



## Memorandum in Support

May 30, 2023

NYSBA #3

S. 4716

A.7648

By: Senator Krueger

By: M of A Burke

Senate Committee: Corporations,  
Authorities and  
Commissions

Assembly Committee: Corporations,  
Authorities and  
Commissions

Effective Date: 180 Days

**AN ACT** to amend the limited liability company law and the partnership law, in relation to certain publication requirements and fees; to amend the state finance law, in relation to establishing the department of state modernization fund; to repeal subdivision (a-1) of section 102 and section 206 of the limited liability company law and subdivision (a-1) of section 121-101 of the partnership law, relating to affidavits of publication; to repeal subdivision (s) of section 1101 of the limited liability company law and subdivision (f) of section 121-1300 of the partnership law, relating to fees for filing certificates of publication; to repeal subdivision (b) of section 802, paragraph 2 of subdivision (c) of section 1203 and subdivision (d) of section 1306 of the limited liability company law and subdivision (c) of section 121-201, subdivision (d) of section 121-902, paragraph (II) of subdivision (a) of section 121-1500 and paragraph (II) of subdivision (f) of section 121-1502 of the partnership law, in relation to publication requirements; to repeal subdivision (e-1) of section 102 of the limited liability company law and subdivision (a-2) of section 121-101 of the partnership law, relating to certificates of publication; and to repeal subdivision 4 of section 23.03 of the arts and cultural affairs law, relating to theatrical production company publication requirements.

**LAW & SECTIONS REFERRED TO:** Sections 206, 802, 1006, 1101, 1203 and 1306 of the Limited Liability Company Law, Sections 121-101, 121-201, 121-902, 121-1300, 121-1500 and 121-1502 of the Partnership Law

**THE NEW YORK STATE BAR ASSOCIATION**  
**SUPPORTS THIS LEGISLATION**

Limited Liability Company Law (“LLCL”) Section 206 currently requires the founders of limited liability companies formed in New York or qualifying to do business in New York to place a notice in two local newspapers in the county in which the company is located, once a week for six successive weeks, within 120 days after the entity has been

formed or qualified in New York. This requirement is commonly known as the publication requirement. New York's Partnership Law imposes the same publication requirement upon newly formed or newly New York qualified out-of-state partnerships.

This bill sensibly seeks to end the publication requirement of LLCL Section 206. It also institutes an expanded online database of limited liability company filings and limited partnership filings managed by the New York Department of State, which would provide much more useful information to the public than a one-time print publication that is generally ignored.

The New York State Bar Association ("NYSBA") strongly supports this bill for the following reasons:

First, the cost of publication can be burdensome for many small businesses. The current cost of LLC publication in New York County commonly ranges from \$1,200 to \$2,000 but can be hundreds of dollars more depending on how the notice is written or, for example, for a professional limited liability company, or if the entity's purpose is other than simply any lawful act. For businesses that can just as easily locate their offices in New Jersey, Connecticut or another state, this cost alone may discourage them from locating in New York. Indeed, members of the Business Law Section have advised businesses that have a choice as to where to locate to avoid New York, in part to avoid these onerous costs for a small start-up business. As noted above, the publication requirement applies both to entities formed in New York and those formed in other states that qualify to do business in New York, creating a disincentive to opening company facilities here.

Second, the publication requirement serves no legitimate business or economic purpose. Nor does it benefit business owners or the New York public. In fact, published notices of entity formation or qualification are generally unread and ignored.

Third, corporations have no comparable publication requirement. Not only is this disparity without basis, but the absence of a publication requirement for corporations has had no known adverse consequences.

In addition, eliminating the publication requirement will benefit the State of New York in several ways. It will likely increase business activity in New York, which will benefit the Department of State's revenues. More companies forming and locating within the State would similarly benefit New York's economy. As a result, this bill will likely lead to higher employment and greater tax revenue in New York. More companies with offices in New York will employ more New Yorkers, resulting in increased tax revenue to the State.

For all these reasons, removing the publication requirement of LLCL Section 206 would make it easier to promote New York as a business-friendly state, while benefiting the State's economy and residents.

In a 2017 survey of lawyers in the Business Law Section of the New York State Bar Association, more than 97% of the respondents favored eliminating the publication requirement.

For the foregoing reasons, the State Bar Association **SUPPORTS** the passage and enactment of this legislation.