

LEGISLATIVE HISTORY CHECKLIST

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(Limited liability companies--
revision of law)

NJSA: 42:2B-11

LAWS OF: 1997 CHAPTER: 139

BILL NO: A2875

SPONSOR(S): Stuhltrager & Russo

DATE INTRODUCED: March 24, 1997

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

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First reprint enacted by superscript numbers

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SENATE: June 26, 1997

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

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6-10-97

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

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MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:
REPORTS: Yes

HEARINGS: No

See attached:
974.901 New jersey. Corporate and Business Law Study Commission.
B969 Annual Report, January 9, 1996.

KBP:pp

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[Passed Both Houses]

[Third Reprint]

ASSEMBLY, No. 2875

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Assemblymen **STUHLTRAGER, RUSSO, Felice,**
Senators **LaRossa, Inverso and Kyrillos**

1 AN ACT concerning ³[limited liability companies, amending P.L.1973,
2 c.367 and amending and supplementing P.L.1993, c.210] certain
3 domestic and foreign entities authorized to transact business in this
4 State and revising various parts of the statutory law³ .
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 ³1. N.J.S.14A:4-3 is amended to read as follows:

10 14A:4-3. Change of registered office or registered agent.

11 (1) A domestic corporation or a foreign corporation authorized to
12 transact business in this State may change its registered office or its
13 registered agent, or both. When the registered office is changed, or
14 when the registered agent is changed, or dies, resigns or becomes
15 disqualified, the corporation shall, by resolution of the board,
16 forthwith fix the address of the new registered office or designate the
17 successor registered agent or both, as the case may be.

18 (2) Such corporation shall forthwith file in the office of the
19 Secretary of State a certificate executed on behalf of the corporation
20 setting forth

21 (a) the name of the corporation;

22 (b) if the registered agent is not being changed, the name of the
23 registered agent;

24 (c) if the registered agent is being changed, the names of the
25 registered agent being succeeded and of the successor registered
26 agent;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted May 1, 1997.

² Senate SJU committee amendments adopted June 5, 1997.

³ Senate floor amendments adopted June 19, 1997.

1 (d) if the registered office is not being changed, the address of the
2 then registered office;

3 (e) if the registered office is being changed, the address of the
4 registered office immediately prior to the change, and the address of
5 the new registered office;

6 (f) that the address of its registered office and the address of its
7 registered agent will be identical after the change; and

8 (g) that the change in registered office, or registered agent, or both,
9 is made pursuant to resolution of the board.

10 (3) The registered agent of one or more domestic or foreign
11 corporations may change the registered office of such corporation or
12 corporations to another address in this State by filing in the office of
13 the Secretary of State a certificate executed by such agent and setting
14 forth

15 (a) the names of all the corporations whose registered offices are
16 being changed and for which he or it is the registered agent, listed in
17 alphabetical order;

18 (b) the address of the registered office of each such corporation
19 immediately prior to the change, and the address of the new registered
20 office;

21 (c) that the address of the registered office of each such corporation
22 and the address of its registered agent will be identical after the
23 change; and

24 (d) a statement that at least 20 days' prior notice of the change has
25 been given to each such corporation in writing.

26 The change of the registered office of each of the corporations
27 named in the certificate shall become effective upon the date of such
28 filing or at such later time, not to exceed 30 days after the date of
29 filing, as may be set forth in the certificate.

30 (4) **I**f any certificate of change required by this section is not filed,
31 the corporation shall, after written demand therefor by the Secretary
32 of State by certified mail addressed to the corporation at the last
33 address appearing of record in his office, forfeit to the State a penalty
34 of \$200.00 to be recovered with costs in a civil action prosecuted by
35 the Attorney General. No corporation shall be subject to penalty if it
36 shall, within 30 days after written demand, file the certificate of
37 change required by law and pay to the Secretary of State the fee
38 provided by law for the filing of each such certificate of change. In
39 lieu of such civil action, the Secretary of State, after expiration of
40 such 30-day period, may issue a certificate to the Clerk of the
41 Superior Court that the corporation is indebted for the payment of
42 such penalty, and thereupon the clerk shall immediately enter upon his
43 record of docketed judgments the name of such corporation as the
44 judgment debtor and of the State as the judgment creditor, a
45 statement that the penalty is imposed under this section, the amount
46 of the penalty, and the date of such certificate. Such entry shall have

1 the same force as a judgment docketed in the Superior Court. The
2 Secretary of State within 5 days after such entry shall give notice
3 thereof to the corporation by certified mail addressed to the
4 corporation at the last address appearing of record in his office.】

5 ~~(Deleted by amendment, P.L. . . . c. . . .)~~³

6 (cf: P.L.1977, c.34, s.1)

7
8 ³2. N.J.S.14A:4-4 is amended to read as follows:

9 14A:4-4. Resignation of registered agent.

10 (1) The registered agent of a domestic corporation or a foreign
11 corporation authorized to transact business in this State may resign by
12 complying with the provisions of this section.

13 (2) The registered agent shall serve a notice of resignation by
14 certified mail, return receipt requested, upon the president, or any vice
15 president, or the secretary or treasurer of the corporation at the
16 address last known to the agent, and shall make an affidavit of such
17 service. The notice shall also advise the recipient of the requirements
18 of subsection 14A:4-3(1) 【and the penalties for failure to comply
19 imposed by subsection 14A:4-3(4)】. If such service cannot be made,
20 the affidavit shall so state, and shall state briefly why such service
21 cannot be made. The affidavit, together with a copy of the notice of
22 resignation, shall be filed in the office of the Secretary of State.

23 (3) Such resignation shall become effective upon the expiration of
24 30 days after the filing in the office of the Secretary of State of the
25 affidavit under this section or upon the designation by the corporation
26 of a new registered agent pursuant to this act, whichever is earlier. If
27 the corporation fails to designate a new registered agent within said
28 30-day period, the corporation shall thereafter be deemed to have no
29 registered agent or registered office in this State.

30 (4) 【Service of a notice of resignation shall be in lieu of and shall
31 be deemed to be the written demand of the Secretary of State required
32 by subsection 14A:4-3(4).】 ~~(Deleted by amendment, P.L. . . . c. . . .)~~³

33 (cf: P.L.1988, c.94, s.15)

34
35 ³3. N.J.S.14A:4-5 is amended to read as follows:

36 14A:4-5. Annual report to Secretary of State.

37 (1) Every domestic corporation and every foreign corporation
38 authorized to transact business in this State shall file in the office of
39 the Secretary of State, within the time prescribed by this section, an
40 annual report, executed on behalf of the corporation, or executed by
41 the registered agent, setting forth

42 (a) The name of the corporation and, in the case of a foreign
43 corporation, the jurisdiction of its incorporation;

44 (b) The address of the registered office of the corporation in this
45 State, and the name of its registered agent in this State at such
46 address;

1 (c) The names and addresses of the directors and officers of the
2 corporation;

3 (d) (Deleted by amendment, P.L.1988, c.94.)

4 (e) The address of its main business or headquarters office; and

5 (f) The address of its principal business office in New Jersey, if
6 any.

7 (2) The Secretary of State shall designate a date for filing annual
8 reports for each corporation required to submit a report pursuant to
9 this section and shall annually notify the corporation of the date so
10 designated not less than 60 days prior to such date. The corporation
11 shall file the report within 30 days before or 30 days after the date so
12 designated. If the date so designated is not more than six months after
13 the date on which an annual report pursuant to the provisions of prior
14 law was filed or on which the certificate of incorporation became
15 effective, the corporation shall not be required to file an annual report
16 until one year after the first occurrence of the date so designated.

17 (3) **[**If the report is not so filed, the corporation shall, after written
18 demand therefor by the Secretary of State by certified mail addressed
19 to the corporation at the last address appearing of record in his office,
20 forfeit to the State a penalty of \$200.00 for each report required to
21 have been filed not more than five years prior thereto and remaining
22 unfiled, to be recovered with costs in a civil action prosecuted by the
23 Attorney General. No corporation shall be subject to penalty if it
24 shall, within 30 days after such written demand, file the reports
25 required by law and pay to the Secretary of State the fee provided by
26 law for the filing of each such report. In lieu of such civil action, the
27 Secretary of State, after expiration of such 30-day period, may issue
28 a certificate to the Clerk of the Superior Court that the corporation is
29 indebted for the payment of such penalty, and thereupon the clerk shall
30 immediately enter upon his record of docketed judgments the name of
31 such corporation as the judgment debtor, and of the State as the
32 judgment creditor, a statement that the penalty is imposed under this
33 section, the amount of the penalty, and the date of such certificate.
34 Such entry shall have the same force as a judgment docketed in the
35 Superior Court. The Secretary of State within five days after such
36 entry shall give notice thereof to the corporation by certified mail
37 addressed to the corporation at the last address appearing of record in
38 his office.] (Deleted by amendment, P.L. __, c. __.)

39 (4) The Secretary of State shall furnish annual report forms, shall
40 keep in his office all such reports and shall prepare an alphabetical
41 index thereof, which reports and index shall be open to public
42 inspection at proper hours.

43 (5) In the event a domestic corporation fails to file an annual report
44 for two consecutive years with the Secretary of State, then, after
45 written notice by certified mail to the corporation at its last known
46 main business or headquarters office **[and] or** at the address of its

1 registered agent, the Secretary of State may issue a proclamation
2 declaring that the certificate of incorporation of the corporation has
3 been revoked and that all powers conferred by law upon it shall
4 thereafter be inoperative and void. The proclamation of the Secretary
5 of State shall be filed in the office of the Secretary of State. No
6 corporation's certificate of incorporation shall be revoked pursuant to
7 this subsection if, within 30 days after the giving of notice, it files the
8 reports required by law and pays to the Secretary of State all of the
9 fees due for the filing of the reports [and all penalties which have been
10 imposed pursuant to subsection (3)].

11 (6) In the event a foreign corporation fails to file an annual report
12 for two consecutive years with the Secretary of State, then, after
13 written notice by certified mail to the corporation at its last known
14 main business or headquarters office [and] ~~or~~ at the address of its
15 registered agent, the Secretary of State may issue a proclamation
16 declaring that the certificate of authority to do business of the
17 corporation and the powers conferred by law upon it shall be revoked.
18 The proclamation of the Secretary of State shall be filed in the office
19 of the Secretary of State. No corporation's certificate of authority
20 shall be revoked pursuant to this paragraph if, within 30 days after the
21 giving of notice, it files the reports required by law and pays to the
22 Secretary of State all of the fees due for the filing of the reports [and
23 all penalties which have been imposed pursuant to subsection (3)].

24 (7) If the certificate of incorporation of a domestic corporation or
25 a certificate of authority of a foreign corporation has been revoked by
26 proclamation, the certificate shall be reinstated by proclamation of the
27 Secretary of State upon: (a) payment by the corporation of all fees
28 [and fines] due to the Secretary of State . consisting of a
29 reinstatement filing fee of \$50, tax clearance filing fee of \$20, current
30 annual report fee, all delinquent annual report fees, and a reinstatement
31 assessment of \$200; and (b) certification of the Director of the
32 Division of Taxation that no cause exists for revocation of the
33 corporation's certificate of incorporation or certificate of authority
34 pursuant to R.S.54:11-2. The reinstatement relates back to the date
35 of issuance of the proclamation revoking the certificate of
36 incorporation or the certificate of authority and shall validate all
37 actions taken in the interim. In the event that in the interim the
38 corporate name has become unavailable, the Secretary of State shall
39 issue the certificate upon, in the case of a domestic corporation, the
40 filing of an amendment to its certificate of incorporation to change the
41 corporate name to an available name, and, in the case of a foreign
42 corporation, the filing of an amended certificate of authority adopting
43 an assumed name. The Secretary of State shall provide the forms
44 necessary to effect annual report reinstatements.³

45 (cf: P.L.1988, c.94, s.16)

1 ³4. N.J.S.15A:12-11 is amended to read as follows:

2 15A:12-11. Dissolution in Action Brought by the Attorney
3 General.

4 a. The Attorney General may bring an action in the Superior Court
5 for the dissolution of a corporation upon the ground that the
6 corporation:

7 (1) Has procured its organization through fraudulent
8 misrepresentation or concealment of a material fact;

9 (2) Has had its certificate of incorporation revoked under
10 subsection c. of section 15A:4-5 (failure to file its annual report) [or
11 has violated subsection d. of section 15A:4-3 (failure to file change
12 of registered agent)];

13 (3) Has conducted activities after the period of duration specified
14 in its certificate of incorporation and has neither amended its
15 certificate of incorporation to extend the period nor proceeded to
16 liquidate and cease activities;

17 (4) Has repeatedly exceeded the authority conferred upon it by law;

18 (5) Has repeatedly conducted its business in an unlawful manner;

19 (6) Has misused or improperly failed to use its powers, privileges
20 or franchises;

21 (7) Is insolvent;

22 (8) Has suspended its ordinary activities for lack of funds;

23 (9) Is conducting its activities in violation of its certificate of
24 incorporation or, with respect to specific assets, in violation of any
25 terms, conditions, or restrictions applicable to those assets imposed
26 upon it;

27 (10) Is conducting its activities at a great loss and with great
28 prejudice to the interests of its creditors or members; or

29 (11) Is conducting activities in a manner which is prejudicial to the
30 public.

31 b. The Superior Court may proceed in the action in a summary
32 manner or otherwise. Upon a showing by clear and convincing
33 evidence of any cause set forth in subsection a. of this section, the
34 court may declare the corporation dissolved and a copy of the order
35 of the court may be filed in the office of the Secretary of State as
36 evidence thereof.

37 c. The enumeration in subsection a. of this section of grounds for
38 dissolution shall not exclude any other statutory or common law action
39 by the Attorney General for the dissolution of a corporation or the
40 revocation or forfeiture of its corporate franchises.³

41 (cf: N.J.S.15A:12-11)

42

43 ³5. Section 8 of P.L.1995, c.96 (C.42:1-44) is amended to read as
44 follows:

45 8. a. To become a limited liability partnership, a partnership shall
46 file in the Office of the Secretary of State an application stating the

1 name of the partnership; the address of its principal office; the address
2 of the registered office and name of the registered agent for service of
3 process as required by this act; a brief statement of the business in
4 which the partnership engages; any other matters that the partnership
5 determines to include; and that the partnership thereby applies for
6 status as a limited liability partnership.

7 b. Before doing business in this State, a foreign limited liability
8 partnership shall register as a foreign limited liability partnership in the
9 Office of the Secretary of State by filing an application setting forth
10 the name of the partnership and, if different, the name under which it
11 proposes to do business in this State; the State, territory or possession
12 where formed; date of formation; the address of its principal office; if
13 the partnership's principal office is not located in this State, the
14 address of the registered office and the name and address of the
15 registered agent for service of process, as required by this act; a
16 statement that the partnership validly exists as a limited liability
17 partnership under the laws of the jurisdiction of its formation; and a
18 brief statement of the nature of the business or purpose to be
19 conducted or promoted in this State.

20 c. The application shall be executed by a majority in interest of the
21 partners or by one or more of the partners authorized to execute an
22 application.

23 d. The Secretary of State shall register as a limited liability
24 partnership or foreign limited liability partnership any partnership that
25 files a completed application that substantially conforms with the
26 requirements of this act, accompanied by the appropriate fee.

27 e. A partnership registered pursuant to this section shall file, in
28 each year following the year in which its application is filed, on a date
29 specified by the Secretary of State, an annual report. The annual
30 report shall be on a form provided by the Secretary of State, and shall
31 indicate any material change in the information contained in the
32 partnership's application for registration. If the annual report is not
33 filed or the filing fee is not paid for two consecutive years, the
34 registration of a limited liability partnership or foreign limited liability
35 partnership shall, after written demand for the annual report by the
36 Secretary of State by mail addressed to the limited liability partnership
37 or foreign limited liability partnership at the last address appearing of
38 record in the office of the Secretary of State, remain filed but be
39 transferred to an inactive list. A limited liability partnership or foreign
40 limited liability partnership shall not have its registration transferred to
41 the inactive list if it shall, within 60 days after the written demand, file
42 the annual report and fee required by this act. If the registration of a
43 domestic or foreign limited liability partnership has been placed on the
44 inactive list, the registration shall be reinstated by proclamation of the
45 Secretary of State upon payment of all fees due to the Secretary of
46 State, consisting of a reinstatement filing fee of \$50, current annual

1 report fee, all delinquent annual report fees, and a reinstatement filing
2 assessment of \$200. Reinstatement relates back to the date of
3 issuance of the proclamation placing the certificate of registration on
4 the inactive list and shall validate all actions taken in the interim. If
5 the limited liability partnership name of a domestic or foreign limited
6 liability partnership has become unavailable in the interim, the
7 Secretary of State shall issue the reinstatement upon the filing of a
8 name change certificate that changes the name to an available name.
9 The Secretary of State shall provide the forms necessary to effect
10 annual report reinstatements.

11 f. Registration is effective immediately after the date an
12 application is filed in the Office of the Secretary of State, and remains
13 effective until it is voluntarily withdrawn by filing in the Office of the
14 Secretary of State a written withdrawal notice executed by a majority
15 in interest of the partners or by one or more partners of the partnership
16 authorized to execute a withdrawal notice.

17 g. A partnership continues as a limited liability partnership if there
18 has been substantial compliance with the requirements of this act.
19 After the filing of an application, the status of a partnership as a
20 limited liability partnership, or the liability of the partners thereof, shall
21 not be affected by errors or changes in the information stated in the
22 application.

23 h. If an instrument filed in the Office of the Secretary of State
24 pursuant to this section is an inaccurate record of the facts stated
25 therein, or was defectively or erroneously executed, the instrument
26 may be corrected by filing in the Office of the Secretary of State a
27 certificate of correction by a partner. The certificate of correction
28 shall specify the inaccuracy or defect to be corrected and shall set
29 forth the correction. The instrument so corrected shall be deemed to
30 have been effective in its corrected form as of its original filing date
31 except as to persons who actually relied in good faith upon the
32 inaccurate portion of the instrument and who are adversely affected by
33 the correction. As to these persons, the correction shall be effective
34 as of the effective date of filing of the certificate of correction. Such
35 filing shall only be made if the Secretary of State consents to the filing.

36 i. The Secretary of State may provide forms for application for
37 registration, notice of changes or payment of the annual fee.

38 j. Any limited liability partnership formed pursuant to an
39 agreement governed by this section or any foreign limited liability
40 partnership transacting business in this State under this section shall be
41 exempt from the filing requirements of R.S.56:1-1 et seq.

42 k. The fact that an application or annual report is on file in the
43 Office of the Secretary of State is notice that the partnership is a
44 limited liability partnership or foreign limited liability partnership and
45 is notice of all other facts set forth in the application or annual report.³

46 (cf: P.L.1995, c.96, s.8)

1 ³6. Section 66 of P.L.1983, c.489 (C.42:2A-69) is amended to read
2 as follows:

3 66. Annual report to the Secretary of State by domestic limited
4 partnerships.

5 a. Every domestic limited partnership authorized in this State shall
6 file in the Office of the Secretary of State, within the time prescribed
7 by this section, an annual report, executed on behalf of the limited
8 partnership or executed by the registered agent setting forth:

9 1. The name of the limited partnership;

10 2. The address, including the actual location as well as the postal
11 designation, if different, of the registered agent in this State; and

12 3. The name of the registered agent.

13 b. The Secretary of State shall designate a date of filing annual
14 reports for each limited partnership required to submit a report
15 pursuant to this section.

16 c. If the report is not filed for two consecutive years, the certificate
17 of limited partnership shall, after written demand for the reports by the
18 Secretary of State by mail addressed to the limited partnership at the
19 last address appearing of record in the office of the Secretary of State
20 remain filed but be transferred to an inactive list. A limited
21 partnership shall not have its certificate of limited partnership
22 transferred to the inactive list if it shall, within 60 days after the
23 written demand, file the reports required by law and pay to the
24 Secretary of State the fee provided by law for the filing of each report.

25 d. (1) Any domestic limited partnership on the inactive list may
26 return to active status by:

27 [(1)] (a) Paying to the Secretary of State [double the amount of]
28 the current annual report fee [for each year an annual report was not
29 filed. Years prior to becoming inactive and years subsequent to being
30 declared inactive shall be included in calculating this fee;

31 (2) Filing a current annual report; and

32 (3) . all delinquent annual report fees, a reinstatement filing fee of
33 \$50 and a reinstatement filing assessment of \$200; and

34 (b) Submitting a certificate of amendment adopting a name which
35 complies with paragraph (4) of subsection a. of section 6 of [this
36 chapter] P.L.1983, c.489 (C.42:2A-6) , if the name of the inactive
37 limited partnership does not comply with paragraph (4) of subsection
38 a. of section 6.

39 (2) The Secretary of State shall provide the forms necessary to
40 effect annual report reinstatements.

41 e. A limited partnership whose certificate has been transferred to
42 the inactive list shall remain a limited partnership formed under this
43 chapter or under R.S.42:2-1 et seq., but no name reservations,
44 transfers of reserved names, or certificates of amendment may be filed
45 until the limited partnership whose certificate has been placed on the
46 inactive list regains active status. A limited partner of a limited

1 partnership is not liable as a general partner of the limited partnership
2 solely by reason of the transfer of the certificate of limited partnership
3 to the inactive list.

4 f. The Secretary of State shall furnish annual report forms, shall
5 keep all the reports and shall prepare an index thereof. The reports
6 shall be open to public inspection at proper hours.³

7 (cf: P.L.1988, c.130, s.37.1)

8

9 ³7. Section 67 of P.L.1983, c.489 (C.42:2A-70) is amended to read
10 as follows:

11 67. Annual report to Secretary of State by foreign limited
12 partnership.

13 a. Every foreign limited partnership authorized to transact
14 business in this State shall file in the office of the Secretary of State,
15 within the time prescribed by this section, an annual report, executed
16 on behalf of the foreign limited partnership setting forth:

17 1. The name of the foreign limited partnership;

18 2. The address, including the actual location as well as postal
19 designation, if different, of the registered agent in this State; and

20 3. The name of the registered agent.

21 b. The Secretary of State shall designate a date for filing annual
22 reports for each foreign limited partnership required to submit a report
23 pursuant to this section.

24 c. If the report is not filed for two consecutive years, the
25 certificate of a foreign limited partnership to transact business in this
26 State shall, after written demand for the reports by the Secretary of
27 State by certified mail addressed to the foreign limited partnership at
28 the last address appearing of record in the office of the Secretary of
29 State, be revoked for the failure to file reports. A foreign limited
30 partnership shall not be subject to the revocation of its certificate to
31 transact business in this State if it shall, within 60 days after the
32 written demand, file the reports required by law and pay to the
33 Secretary of State the fee provided by law for the filing of each report.

34 d. Any foreign limited partnership may, within two years of the
35 revocation of its certificate to transact business in this State, cause a
36 reinstatement of the certificate upon :

37 (1) payment to the Secretary of State **【double the amount】** of the
38 current annual report fee **【for each year an annual report was not filed.**
39 **Years prior to revocation and years after revocation shall be included**
40 **in calculating this fee, and by filing a current annual report】** .all
41 delinquent annual report fees, a reinstatement filing fee of \$50 and a
42 reinstatement filing assessment of \$200; and

43 (2) compliance with the requirements of subsection c. of section 6
44 of P.L.1983, c.489 (C.42:2A-6), if the name of the inactive foreign
45 limited partnership does not comply with the provisions of paragaph
46 (4) of subsection a. of section 6 of P.L.1983, c.489 (C.42:2A-6).

1 e. A limited partner of a foreign limited partnership is not liable as
2 a general partner of the foreign limited partnership solely by reason of
3 the revocation, pursuant to this section, of the certificate of authority
4 to transact business in this State.

5 ~~[e.]~~ f. The Secretary of State shall furnish annual report forms,
6 including the forms necessary to effect annual report reinstatements.
7 shall keep all the reports and shall prepare an index thereof. The
8 reports shall be open to public inspection at proper hours.³
9 (cf: P.L.1983, c.489, s.67)

10
11 ~~§21.]~~ ~~§.~~³ Section 7 of P.L. 1993, c.210 (C.42:2B-7) is amended
12 to read as follows:

13 7. a. The registered agent of a domestic limited liability company
14 or a foreign limited liability company authorized to transact business
15 in this State may resign by complying with the provisions of this
16 section.

17 b. The registered agent of a foreign or domestic limited liability
18 company may resign and appoint a successor registered agent by filing
19 a certificate in the office of the Secretary of State, stating that it
20 resigns and the name and address of the successor registered agent.
21 There shall be attached to such certificate a statement executed by the
22 affected limited liability company ratifying and approving such change
23 of registered agent. Upon such filing, the successor registered agent
24 shall become the registered agent of each limited liability company
25 which has ratified and approved the substitution and the successor
26 registered agent's address, as stated in such certificate, shall become
27 the address of each limited liability company's registered office in this
28 State. The Secretary of State shall furnish to the successor registered
29 agent upon request a certified copy of the certificate of resignation.
30 Filing of the certificate of resignation shall be deemed to be an
31 amendment of the certificate of formation of the limited liability
32 company affected thereby and the limited liability company shall not
33 be required to take any further action with respect thereto, to amend
34 its certificate of formation under this act.

35 c. The registered agent of a limited liability company may resign
36 without appointing a successor registered agent by complying with the
37 following provisions:

38 (1) The registered agent, or, in the case of a registered agent who
39 is deceased or has been declared incompetent by a court of competent
40 jurisdiction, his legal representative, shall serve a notice of resignation
41 by certified mail, return receipt requested, upon the limited liability
42 company at the address last known to the agent, and shall make an
43 affidavit of such service. If service cannot be made, the affidavit shall
44 so state, and shall state briefly why service cannot be made. The
45 affidavit, together with a copy of notice of resignation, shall be filed
46 in the office of the Secretary of State.

1 (2) The resignation shall become effective 30 days after filing the
2 affidavit of service in the office of the Secretary of State or upon the
3 designation by the limited liability company of a new registered agent
4 pursuant to this act, whichever is earlier. If the limited liability
5 company fails to designate a new registered agent within the 30 day
6 period, the limited liability company shall thereafter be deemed to have
7 no registered agent or registered office in this State, until the limited
8 liability company files a certificate of change of address of registered
9 office and registered agent indicating the new registered office and
10 registered agent.

11 [(3) If any certificate of change replacing a resigned agent is not
12 filed, the limited liability company shall, after written demand therefor
13 by the Secretary of State, forfeit to the State a penalty of \$200 for
14 each year or part thereof until an agent is appointed. The Secretary of
15 State may issue a certificate to the Clerk of the Superior Court that the
16 limited liability company is indebted for the payment of this penalty.
17 This certificate shall be entered by the Clerk as a judgment docketed
18 in the Superior Court, and shall have the same form as a docketed
19 judgment.

20 (4) If a certificate of change replacing a resigned agent is not filed
21 within two years from the effective date of the resignation, the
22 certificate of formation of the limited liability company shall remain
23 filed with the office of the Secretary of State but be transferred to an
24 inactive list. A limited liability company whose certificate has been
25 transferred to the inactive list shall remain a limited liability company
26 formed under this act but no name reservations, transfers of reserved
27 names or certificates of amendment may be filed until the limited
28 liability company regains active status by making all required filings
29 and payments. The transfer of the certificate of formation of a limited
30 liability company to the inactive list shall have no effect on the liability
31 of a member of a limited liability company.]²

32 (cf: P.L.1993, c.210, s.7)

33

34 ²[1.] ³[2.²] 9. ³ Section 11 of P.L.1993, c.210 (C.42:2B-11) is
35 amended to read as follows:

36 11. a. In order to form a limited liability company, one or more
37 authorized persons must execute a certificate of formation. The
38 certificate of formation shall be filed in the office of the Secretary of
39 State and set forth:

40 (1) The name of the limited liability company;

41 (2) The address of the registered office and the name and address
42 of the registered agent for service of process required to be maintained
43 by section 6 of this act;

44 (3) That the limited liability company has two or more members;

45 (4) If the limited liability company is to have perpetual existence,
46 regardless of whether the limited liability company is subject to any

1 dissolution contingencies, then the word "perpetual" shall be stated:
2 if the limited liability company is to have a specific date of dissolution,
3 regardless of whether the limited liability company is subject to any
4 dissolution contingencies, the latest date on which the limited liability
5 company is to dissolve; and

6 (5) Any other matters the members determine to include therein.

7 b. A limited liability company is formed at the time of the filing of
8 the initial certificate of formation in the office of the Secretary of State
9 or at any later date or time specified in the certificate of formation if,
10 in either case, there has been substantial compliance with the
11 requirements of this section. A limited liability company formed under
12 this act shall be a separate legal entity, the existence of which as a
13 separate legal entity shall continue until cancellation of the limited
14 liability company's certificate of formation.

15 (cf: P.L.1993, c.210, s.11)

16
17 ²[2.] ³[3.2] 10.³ Section 14 of P.L.1993, c.210 (C.42:2B-14) is
18 amended to read as follows:

19 14. a. A certificate of formation shall be canceled upon the
20 dissolution and the completion of winding up of a limited liability
21 company, **[or at any other time there are fewer than two members,]**
22 or upon the filing of a certificate of merger or consolidation if the
23 limited liability company is not the surviving or resulting entity in a
24 merger or consolidation.

25 b. A certificate of cancellation shall be filed in the office of the
26 Secretary of State to accomplish the cancellation of a certificate of
27 formation upon the dissolution and the completion of winding up of a
28 limited liability company **[or at any other time there are not two**
29 **members]** and shall set forth:

30 (1) The name of the limited liability company;

31 (2) The date of filing of its certificate of formation;

32 (3) The reason for filing the certificate of cancellation;

33 (4) The future effective date or time (which shall be a date or time
34 certain) of cancellation if it is not to be effective upon the filing of the
35 certificate; and

36 (5) Any other information the person filing the certificate of
37 cancellation determines.

38 c. A certificate of formation shall not be canceled, and no
39 certificate of cancellation shall be required to be filed, when a limited
40 liability company has only one member, and the certificate of
41 formation shall remain valid when a limited liability company has only
42 one member, if within 90 days of the date on which the limited liability
43 company first had only one member, one or more additional members
44 are admitted. If no additional member is admitted within that 90 day
45 period, the certificate of formation of that limited liability company
46 shall be canceled and a certificate of cancellation shall be filed on and

1 as of the end of that 90 day period.

2 (cf: P.L.1993, c.210, s.14)

3

4 ²[3.]³[4.²] 11.³ Section 18 of P.L.1993, c.210 (C.42:2B-18) is
5 amended to read as follows:

6 18. A certificate of formation filed in the office of the Secretary of
7 State is notice that the entity formed in connection with the filing of
8 the certificate of formation is a limited liability company formed under
9 the laws of this State and is notice of all other facts set forth therein
10 which are required or permitted to be set forth in a certificate of
11 formation by paragraphs (1) and (2) of subsection a. of section 11 of
12 this act. If any provision of an operating agreement is inconsistent
13 with the information contained in the certificate of formation of that
14 limited liability company, as amended, on file with the office of the
15 Secretary of State, the operating agreement shall be controlling except
16 with respect to any third party who can show actual and reasonable
17 reliance to the detriment of that third party, upon the information
18 contained in the certificate of formation.

19 (cf: P.L.1993, c.210, s.18)

20

21 ²[4.] ³[5.²] 12.³ Section 22 of P.L.1993, c.210 (C.42:2B-22) is
22 amended to read as follows:

23 22. a. An operating agreement may provide for classes or groups
24 of members having such relative rights, powers and duties as the
25 operating agreement may provide, and may make provision for the
26 future creation in the manner provided in the operating agreement of
27 additional classes or groups of members having such relative rights,
28 powers and duties as may from time to time be established, including
29 rights, powers and duties senior to existing classes and groups of
30 members. An operating agreement may provide for the taking of an
31 action, including the amendment of the operating agreement, without
32 the vote or approval of any member or class or group of members,
33 including an action to create under the provisions of the operating
34 agreement a class or group of limited liability company interests that
35 was not previously outstanding.

36 b. An operating agreement may grant to all or certain identified
37 members or a specified class or group of the members the right to
38 vote, separately or with all or any class or group of managers or
39 members, on any matter. Voting by members may be on a per capita,
40 number, financial interest, class, group or any other basis. **[In the**
41 **absence of any provision in the operating agreement, voting by**
42 **members shall be on a per capita basis.]**

43 c. An operating agreement which grants a right to vote may set
44 forth provisions relating to notice of the time, place or purpose of any
45 meeting at which any matter is to be voted on by any manager or class
46 or group of managers, waiver of any such notice, action by consent

1 without a meeting, the establishment of a record date, quorum
2 requirements, voting in person or by proxy, or any other matter with
3 respect to the exercise of any such right to vote.

4 (cf: P.L.1993, c.210, s.22)

5

6 ²~~[5.]~~³~~[6.]~~ 13.³ Section 24 of P.L.1993, c.210 (C.42:2B-24) is
7 amended to read as follows:

8 24. A ~~[person ceases to be a]~~ member ~~[of]~~ shall be dissociated
9 from a limited liability company upon the ~~[happening]~~ occurrence of
10 any of the following events:

11 a. Unless otherwise provided in an operating agreement, or with
12 the written consent of all members,

13 (1) the limited liability company receives notice of the member's
14 resignation as a member, or on a later date specified by the member;

15 (2) an event agreed to in the operating agreement as causing the
16 member's dissociation;

17 (3) a member:

18 [(1) Makes an assignment for the benefit of creditors;

19 (2) Files a voluntary petition in bankruptcy;

20 (3) Is adjudged bankrupt or insolvent, or has entered against him
21 an order for relief, in any bankruptcy or insolvency proceeding;

22 (4) Files a petition or answer seeking for himself any
23 reorganization, arrangement, composition, readjustment, liquidation,
24 dissolution or similar relief under any statute, law or regulation;

25 (5) Files an answer or other pleading admitting or failing to contest
26 the material allegations of a petition filed against him in any
27 proceeding of this nature;

28 (6) Seeks]

29 (a) becomes a debtor in bankruptcy;

30 (b) executes an assignment for the benefit of creditors;

31 (c) seeks, consents to or acquiesces in the appointment of a
32 trustee, receiver or liquidator of the member or of all or [any
33 substantial part of his] substantially all of that member's properties; or

34 (d) fails, within 90 days after the appointment, without the
35 member's consent or acquiescence, of a trustee, receiver or liquidator
36 of the member or of all or substantially all of that member's properties,
37 to have the appointment vacated or stayed, or fails within 90 days after
38 the expiration of a stay to have the appointment vacated; or

39 b. [Unless otherwise provided in an operating agreement, or with
40 the written consent of all members, 120 days after the commencement
41 of any proceeding against the member seeking reorganization,
42 arrangement, composition, readjustment, liquidation, dissolution or
43 similar relief under any statute, law or regulation, if the proceeding has
44 not been dismissed, or if within 90 days after the appointment without
45 his consent or acquiescence of a trustee, receiver or liquidator of the
46 member or of all or any substantial part of his properties, the

- 1 appointment is not vacated or stayed, or within 90 days after the
2 expiration of any such stay, the appointment is not vacated.]
- 3 (1) the member's expulsion pursuant to the operating agreement;
4 (2) the member's expulsion by the unanimous vote of the other
5 members if:
- 6 (a) it is unlawful to carry on the limited liability company
7 ¹[without] with¹ that member;
- 8 (b) there has been a transfer of all ¹[or substantially all]¹ of that
9 member's transferable interest in the limited liability company, other
10 than a transfer for security purposes, or a court order charging the
11 member's interest;
- 12 (c) within 90 days after the limited liability company notifies a
13 corporate member that it will be expelled because it has filed a
14 certificate of dissolution or the equivalent, its charter has been
15 revoked, or its right to conduct business has been suspended by the
16 jurisdiction of its incorporation, there is no revocation of the
17 certificate of dissolution or no reinstatement of its charter or its right
18 to conduct business; or
- 19 (d) a limited liability company ¹or a partnership¹ that is a member
20 has been dissolved and its business is being wound up;
- 21 (3) on application by the limited liability company or another
22 member, the member's expulsion by judicial determination because:
- 23 (a) the member engaged in wrongful conduct that adversely and
24 materially affected the limited liability company's business;
- 25 (b) the member willfully or persistently committed a material
26 breach of the operating agreement; or
- 27 (c) the member engaged in conduct relating to the limited liability
28 company business which makes it not reasonably practicable to carry
29 on the business with the member as a member of the limited liability
30 company;
- 31 (4) in the case of a member who is an individual:
- 32 (a) the member's death;
- 33 (b) the appointment of a guardian or general conservator for the
34 member; or
- 35 (c) a judicial determination that the member has otherwise become
36 incapable of performing the member's duties under the operating
37 agreement;
- 38 (5) in the case of a member that is a trust or is acting as a member
39 by virtue of being a trustee of a trust, distribution of the trust's entire
40 transferable interest in the limited liability company, but not merely by
41 reason of the substitution of a successor trustee;
- 42 (6) in the case of a member that is an estate or is acting as a
43 member by virtue of being a personal representative of an estate,
44 distribution of the estate's entire transferable interest in the limited
45 liability company, but not merely by reason of the substitution of a
46 successor personal representative; or

1 (7) ~~'[termination] dissolution'~~ of a member who is not an
2 individual, partnership, corporation, trust or estate.

3 (cf: P.L.1993, c.210, s.24)

4
5 ~~²[6.] ³[7.²] 14.³~~ (New section) Upon a member's dissociation,
6 the dissociated member has, subject to section 39 of P.L.1993, c.210
7 (C.42:2B-39), only the rights of an assignee of a member's limited
8 liability interest.

9
10 ~~²[7.] ³[8.²] 15.³~~ Section 27 of P.L.1993, c.210 (C.42:2B-27) is
11 amended to read as follows:

12 27. a. (1) Unless otherwise provided in an operating agreement,
13 the management of a limited liability company shall be vested in its
14 members in proportion to the then current percentage or other interest
15 of members in the profits of the limited liability company owned by all
16 of the members, the decision of members owning more than 50 percent
17 of the then current percentage or other interest in the profits
18 controlling; (2) provided, however, that if an operating agreement
19 provides for the management, in whole or in part, of a limited liability
20 company by ~~[a manager]~~ one or more managers, the management of
21 the limited liability company, to the extent so provided, shall be vested
22 in the manager ~~or managers~~ who shall be chosen by the members in the
23 manner provided in the operating agreement. The ~~[manager]~~
24 managers shall also hold the offices and have the responsibilities
25 accorded to ~~[him]~~ them by the members and set forth in an operating
26 agreement. Subject to section 37 of this act, a manager shall cease to
27 be a manager as provided in an operating agreement.

28 b. (1) ~~If a limited liability company is managed by its members,~~
29 ~~unless otherwise provided in the operating agreement, each member~~
30 ~~shall have the authority to bind the limited liability company. In~~
31 ~~addition, unless otherwise provided in the operating agreement, or to~~
32 ~~the extent that a court of competent jurisdiction determines that the~~
33 ~~operating agreement is without effect in this regard, each member in~~
34 ~~a limited liability company managed by its members shall also have the~~
35 ~~authority to file for insolvency or reorganization under appropriate~~
36 ~~State or federal law, so long as that filing has the prior approval of~~
37 ~~members then owning more than 50 percent of the interests in the~~
38 ~~profits of the limited liability company.~~

39 (2) ~~If the limited liability company is managed by a manager or~~
40 ~~managers, the managers shall, in addition to all other authority~~
41 ~~accorded by the operating agreement, have the authority to file for~~
42 ~~insolvency or reorganization under appropriate State or federal law,~~
43 ~~unless otherwise provided in the operating agreement, except to the~~
44 ~~extent a court of competent jurisdiction determines that the operating~~
45 ~~agreement is without effect in this regard.~~

46 (cf: P.L.1993, c.210, s.27)

1 ²[8.] ³[9.²] 16.³ Section 39 of P.L.1993, c.210 (C.42:2B-39) is
2 amended to read as follows:

3 39. a. Except as provided in this act, upon resignation any
4 resigning member is entitled to receive any distribution to which he is
5 entitled under an operating agreement and, if not otherwise provided
6 in an operating agreement, he is entitled to receive, within a reasonable
7 time after resignation, the fair value of his limited liability company
8 interest as of the date of resignation based upon the net present value
9 of his right to share in distributions from the limited liability company,
10 less all applicable valuation discounts, unless the operating agreement
11 provides for another distribution formula. If the resignation of a
12 member violates an operating agreement, in addition to any remedies
13 otherwise available under applicable law, a limited liability company
14 may recover from the resigning member damages for breach of the
15 operating agreement and offset the damages against the amount
16 otherwise distributable to the resigning member.

17 b. As used in subsection a. of this section, "all applicable valuation
18 discounts" shall include discounts for lack of liquidity, relative size of
19 holding, absence of any trading market and comparable factors.
20 (cf: P.L.1993, c.210, s.39)

21

22 ²[9.] ³[10.²] 17.³ Section 44 of P.L.1993, c.210 (C.42:2B-44) is
23 amended to read as follows:

24 44. a. A limited liability company interest is assignable in whole or
25 in part except as provided in an operating agreement. The assignee of
26 a member's limited liability company interest shall have no right to
27 participate in the management of the business and affairs of a limited
28 liability company except as provided in an operating agreement and
29 upon:

30 (1) The approval of all of the members of the limited liability
31 company other than the member assigning his limited liability company
32 interest; or

33 (2) Compliance with any procedure provided for in the operating
34 agreement.

35 b. Unless otherwise provided in an operating agreement:

36 (1) An assignment entitles the assignee to share in the profits and
37 losses, to receive the distribution or distributions, and to receive the
38 allocation of income, gain, loss, deduction, or credit or similar item to
39 which the assignor was entitled, to the extent assigned;

40 (2) A member ceases to be a member and to have the power to
41 exercise any rights or powers of a member upon assignment of all of
42 his limited liability company interest; and

43 (3) The pledge of, or granting of a security interest, lien or other
44 encumbrance in or against, any or all of the limited liability company
45 interest of a member shall not cause the member to cease to be a
46 member or to have the power to exercise any rights or powers of a

1 member.

2 c. An operating agreement may provide that a member's interest in
3 a limited liability company may be evidenced by a certificate of limited
4 liability company interest issued by the limited liability company.

5 d. Unless otherwise provided in an operating agreement and except
6 to the extent assumed by agreement, until an assignee of a limited
7 liability company interest becomes a member, the assignee shall have
8 no liability as a member solely as a result of the assignment.

9 e. An assignee shall have no authority to seek or obtain a court
10 order dissolving or liquidating a limited liability company.

11 (cf: P.L.1993, c.210, s.44)

12

13 ²[10.] ³[11.²] 18.³ Section 45 of P.L.1993, c.210 (C.42:2B-45)
14 is amended to read as follows:

15 45. On application to a court of competent jurisdiction by any
16 judgment creditor of a member, the court may charge the limited
17 liability company interest of the member with payment of the
18 unsatisfied amount of the judgment with interest. To the extent so
19 charged, the judgment creditor has only the rights of an assignee of the
20 limited liability company interest. An action by a court pursuant to
21 this section does not deprive any member of the benefit of any
22 exemption laws applicable to his limited liability company interest. A
23 court order charging the limited liability company interest of a member
24 pursuant to this section shall be the sole remedy of a judgment
25 creditor, who shall have no right under P.L.1993, c.210 (42:2B-1 et
26 seq.) or any other State law to interfere with the management or force
27 dissolution of a limited liability company or to seek an order of the
28 court requiring a foreclosure sale of 'the' limited liability company
29 interest. Nothing in this section shall be construed to affect in any way
30 the rights of a judgment creditor of a member under federal
31 bankruptcy or reorganization laws.

32 (cf: P.L.1993, c.210, s.45)

33

34 ²[11.] ³[12.²] 19.³ Section 48 of P.L.1993, c.210 (C.42:2B-48)
35 is amended to read as follows:

36 48. A limited liability company is dissolved and its affairs shall be
37 wound up upon the first to occur of the following:

38 a. [At] Unless the certificate of formation specifies that the limited
39 liability company is perpetual, at the time specified in an operating
40 agreement, or 30 years from the date of the formation of the limited
41 liability company if no [such] specified time for dissolution and
42 winding up, regardless of any dissolution contingencies, is set forth in
43 the operating agreement;

44 b. Upon the happening of events specified in an operating
45 agreement;

46 c. The written consent of all members, which includes written

1 consent of the sole remaining member of a limited liability company;
2 d. ~~【The death, retirement, resignation, expulsion, bankruptcy or~~
3 ~~dissolution of a member or the occurrence of any other event which~~
4 ~~terminates the continued membership of a member in the limited~~
5 ~~liability company unless the business of the limited liability company~~
6 ~~is continued either by the consent of all the remaining members within~~
7 ~~90 days following the occurrence of any such event or pursuant to a~~
8 ~~right to continue stated in the operating agreement】~~ Ninety days after
9 the date on which the limited liability company has only one member,
10 unless at least one additional member is admitted within 90 days after
11 the date on which the limited liability company had only one member;
12 or

13 e. The entry of a decree of judicial dissolution under section 49 of
14 this act.

15 (cf: P.L.1993, c.210, s.48)

16

17 ²[12.] ³[13.²] ~~20.~~³ Section 50 of P.L.1993, c.210 (C.42:2B-50)
18 is amended to read as follows:

19 50. a. Unless otherwise provided in an operating agreement, a
20 manager who has not wrongfully dissolved a limited liability company
21 or, if there is no manager, the members or a person approved by the
22 members or, if there is more than one class or group of members, then
23 by each class or group of members, in either case, by members who
24 own more than 50 percent of the then current percentage or other
25 interest in the profits of the limited liability company owned by all of
26 the members or by the members in each class or group, as appropriate,
27 may wind up the limited liability company's affairs; but the ~~【Court of】~~
28 ~~Chancery Division, General Equity Part of Superior Court,~~ upon cause
29 shown, may wind up the limited liability company's affairs upon
30 application of any member or manager, his legal representative or
31 assignee, and in connection therewith, may appoint a liquidating
32 trustee.

33 b. Upon dissolution of a limited liability company and until the
34 filing of a certificate of cancellation as provided in section 14 of this
35 act, the persons winding up the limited liability company's affairs may,
36 in the name of, and for and on behalf of, the limited liability company,
37 prosecute and defend suits, whether civil, criminal or administrative,
38 gradually settle and close the limited liability company's business,
39 dispose of and convey the limited liability company's property,
40 discharge or make reasonable provision for the limited liability
41 company's liabilities, and distribute to the members any remaining
42 assets of the limited liability company, all without affecting the liability
43 of members and managers and without imposing liability on a
44 liquidating trustee.

45 (cf: P.L.1993, c.210, s.50)

1 ~~2~~¹~~[13.]~~³~~[14.]~~² 21.³ Section 65 of P.L.1993, c.210 (C.42:2B-65)
2 is amended to read as follows:

3 65. a. No document required to be filed under this act shall be
4 effective until the applicable fee required by this section is paid. The
5 following fees shall be paid to and collected by the Secretary of State
6 for the use of the State:

7 (1) Upon the receipt for filing of a certificate of registration of
8 alternate name or a certificate of renewal pursuant to section 4 of this
9 act, a fee in the amount of \$50.

10 (2) Upon the receipt for filing of an application for reservation of
11 name, an application for renewal of reservation or a notice of transfer
12 or cancellation of reservation pursuant to section 5 of this act, a fee in
13 the amount of \$50.

14 (3) Upon the receipt for filing of a certificate under subsection b.
15 of section 6 of this act, a fee in the amount of \$25, upon the receipt
16 for filing of a certificate under subsection b. of section 7 of this act, a
17 fee in the amount of \$25 and a further fee of \$10 for each limited
18 liability company affected by such certificate.

19 (4) Upon the receipt for filing of a notice of resignation and
20 affidavit pursuant to subsection c. of section 7 of this act, a fee in the
21 amount of \$25 and upon the receipt for filing of a certificate of change
22 pursuant to subsection c. of section 7 of this act, a fee in the amount
23 of \$25.

24 (5) Upon the receipt for filing of a certificate of formation under
25 section 11 of this act, a certificate of correction under section 12 of
26 this act, a certificate of amendment under section 13 of this act, a
27 certificate of cancellation under section 14 of this act, a certificate of
28 merger or consolidation under section 20 of this act or a restated
29 certificate of formation under section 19 of this act, a fee in the
30 amount of \$100.

31 ~~(6) Upon filing of a an annual report, a fee in the amount of~~
32 ~~\$50.00.~~

33 ~~(7) Upon requesting a reinstatement of a certificate of a limited~~
34 ~~liability company, a late filing fee of \$200.00 and a reinstatement filing~~
35 ~~fee of \$50.00.~~

36 ~~[(6)] (8)~~ For certifying copies of any paper on file as provided for
37 by this act, a fee in the amount of \$25 for each copy certified.

38 ~~[(7)] (9)~~ The Secretary of State may issue photocopies of
39 instruments on file as well as other copies, and for all of those copies,
40 whether certified or not, a fee in the amount of \$10 for the first page
41 and \$2 per page thereafter shall be paid.

42 ~~[(8)] (10)~~ Upon the receipt for filing of an application for
43 registration as a foreign limited liability company under section 53 of
44 this act or a certificate of cancellation under section 56 of this act, a
45 fee in the amount of \$100.

46 ~~[(9)] (11)~~ For preclearance of any document for filing, a fee in the

1 amount of \$50.

2 ~~[(10)]~~ (12) For preparing and providing a written report of a
3 record search, a fee in the amount of \$50.

4 ~~[(11)]~~ (13) For issuing any certificate of the Secretary of State,
5 including but not limited to a certificate of good standing, other than
6 a certification of a copy under paragraph (6) of this subsection, a fee
7 in the amount of \$50, except that for issuing any certificate of the
8 Secretary of State that recites all of a limited liability company's filings
9 with the Secretary of State, a fee of \$100 shall be paid for each such
10 certificate.

11 ~~[(12)]~~ (14) For receiving and filing and/or indexing any certificate,
12 affidavit, agreement or any other paper provided for by this act, for
13 which no different fee is specifically prescribed, a fee in the amount of
14 \$50.

15 ~~[(13)]~~ (15) The Secretary of State may in his discretion charge a
16 fee of \$50 for each check received for payment of any fee that is
17 returned due to insufficient funds or the result of a stop payment
18 order.

19 b. In addition to those fees charged under subsection a. of this
20 section, there shall be collected by and paid to the Secretary of State
21 the following:

22 (1) for all services described in subsection a. of this section that are
23 requested to be completed within the same day as the day of the
24 request, an additional sum of up to \$50; and

25 (2) for all services described in subsection a. of this section that are
26 requested to be completed within a 24-hour period from the time of
27 the request, an additional sum of up to \$25.

28 The Secretary of State shall establish (and may from time to time
29 amend) a schedule of specific fees payable pursuant to this subsection.

30 c. The Secretary of State may in his discretion permit the extension
31 of credit for the fees required by this section upon such terms as he
32 shall deem to be appropriate.¹

33 (cf: P.L.1993, c.210, s.65)

34

35 ¹~~[(13.)]~~ ²~~[(14.)]~~ ³~~[(15.)]~~ ~~22.~~³ (New section) a. Each domestic and
36 foreign limited liability company shall file an annual report with the
37 office of the Secretary of State, setting forth:

38 (1) the name and address of the limited liability company;

39 (2) the name and address of the registered agent of the limited
40 liability company; and

41 (3) the name and addresses of the managing members or managers,
42 as the case may be.

43 b. If no annual report is filed as required by this section for two
44 consecutive years,

45 (1) the certificate of a domestic limited liability company shall be
46 transferred to an inactive list maintained by the Secretary of State. A

1 limited liability company on the inactive list shall remain a limited
2 liability company and the limited liability of its members and managers
3 shall not be affected by its transfer to this list. The name of a limited
4 liability company on the inactive list shall, subject to any other rights
5 that limited liability company may have to its name, be available for
6 use by any other limited liability company, including a newly-formed
7 limited liability company.

8 (2) the certificate of a foreign limited liability company may be
9 revoked by the Secretary of State.

10 ¹(3) if the certificate of a domestic limited liability company has
11 been transferred to the inactive list or if the certificate of a foreign
12 limited liability company has been revoked, the certificate shall be
13 reinstated by proclamation of the Secretary of State upon payment of
14 all fees due to the Secretary of State, consisting of a reinstatement
15 filing fee, current annual report fee, all delinquent annual report fees,
16 and a late filing fee. The reinstatement relates back to the date of
17 transfer of the certificate of a domestic limited liability company to the
18 inactive list or to the date of revocation of the certificate of a foreign
19 limited liability company, as the case may be, and shall validate all
20 actions taken in the interim. In the event that in the interim the name
21 of the limited liability company has become unavailable, the Secretary
22 of State shall reinstate the certificate upon, in the case of a domestic
23 limited liability company, the filing of an amendment to its certificate
24 of formation to change the name to an available name and in the case
25 of a foreign limited liability company, the filing of an amended
26 certificate of registration adopting an alternate name. The Secretary
27 of State shall provide the forms necessary to effect annual report
28 reinstatements.¹

29

30 ¹[14.] ²[15.1]³[16.2] 23. ³ Section 2 of P. L.1973, c.367
31 (C.54:50-13) is amended to read as follows:

32 2. Until all taxes owing by it have been paid, or provided for as set
33 forth in section 4 of P.L.1973, c.367 (C.54:50-15):

34 a. no domestic or foreign corporation shall merge or consolidate
35 into a foreign corporation not authorized to transact business in this
36 State; and

37 b. no domestic corporation shall dissolve and no domestic or
38 foreign corporation shall distribute any of its assets in dissolution or
39 liquidation to any shareholder unless

40 (1) one or more domestic corporations or foreign corporations
41 authorized to transact business in this State are owners in the
42 aggregate of 50% or more of all classes of such corporation's capital
43 stock and, prior to such dissolution or distribution, all such holders of
44 the corporation's capital stock jointly and severally undertake in
45 writing to pay all such taxes on or before the date such taxes are
46 payable; or

1 (2) such corporate action is pursuant to a plan of reorganization
 2 under which a domestic corporation or a foreign corporation
 3 authorized to transact business in this State has purchased, or is about
 4 to purchase, all, or substantially all, of the assets of such corporation
 5 in exchange for shares of its capital stock and has undertaken in
 6 writing to pay all such taxes on or before the date such taxes are
 7 payable; and

8 c. no business entity shall merge or consolidate into any other
 9 business entity other than a domestic **[corporation]** business entity or
 10 a foreign **[corporation]** business entity authorized to transact business
 11 in this State.

12 (cf: P.L.1995, c.279, s.23)

13

14 ¹[15.] ²[16.] ¹ ~~¶~~ ^{17.} ~~¶~~ ^{24.} ³ Section 3 of P.L.1973, c.367
 15 (C.54:50-14) is amended to read as follows:

16 3. The Secretary of State shall not:

17 a. accept for filing a certificate of dissolution of a domestic
 18 corporation;

19 b. issue a certificate of withdrawal of a foreign corporation, unless
 20 such withdrawal is effected by its merger or consolidation into a
 21 domestic corporation or a foreign corporation authorized to transact
 22 business in this State;

23 c. accept for filing a certificate of merger or consolidation of a
 24 domestic corporation into a foreign corporation not authorized to
 25 transact business in this State; or

26 d. accept for filing a certificate of merger or consolidation of any
 27 business entity into any other business entity other than a domestic
 28 **[corporation]** business entity or a foreign **[corporation]** business
 29 entity authorized to transact business in this State;

30 unless the business entity files with the Secretary of State a
 31 certificate issued by the Director of the Division of Taxation dated not
 32 earlier than 45 days prior to the effective date of the business entity
 33 action evidencing that the business entity's taxes have been paid or
 34 provided for.

35 (cf: P.L.1995, c.279, s.24)

36

37 ¹[16.] ²[17.] ¹ ~~¶~~ ^{18.} ~~¶~~ ^{25.} ³ This act shall take effect immediately.

38

39

40

41 Revises law concerning certain domestic and foreign entities
 42 authorized to transact business in this State.

1 domestic corporation into a foreign corporation not authorized to
2 transact business in this State; or

3 d. accept for filing a certificate of merger or consolidation of any
4 business entity into any other business entity other than a domestic
5 **[corporation]** business entity or a foreign **[corporation]** business
6 entity authorized to transact business in this State;

7 unless the business entity files with the Secretary of State a
8 certificate issued by the Director of the Division of Taxation dated not
9 earlier than 45 days prior to the effective date of the business entity
10 action evidencing that the business entity's taxes have been paid or
11 provided for.

12 (cf: P.L.1995, c.279, s.24)

13
14 16. This act shall take effect immediately.

15
16 *Sponsor's*

17 STATEMENT
18

19 This bill makes revisions to the "New Jersey Limited Liability
20 Company Act" as suggested by the 1995 Annual Report of the New
21 Jersey Corporate and Business Law Study Commission, and in
22 recognition of recent Internal Revenue Service "check-the-box"
23 regulations, to put domestic and foreign business entities authorized
24 to transact business in New Jersey on a more "level playing field" with
25 similar entities in other states.

26 Significant among these revisions, the bill: allows for perpetual
27 existence of a limited liability company, as permitted by the recent IRS
28 rules; permits a limited liability company to continue temporarily with
29 only one member, so long as one or more additional members are
30 added within 90 days; revises the termination of membership
31 provisions; authorizes each member of a limited liability company,
32 when managed by its members, to bind the limited liability company,
33 including the authority to file for insolvency or reorganization on
34 behalf of the limited liability company; clarifies the rights of a resigning
35 member to receive the fair value of the member's interest as of the
36 date of resignation; and finally, adds a new section to the act requiring
37 limited liability companies to file an annual report with the Secretary
38 of State.

39 The New Jersey Corporate and Business Law Study Commission is
40 charged with studying and reviewing statutes, legislation and decisions
41 of the courts of New Jersey and other states relating to business
42 entities, including business and nonprofit corporations, partnerships
43 and the issuance of ownership interests and securities, and then
44 reporting annually to the Governor and the Legislature concerning its
45 findings.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2875

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 1, 1997

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2875.

This bill makes revisions to the "New Jersey Limited Liability Company Act" as suggested by the 1995 Annual Report of the New Jersey Corporate and Business Law Study Commission, and in recognition of recent Internal Revenue Service "check-the-box" regulations, to put domestic and foreign business entities authorized to transact business in New Jersey on a more "level playing field" with similar entities in other states.

The bill: allows for perpetual existence of a limited liability company, as permitted by the recent IRS rules; permits a limited liability company to continue temporarily with only one member, so long as one or more additional members are added within 90 days; revises the termination of membership provisions; authorizes each member of a limited liability company, when managed by its members, to bind the limited liability company, including the authority to file for insolvency or reorganization on behalf of the limited liability company; clarifies the rights of a resigning member to receive the fair value of the member's interest as of the date of resignation; and finally, adds a new section to the act requiring limited liability companies to file an annual report with the Secretary of State.

The New Jersey Corporate and Business Law Study Commission is charged with studying and reviewing statutes, legislation and decisions of the courts of New Jersey and other states relating to business entities, including business and nonprofit corporations, partnerships and the issuance of ownership interests and securities.

The committee amendments made certain changes in section 5 of the bill. "Without" is changed to "with" in subsection b.(2)(a). In b.(2)(b) "or substantially all" is deleted. In b.(d) "or a partnership" is inserted and in b.(7) "termination" is changed to "dissolution".

The amendment in section 10 is technical and merely inserts a missing "the." A new section is inserted to amend N.J.S.A. 42:2B-65 to include certain new fees; a \$50.00 fee for filing an annual report and a late filing fee of \$200.00 for reinstatement of a certificate and a \$50.00 reinstatement filing fee. The amendments also add a new

paragraph (3) to section 14 of the bill (section 13 in the bill as introduced). This new paragraph provides for reinstatement of certificates that have been transferred to the inactive list or revoked. It further provides for relation back of the reinstatement to validate actions taken in the interim. The Secretary of State shall provide the forms necessary for effecting these annual report reinstatements.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2875

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 1997

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2875 [1R].

This bill would make revisions to the "New Jersey Limited Liability Company Act" as suggested in the 1995 Annual Report of the New Jersey Corporate and Business Law Study Commission.

This bill would:

1. Allow for the perpetual existence of limited liability company, as permitted by recent Internal Revenue Service rules;
2. Permit a limited liability company to continue temporarily with only one member, so long as one or more additional members are added within 90 days;
3. Revise the termination of membership provisions of current law.;
4. Authorizes each member of a limited liability company, when managed by its members, to bind the company, including the authority to file for insolvency or reorganization on behalf of the limited liability company;
5. Clarifies the rights of a resigning member to receive the fair value of the member's interest as of the date of resignation;
6. Adds a new section to the present law requiring limited liability companies to file an annual report with the Secretary of State;
7. Establish a procedure for the reinstatement of the certificates of limited liability corporations that have been revoked or transferred to the inactive list.

The amendments adopted by the committee would delete two paragraphs from N.J.S.A.42:2B-7. Enactment of the bill would make these provisions unnecessary.

These amendments make this bill identical to S1993 [1R].

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 2875

with Senate Floor Amendments
(Proposed By Senator LaROSSA)

ADOPTED: JUNE 19, 1997

The amendments to Assembly, No. 2875(2R) streamline the procedures for revoking and reinstating the certificates issued by the Secretary of State which give authority to the following domestic and foreign entities to transact business in this State: for profit corporations; limited partnerships; and limited liability partnerships. This streamlined procedure is present already in Assembly, No. 2875 (2R) for limited liability companies.

These amendments remove (1) the penalty imposed on any domestic or foreign for-profit corporation which fails to file a certificate of change of its registered office or agent or its annual report and (2) the action which would result in the subsequent entry of the name of the corporation as a judgment debtor upon the Clerk of the Superior Court's record of docketed judgments.

Under these amendments, the Secretary of State will reinstate an entity's certificate, if the entity pays all fees required. These fees vary according to the entity whose certificate is being reinstated, but include the following, as appropriate: a reinstatement filing fee; a tax clearance fee; current annual report fee; all delinquent annual report fees; current fee for filing a certificate and a reinstatement filing assessment.

The amendments further provide that, if the name of the entity has become unavailable in the period during which the entity's certificate was revoked, the entity may file an amended certificate changing its name, if a domestic entity, or taking an assumed name, if a foreign entity.

Governor's statement

6/27/97

In addition to signing the FY 1998 budget, Gov. Christie Whitman today signed the following budget-related measures:

A-1668, sponsored by Assembly Members Walter J. Kavanaugh (R-Morris/Somerset) and Steve Corodemus (R-Monmouth) and Senator Peter Inverso (R-Mercer/Middlesex), amends the Spill Compensation and Control Act to change the calculation of the tax imposed upon the owner or operator of a major facility. Revenue generated by the tax is used to pay for emergency cleanups, third party claims and Department of Environmental Protection (DEP) administrative and research costs.

A-2532, sponsored by Assembly Members Leonard Lance (R-Warren/Hunterdon/Mercer) and Carol J. Murphy (R-Essex/Morris/Passaic) and Senator Dick LaRossa (R-Mercer/Middlesex), increases from \$100,000 to \$500,000 the value of surplus real property a State department may sell without specific legislative authorization.

A-2560, sponsored by Assembly Members Alex DeCroce (R-Essex/Morris/Passaic) and John C. Gibson (R-Cape May/Atlantic/Cumberland) and Senators Gerald Cardinale (R-Bergen) and Andrew Ciesla (R-Monmouth/Ocean), authorizes the Commissioner of the Department of Transportation to select seven transportation projects to be developed as demonstration projects using public/private partnership agreements.

A-2574, sponsored by Assembly Members Alan Augustine (R-Middlesex/Morris/Somerset/Union) and Richard Bagger (R-Middlesex/Morris/Somerset/Union) and Senators Louis Bassano (R-Essex/Union) and James Cafiero (R-Cape May/Atlantic/Cumberland), permits service in PFRS-covered employment beyond age 65 in certain cases.

A-2648 sponsored by Assembly Members Thomas S. Smith (R-Monmouth) and John Kelly (R-Bergen/Essex/Passaic) and Senator Dick LaRossa (R-Mercer), appropriates \$2.38 million from the Petroleum Overcharge Reimbursement Fund to the Department of Community Affairs for energy-related conservation measures for low income households.

A-2844, sponsored by Assembly Members Christopher Bateman (R-Morris/Somerset) and Wilfredo Caraballo (D-Essex) and Senators Jack Ewing (R-Morris/Somerset) and Joe Kyrillos (R-Middlesex/Monmouth), removes certain limitations on reinstatements of certificates of incorporation of nonprofit corporations.

A-2875, sponsored by Assembly Members Gary W. Stuhltrager (R-Salem/Cumberland/Gloucester) and David C. Russo (R-Bergen/Passaic) and Senators Dick LaRossa (R-Mercer) and Peter Inverso (Mercer/Middlesex), makes revisions to the New Jersey Limited Liability Company Act concerning limited liability companies, limited partnerships, limited liability partnerships and for-profit corporations. The bill is intended to put business entities authorized to transact business in New Jersey on a more level playing field with similar entities in other states.

1995 ANNUAL REPORT
OF THE
NEW JERSEY CORPORATE
AND
BUSINESS LAW STUDY COMMISSION
TO THE
GOVERNOR AND THE LEGISLATURE
OF THE
STATE OF NEW JERSEY

January 9, 1996

To: The Honorable Christine Todd Whitman, Governor, the Honorable Donald T. DiFrancesco, President of the Senate, and the Honorable Garabed Haytaian, Speaker of the Assembly.

The New Jersey Corporate and Business Law Study commission ("Commission") respectfully submits this Annual Report about its activities. The Commission was established in 1989 as a permanent part of the Legislative Branch by New Jersey Statutes Annotated 1:14-12. The Commission is charged with studying and reviewing statutes, legislation and decisions of the courts of New Jersey and other states relating to business entities, including business corporations, nonprofit corporations, partnerships and the issuance of ownership interests and securities and then with reporting annually to the Governor and the Legislature concerning its findings.

In accordance with that charge, we recommend that legislation be introduced in the next Session of the Legislature to address the following:

Revisions to N.J.S.A. Title 42:2B

1. 42:2B-14. Revise both subsection (a) and (b) to reflect that a limited liability company may temporarily have only one member, as provided in the revision proposed for 42:2B-48. This and the related revision will clarify that a limited liability company does not automatically lose its existence as a limited liability company if only one member remains, so long as one or more additional members is added within 90 days.

2. 42:2B-20. Revise the tax clearance requirements to authorize the Division of Taxation to adopt regulations waiving the tax clearance procedure if the surviving entity is either a

New Jersey limited liability company or a foreign limited liability company qualified to do business in New Jersey and the limited liability company enters into an assumption agreement acceptable to the Division. This will, to the extent the Division finds it acceptable, allow for a simplified merger clearance procedure while maintaining assurance that taxes due will be paid.

3. 42:2B-22. Delete the last sentence of subsection (b). This sentence currently provides that member voting (in the absence of a provision to the contrary in a limited liability company agreement), will be per capita. It was included as a "default rule" because of concerns for certain earlier comments of the Internal Revenue Service about limited liability companies. Subsequent Internal Revenue Service pronouncements have made this provision unnecessary and its continued presence in the statute raises a significant risk of conflict with 42:2B-27. Section 27 provides that voting on management decisions (in the absence of a different provision in the operating agreement) will be based upon the member's percentage interest in profits. Deletion of the last sentence from Section 22(b) will avoid the need to determine whether the subject matter of a vote is a "management" matter.

4. 42:2B-27. Add a provision that whenever a limited liability company is managed by its members, then unless otherwise provided in an operating agreement, each member shall have the authority to bind the limited liability company

including (so long as such action is approved by the members holding majority in interest) authority to file on behalf of the limited liability company under Federal and State insolvency and reorganization. This will clarify an issue related to Federal Tax Treatment of New Jersey limited liability companies. Add a parallel provision that unless otherwise provided in an operating agreement, members have no authority to bind a limited liability company which is managed by one or more managers. This addition should also expressly authorize the managers, unless otherwise provided in the operating agreement, to file on behalf of the limited liability company under Federal and State insolvency and reorganization laws. This will insure that the distinction is clear between member authority to bind the entity in a member-managed limited liability company as opposed to a manager-managed limited liability company. Revise the sentence that refers to "management, in whole or in part, of a limited liability company by a manager", to read "by one or more managers", to clarify that the limited liability company may have any number of managers.

5. 42:2B-39. Revise to modify the right to a resigning member to receive the fair value of his interest as of the date of resignation by providing a valuation rule in all cases, unless otherwise provided in the operating agreement. That valuation rule would define "fair value" in those circumstances as the lesser of: (i) the resigning member's right to share in liquidating distributions as if the limited liability company had dissolved and wound up its affairs under 42:2B-51 as of the date

of resignation, or (ii) the resigning member's share of the going concern value of the limited liability company based on the discounted present value of reasonably anticipated future distributions as if the limited liability company were to continue for 25 years.

6. 42:2B-44. Add a new subsection e to clarify that an assignee has no ability to obtain an order from a court ordering dissolution or liquidation of an limited liability company. This is consistent with the existing statute, which gives an assignee only an economic interest in an limited liability company and not any rights of management, let alone to force a termination of the entity.

7. 42:2B-45. Add a clarifying provision that a charging order is the sole remedy of a creditor of a member, so that the creditor is not able under state law to interfere with management of or force a dissolution of an entity, or to order a foreclosure sale of a limited liability company interest. The rights of a creditor of a member under Federal bankruptcy and reorganization law will, of course, remain as they are.

8. 42:2B-48. Revise this provision in two respects. First, reduce the consent requirement to continue the limited liability company from consent of all members to consent of members holding a majority in interest of the remaining members. Second, in the case where only one member remains after a dissolution event, permit the limited liability company to continue provided at least one additional member is brought in

within 90 days of the occurrence of the dissolution event. The first revision reflects increased flexibility under Federal tax law to be eligible for partnership tax treatment; the Internal Revenue Service has ruled that majority approval for continuation is sufficient. The second revision addresses the problem of automatic dissolution for limited liability companies which lose all but a last member. This is a particular risk in a family business where death may unexpectedly eliminate all but one member. The revision allows a reasonable time for reformation without loss of limited liability status. This essentially allows for a new event of dissolution, i.e. where there is a limited liability company with only one member for more than 90 days. Therefore, Section 14(a) and (b), need not reference the one member situation.

9. 42:2B-50. Correct the erroneous reference to the "Court of Chancery" by replacing it with "Superior Court."

10. New Section 42:2B-71. Add a new section requiring all domestic and foreign limited liability companies to file an annual report with the Office of the Secretary of State setting forth the name and address of the limited liability company, the name of the registered agent and, if the limited liability company is managed by managers, the name(s) and address(es) of the managers. The Section should provide that if no report is filed for two consecutive years, the certificate of a domestic limited liability company will be transferred to an inactive list maintained by the office of the Secretary of State but the

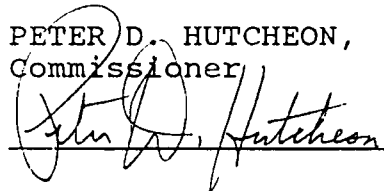
limited liability company shall remain a limited liability company and the limited liability of members, managers, etc. shall not be affected by the transfer. The name of a limited liability company on the inactive list shall (subject to any other rights that limited liability company may have to its name) be available for use by any other limited liability company (including one newly formed). In the case of a foreign limited liability company which fails to file a report for two consecutive years may have its certificate to do business in New Jersey revoked.

Conclusion

We appreciate the opportunities to serve our State and to address the laws relating to business entitles and non-profit corporations. We hope this report is helpful to you and we look forward to assisting the Legislature as it may request in addressing the legislations we propose.

Respectfully submitted,

PETER D. HUTCHEON,
Commissioner



WALTER J. FESSLER,
Commissioner



RICHARD D. TRENK,
Commissioner