



Legislation Text

File #: Res 0840-2015, **Version:** *

Res. No. 840

Resolution calling upon the New York State Legislature to pass, and the Governor to sign, legislation that would allow limited liability companies formed in New York to fulfill their publication requirement by publishing on the New York Department of State's website or on an online news site

By Council Members Cornegy, Barron, Cabrera, Constantinides, Gentile, Rose and Rosenthal

Whereas, Many small businesses throughout the United States opt to incorporate as a limited liability company ("LLC") due to the relatively flexible corporate structure of the LLC as compared to other corporate structures; and

Whereas, The New York State Limited Liability Company Law requires a newly-formed LLC to publish notice of its formation once a week for six successive weeks in two newspapers in the county in which the office of the LLC is located before it can file a Certificate of Publication with the New York Department of State to complete formation (the "publication requirement"); and

Whereas, If a New York LLC fails to comply with the publication requirement within 120 days after formation, its authority to carry on, conduct or transact any business is suspended; and

Whereas, The purported original intent of the publication requirement was to give the local public notice of the company's existence and operations and to protect the public against fraud, the nonperformance of contractual, financial or other obligations and the usurpation of creditors' rights; and

Whereas, According to a September 27, 2012 Pew Research Center study on Trends in News Consumption, starting in 2011-2012, online and digital news sources surpassed other forms of media consumption to become the primary means of news consumption, especially as more people have begun to and continue to read their news on cell phones, tablets or other mobile platforms; and

Whereas, If the purported intent of the publication requirement is to give notice to the local public, then online publication of an LLC's formation is a more wide-reaching and effective means of giving notice than publication in printed form; and

Whereas, Fulfilling the publication requirement can cost an LLC more than \$2,000 in New York City, where print newspapers charge the highest rates in the state; and

Whereas, Because of the high costs of the publication requirement, many new companies - especially small businesses - are discouraged from forming LLCs in New York, which results in the loss of the presence of such businesses and of the potential revenue from associated taxes and fees; and

Whereas, The Department of State could publish notices of newly-formed LLCs on its website for a small administrative fee; and

Whereas, If New York State also allowed for the publication requirement to be satisfied by publication on online news sites, online news sites could offer publishing fees that were competitive with the administrative fees that the Department of State would charge for publication; and

Whereas, New York State should modify the antiquated and onerous publication requirements for LLCs formed in New York in order to promote the establishment of new companies and small businesses within New York State and New York City; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, legislation that would allow limited liability companies formed in New York to fulfill their publication requirement by publishing on the New York Department of State's website or on an online news site.

LS #4906
7/22/15 2:30pm
wjp