

42:2B-20

**LEGISLATIVE HISTORY CHECKLIST**  
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(Limited liability--merge or consolidate)

**NJSA:** 42:2B-20

**LAWS OF:** 1995 **CHAPTER:** 222

**BILL NO:** A2151

**SPONSOR(S):** Solomon

**DATE INTRODUCED:** September 19, 1994

**COMMITTEE:** **ASSEMBLY** Labor

**SENATE:** ---

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
First reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** May 1, 1995

**SENATE:** June 22, 1995

**DATE OF APPROVAL:** August 15, 1995

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** No

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

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[CORRECTED COPY]

[FIRST REPRINT]

ASSEMBLY, No. 2151

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1994

By Assemblymen SOLOMON and RUSSO

1 AN ACT concerning the authority of limited liability companies  
2 to merge or consolidate with other business entities and  
3 amending P.L.1993, c.210.

4  
5 BE IT ENACTED *by the Senate and General Assembly of the*  
6 *State of New Jersey:*

7 1. Section 20 of P.L.1993, c.210 (C.42:2B-20) is amended to  
8 read as follows:

9 20. a. As used in this section, "other business entity" means a  
10 corporation, or a business trust or association, a real estate  
11 investment trust, a common-law trust, or any other  
12 unincorporated business, including a partnership <sup>1</sup>[(whether  
13 general or limited)]<sup>1</sup>, and a foreign limited liability company, but  
14 excluding a domestic limited liability company.

15 b. (1) Pursuant to an agreement of merger or consolidation, a  
16 domestic limited liability company may merge or consolidate  
17 with or into one or more domestic limited liability companies or  
18 other business entities formed or organized under the laws of this  
19 State or any other state or the United States or any foreign  
20 country or other foreign jurisdiction, with such domestic limited  
21 liability company or other business entity as the agreement shall  
22 provide being the surviving or resulting domestic limited liability  
23 company or other business entity. Unless otherwise provided in  
24 the operating agreement, a merger or consolidation shall be  
25 approved by the members of each domestic limited liability  
26 company which is to merge or consolidate or, if there is more  
27 than one class or group of members, then by each class or group  
28 of members who under the provisions of the operating agreement  
29 are entitled to vote, in either case, by members who own more  
30 than 50 percent (unless a higher percentage is specified in the  
31 operating agreement) of the then current percentage or other  
32 interest in the profits of the domestic limited liability company  
33 owned by all of the members or by the members in each class or  
34 group, as appropriate. In connection with a merger or  
35 consolidation hereunder, rights or securities of, or interests in, a  
36 domestic limited liability company or other business entity which  
37 is a constituent party to the merger or consolidation may be  
38 exchanged for or converted into cash, property, rights or  
39 securities of, or interests in, the surviving or resulting domestic  
40 limited liability company or other business entity or, in addition  
41 to or in lieu thereof, may be exchanged for or converted into  
42 cash, property, rights or securities of, or interests in, a domestic

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ALA committee amendments adopted March 23, 1995.

1 limited liability company or other business entity which is not the  
2 surviving or resulting limited liability company or other business  
3 entity in the merger or consolidation. Notwithstanding prior  
4 approval, an agreement of merger or consolidation may be  
5 terminated or amended pursuant to a provision for such  
6 termination or amendment contained in the agreement of merger  
7 or consolidation.

8 (2) A domestic limited liability company may not merge or  
9 consolidate with an other business entity if authority for such  
10 merger or consolidation is not granted by the laws of the  
11 jurisdiction under which the other business entity is organized.

12 (3) With respect to the merger or consolidation of domestic  
13 limited liability companies, each domestic limited liability  
14 company shall comply with the provisions of this section and each  
15 other business entity shall comply with the applicable provisions  
16 of the laws of the jurisdiction under which it is organized.

17 c. If a domestic limited liability company merges or  
18 consolidates under this section, the domestic limited liability  
19 company or other business entity surviving or resulting in or from  
20 the merger or consolidation shall file a certificate of merger or  
21 consolidation in the office of the Secretary of State. <sup>1</sup>The  
22 Secretary of State shall, upon filing, forward a copy of the  
23 certificate of merger or consolidation to the Director of the  
24 Division of Taxation.<sup>1</sup> The certificate of merger or consolidation  
25 shall state:

26 (1) The name and jurisdiction of formation or organization of  
27 each of the domestic limited liability companies or other business  
28 entities which is to merge or consolidate;

29 (2) That an agreement of merger or consolidation has been  
30 approved and executed by each of the domestic limited liability  
31 companies or other business entities which is to merge or  
32 consolidate;

33 (3) The name of the surviving or resulting domestic limited  
34 liability company or other business entity;

35 (4) The future effective date or time (which shall be a date or  
36 time certain) of the merger or consolidation if it is not to be  
37 effective upon the filing of the certificate of merger or  
38 consolidation;

39 (5) That the agreement of merger or consolidation is on file at  
40 a place of business of the surviving or resulting domestic limited  
41 liability company or other business entity, and shall state the  
42 address thereof;

43 (6) That a copy of the agreement of merger or consolidation  
44 [will] shall be furnished by the surviving or resulting domestic  
45 limited liability company or other business entity, on request and  
46 without cost, to any member of any domestic limited liability  
47 company or any person holding an interest in any other business  
48 entity which is to merge or consolidate; and

49 (7) If the surviving or resulting entity is not a domestic limited  
50 liability company, or a corporation or limited partnership  
51 organized under the laws of this State, a statement that such  
52 surviving or resulting other business entity agrees that it may be  
53 served with process in this State in any action, suit or proceeding  
54 for the enforcement of any obligation of any domestic limited

1 liability company which is to merge or consolidate, irrevocably  
2 appointing the Secretary of State as its agent to accept service  
3 of process in any such action, suit or proceeding and specifying  
4 the address to which a copy of such process shall be mailed to it  
5 by the Secretary of State.

6 d. Unless a future effective date or time is provided in a  
7 certificate of merger or consolidation, in which event a merger  
8 or consolidation shall be effective at any such future effective  
9 date or time, a merger or consolidation shall be effective upon  
10 the filing in the office of the Secretary of State of a certificate  
11 of merger or consolidation.

12 e. A certificate of merger or consolidation shall act as a  
13 certificate of cancellation for a domestic limited liability  
14 company which is not the surviving or resulting entity in the  
15 merger or consolidation.

16 f. An agreement of merger or consolidation approved in  
17 accordance with subsection b. of this section may (1) effect any  
18 amendment to the operating agreement or (2) effect the adoption  
19 of a new operating agreement for a limited liability company if it  
20 is the surviving or resulting limited liability company in the  
21 merger or consolidation. Any amendment to an operating  
22 agreement or adoption of a new operating agreement made  
23 pursuant to this subsection shall be effective at the time or date  
24 of the merger or consolidation. The provisions of this subsection  
25 shall not be construed to limit the accomplishment of a merger or  
26 of any of the matters referred to herein by any other means  
27 provided for in an operating agreement or other agreement or as  
28 otherwise permitted by law, including that the operating  
29 agreement of any constituent limited liability company to the  
30 merger or consolidation (including a limited liability company  
31 formed for the purpose of consummating a merger or  
32 consolidation) shall be the operating agreement of the surviving  
33 or resulting limited liability company.

34 g. When any merger or consolidation becomes effective under  
35 this section, for all purposes of the laws of this State, all of the  
36 rights, privileges and powers of each of the domestic limited  
37 liability companies and other business entities that have merged  
38 or consolidated, and all property, real, personal and mixed, and  
39 all debts due to any of those domestic limited liability companies  
40 and other business entities, as well as all other things and causes  
41 of action belonging to each of those domestic limited liability  
42 companies and other business entities, shall be vested in the  
43 surviving or resulting domestic limited liability company or other  
44 business entity, and shall thereafter be the property of the  
45 surviving or resulting domestic limited liability company or other  
46 business entity as they were of each of the domestic limited  
47 liability companies and other business entities that have merged  
48 or consolidated, and the title to any real property vested by deed  
49 or otherwise, under the laws of this State, in any of those  
50 domestic limited liability companies and other business entities,  
51 shall not revert or be in any way impaired by reason of this act;  
52 but all rights of creditors and all liens upon any property of any  
53 of those domestic limited liability companies and other business  
54 entities shall be preserved unimpaired, and all debts, liabilities

1 and duties of each of those domestic limited liability companies  
2 and other business entities that have merged or consolidated shall  
3 attach to the surviving or resulting domestic limited liability  
4 company or other business entity, and may be enforced against it  
5 to the same extent as if the debts, liabilities and duties had been  
6 incurred or contracted by it. Unless otherwise agreed, a merger  
7 or consolidation of a domestic limited liability company,  
8 including a domestic limited liability company which is not the  
9 surviving or resulting entity in the merger or consolidation, shall  
10 not require the domestic limited liability company to wind up its  
11 affairs under section 50 of this act or pay its liabilities and  
12 distribute its assets under section 51 of this act.

13 (cf: P.L.1993, c.210, s.20)

14 2. This act shall take effect <sup>1</sup>[immediately] on the 90th day  
15 following the date of enactment<sup>1</sup>.

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19

20 Provides that limited liability companies may merge or  
21 consolidate with other business entities if authorized by the laws  
22 under which those other business entities are organized.

1 company or other business entity, and may be enforced against it  
2 to the same extent as if the debts, liabilities and duties had been  
3 incurred or contracted by it. Unless otherwise agreed, a merger  
4 or consolidation of a domestic limited liability company,  
5 including a domestic limited liability company which is not the  
6 surviving or resulting entity in the merger or consolidation, shall  
7 not require the domestic limited liability company to wind up its  
8 affairs under section 50 of this act or pay its liabilities and  
9 distribute its assets under section 51 of this act.

10 (cf: P.L.1993, c.210. s.20)

11 2. This act shall take effect immediately.

12  
13 *Sponsor's* STATEMENT  
14

15 This bill clarifies that a domestic limited liability company  
16 may not merge or consolidate with another business entity unless  
17 authority for such merger or consolidation is granted by the laws  
18 of the jurisdiction under which the other business entity is  
19 organized.

20 The bill also provides that domestic limited liability companies  
21 shall comply with the provisions of the "New Jersey Limited  
22 Liability Company Act" with respect to merger or consolidation  
23 and that other business entities shall comply with the  
24 requirements for merger or consolidation of the laws under which  
25 they are organized.

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29  
30 Provides that limited liability companies may merge or  
31 consolidate with other business entities if authorized by the laws  
32 under which those other business entities are organized.

ASSEMBLY LABOR, BUSINESS AND INDUSTRY COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2151**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 23, 1995

Assembly Labor, Business and Industry Committee reports favorably Assembly Bill No. 2151, with committee amendments.

This bill clarifies that a domestic limited liability company may not merge or consolidate with another business entity unless authority for such merger or consolidation is granted by the laws of the jurisdiction under which the other business entity is organized.

The bill also provides that domestic limited liability companies shall comply with the provisions of the "New Jersey Limited Liability Company Act" with respect to merger or consolidation and that other business entities shall comply with the requirements for merger or consolidation of the laws under which they are organized.

The committee amended the bill to provide the following: that the bill shall take effect on the 90th day following the date of enactment; require that the Secretary of State forward a copy of the certificate of merger or consolidation to the Director of the Division of Taxation; and, clarify that "other business entity" includes all partnerships. The term also includes limited liability partnerships, which are a type of general partnership.

Amendments requiring business entities to obtain tax clearance certificates before they merge or consolidate into limited liability companies have been made by way of the Assembly labor, Business and Industry Committee amendments to Assembly Bill No. 2155.