17 gation or liability incurred, created or assumed from the date of publi-
18 cation of the proclamation through the date of the filing of the state-
19 ment with the department of state. [If, after the publication of such
20 proclamation, it shall be determined by the department of state that the
21 name of any New York registered foreign limited liability partnership
22 was erroneously included in such proclamation, the department of state
23 shall make appropriate entry on its records, which entry shall have the
24 effect of annulling all of the proceedings theretofore taken for the
25 revocation of the status of such New York registered foreign limited
26 liability partnership under this subdivision and (1) such New York
27 registered foreign limited liability partnership shall have such powers,
28 rights, duties and obligations as it had on the date of the publication

1 of the proclamation, with the same force and effect as if such proclama-
2 tion had not been made or published and (2) such publication shall not
3 affect the applicability of the laws of the jurisdiction governing the
4 agreement under which such New York registered foreign limited liability
5 partnership is operating (including laws governing the liability of
6 partners) to any debt, obligation or liability incurred, created or
7 assumed from the date of publication of the proclamation through the
8 date of the making of the entry on the records of the department of
9 state. Whenever a New York registered foreign limited liability partner-
10 ship whose status was revoked shall have filed a statement pursuant to
11 this subdivision or if the name of a New York registered foreign limited
12 liability partnership was erroneously included in a proclamation and
13 such proclamation was annulled, the department of state shall publish a
14 notice thereof in the state register.]

15 § 9. This act shall take effect on the ninetieth day after it shall
16 have become a law; provided, however, sections one, two, three, four,
17 five, seven and eight of this act shall take effect upon the development
18 of a new computerized filing system currently being developed by the
19 department of state; provided further, however, that the secretary of
20 state shall notify the legislative bill drafting commission upon the
21 occurrence of the development of a new computerized filing system being
22 developed by the department of state in order that the commission may
23 maintain an accurate and timely effective data base of the official text
24 of the laws of the state of New York in furtherance of effectuating the
25 provisions of section 44 of the legislative law and section 70-b of the
26 public officers law.