

**LEGISLATIVE HISTORY CHECKLIST**  
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(Partnerships--merge--business entities)

NJSA: 42:1-49

LAWS OF: 1995 CHAPTER: 223

BILL NO: A2152

SPONSOR(S): Russo and 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, 1996

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

KBG:pp

[FIRST REPRINT]  
ASSEMBLY, No. 2152

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1994

By Assemblymen SOLOMON and RUSSO

1 AN ACT allowing partnerships to merge or consolidate with  
2 certain other business entities and supplementing chapter 1 of  
3 Title 42 of the Revised Statutes.

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

7 1. a. As used in this section, "other business entity" means  
8 a business corporation, partnership <sup>1</sup>[(whether general or  
9 limited)]<sup>1</sup>, or a limited liability company.

10 b. (1) Pursuant to an agreement of merger or consolidation, a  
11 partnership may merge or consolidate with or into one or more  
12 partnerships or other business entities formed or organized under  
13 the laws of this State or any other state or the United States or  
14 any foreign country or other foreign jurisdiction, with such  
15 partnership or other business entity as the agreement shall  
16 provide being the surviving or resulting partnership or other  
17 business entity. Unless otherwise provided in the partnership  
18 agreement, a merger or consolidation shall be approved by all  
19 partners of each partnership which is to merge or consolidate. In  
20 connection with a merger or consolidation hereunder, rights or  
21 securities of, or interests in, a partnership or other business  
22 entity which is a constituent party to the merger or consolidation  
23 may be exchanged for or converted into cash, property, rights or  
24 securities of, or interests in, the surviving or resulting  
25 partnership or other business entity or, in addition to or in lieu  
26 thereof, may be exchanged for or converted into cash, property,  
27 rights or securities of, or interests in, a partnership or other  
28 business entity which is not the surviving or resulting partnership  
29 or other business entity in the merger or consolidation.  
30 Notwithstanding prior approval, an agreement of merger or  
31 consolidation may be terminated or amended pursuant to a  
32 provision for such termination or amendment contained in the  
33 agreement of merger or consolidation.

34 (2) A partnership may not merge or consolidate with any other  
35 business entity if authority for such merger or consolidation is  
36 not granted by the laws of the jurisdiction under which the other  
37 business entity is organized.

38 (3) With respect to the merger or consolidation of  
39 partnerships, each partnership shall comply with the provisions of  
40 this section and each other business entity shall comply with the  
41 applicable provisions of the laws of the jurisdiction under which it  
42 is organized.

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 c. If a partnership merges or consolidates under this section,  
2 the partnership or other business entity surviving or resulting in,  
3 or from the merger or consolidation, shall file a certificate of  
4 merger or consolidation in the office of the Secretary of State.

5 <sup>1</sup>The Secretary of State shall, upon filing, forward a copy of the  
6 certificate of merger or consolidation to the Director of the  
7 Division of Taxation.<sup>1</sup> The certificate of merger or consolidation  
8 shall state:

9 (1) The name and jurisdiction of formation or organization of  
10 each of the partnerships or other business entities which is to  
11 merge or consolidate;

12 (2) That an agreement of merger or consolidation has been  
13 approved and executed by each of the partnerships or other  
14 business entities which is to merge or consolidate;

15 (3) The name of the surviving or resulting partnership or other  
16 business entity;

17 (4) The future effective date or time (which shall be a date or  
18 time certain) of the merger or consolidation if it is not to be  
19 effective upon the filing of the certificate of merger or  
20 consolidation;

21 (5) That the agreement of merger or consolidation is on file at  
22 a place of business of the surviving or resulting partnership or  
23 other business entity, and shall state the address thereof;

24 (6) That a copy of the agreement of merger or consolidation  
25 shall be furnished by the surviving or resulting partnership or  
26 other business entity, on request and without cost, to any member  
27 of any partnership or any person holding an interest in any other  
28 business entity which is to merge or consolidate; and

29 (7) If the surviving or resulting entity is not a partnership or  
30 other business entity organized under the laws of this State, a  
31 statement that such surviving or resulting other business entity  
32 agrees that it may be served with process in this State in any  
33 action, suit or proceeding for the enforcement of any obligation  
34 of any partnership which is to merge or consolidate, irrevocably  
35 appointing the Secretary of State as its agent to accept service  
36 of process in any such action, suit or proceeding and specifying  
37 the address to which a copy of such process shall be mailed to it  
38 by the Secretary of State.

39 d. Unless a future effective date or time is provided in a  
40 certificate of merger or consolidation, in which event a merger  
41 or consolidation shall be effective at any such future effective  
42 date or time, a merger or consolidation shall be effective upon  
43 the filing in the office of the Secretary of State of a certificate  
44 of merger or consolidation.

45 e. A certificate of merger or consolidation shall act as a  
46 certificate of cancellation for a partnership which is not the  
47 surviving or resulting entity in the merger or consolidation.

48 f. An agreement of merger or consolidation approved in  
49 accordance with subsection b. of this section may (1) effect any  
50 amendment to the <sup>1</sup>[operating] partnership<sup>1</sup> agreement or (2)  
51 effect the adoption of a new <sup>1</sup>[operating] partnership<sup>1</sup> agreement  
52 for a partnership if it is the surviving or resulting partnership in  
53 the merger or consolidation. Any amendment to <sup>1</sup>[an operating] a  
54 partnership<sup>1</sup> agreement or adoption of a new <sup>1</sup>[operating]

1 partnership<sup>1</sup> agreement made pursuant to this subsection shall be  
2 effective at the time or date of the merger or consolidation. The  
3 provisions of this subsection shall not be construed to limit the  
4 accomplishment of a merger or of any of the matters referred to  
5 herein by any other means provided for in <sup>1</sup>[an operating] a  
6 partnership<sup>1</sup> agreement or other agreement or as otherwise  
7 permitted by law, including that the <sup>1</sup>[operating] partnership<sup>1</sup>  
8 agreement of any constituent partnership to the merger or  
9 consolidation (including a partnership formed for the purpose of  
10 consummating a merger or consolidation) shall be the <sup>1</sup>[operating]  
11 partnership<sup>1</sup> agreement of the surviving or resulting partnership.

12 g. When any merger or consolidation becomes effective under  
13 this section, for all purposes of the laws of this State, all of the  
14 rights, privileges and powers of each of the partnerships and  
15 other business entities that have merged or consolidated, and all  
16 property, real, personal and mixed, and all debts due to any of  
17 those partnerships and other business entities, as well as all other  
18 things and causes of action belonging to each of those  
19 partnerships and other business entities, shall be vested in the  
20 surviving or resulting partnership or other business entity, and  
21 shall thereafter be the property of the surviving or resulting  
22 partnership or other business entity as they were of each of the  
23 partnerships and other business entities that have merged or  
24 consolidated, and the title to any real property vested by deed or  
25 otherwise, under the laws of this State, in any of those  
26 partnerships and other business entities, shall not revert or be in  
27 any way impaired by reason of this act; but all rights of creditors  
28 and all liens upon any property of any of those partnerships and  
29 other business entities shall be preserved unimpaired, and all  
30 debts, liabilities and duties of each of those partnerships and  
31 other business entities that have merged or consolidated shall  
32 attach to the surviving or resulting partnership or other business  
33 entity, and may be enforced against it to the same extent as if  
34 the debts, liabilities and duties had been incurred or contracted  
35 by it. Unless otherwise agreed, a merger or consolidation of a  
36 partnership, including a partnership which is not the surviving or  
37 resulting entity in the merger or consolidation, shall not require  
38 the dissolution of the partnership pursuant to R.S.42:1-31 or  
39 require the partnership to pay its liabilities and distribute its  
40 assets pursuant to R.S.42:1-40.

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

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48 Allows partnerships to merge or consolidate with certain other  
business entities.

1 the operating agreement of the surviving or resulting partnership.  
2 g. When any merger or consolidation becomes effective under  
3 this section, for all purposes of the laws of this State, all of the  
4 rights, privileges and powers of each of the partnerships and  
5 other business entities that have merged or consolidated, and all  
6 property, real, personal and mixed, and all debts due to any of  
7 those partnerships and other business entities, as well as all other  
8 things and causes of action belonging to each of those  
9 partnerships and other business entities, shall be vested in the  
10 surviving or resulting partnership or other business entity, and  
11 shall thereafter be the property of the surviving or resulting  
12 partnership or other business entity as they were of each of the  
13 partnerships and other business entities that have merged or  
14 consolidated, and the title to any real property vested by deed or  
15 otherwise, under the laws of this State, in any of those  
16 partnerships and other business entities, shall not revert or be in  
17 any way impaired by reason of this act; but all rights of creditors  
18 and all liens upon any property of any of those partnerships and  
19 other business entities shall be preserved unimpaired, and all  
20 debts, liabilities and duties of each of those partnerships and  
21 other business entities that have merged or consolidated shall  
22 attach to the surviving or resulting partnership or other business  
23 entity, and may be enforced against it to the same extent as if  
24 the debts, liabilities and duties had been incurred or contracted  
25 by it. Unless otherwise agreed, a merger or consolidation of a  
26 partnership, including a partnership which is not the surviving or  
27 resulting entity in the merger or consolidation, shall not require  
28 the dissolution of the partnership pursuant to R.S.42:1-31 or  
29 require the partnership to pay its liabilities and distribute its  
30 assets pursuant to R.S.42:1-40.

31 2. This act shall take effect immediately.  
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#### 34 STATEMENT 35

36 This bill allows partnerships to merge or consolidate with or  
37 into one or more partnerships or other business entities formed or  
38 organized under the laws of this State or any other state or the  
39 United States or any foreign country or other foreign  
40 jurisdiction. The bill defines "other business entity" as a business  
41 corporation, partnership (whether general or limited), or a limited  
42 liability company.

43 The bill provides that, unless otherwise provided in the  
44 partnership agreement, a merger or consolidation shall be  
45 approved by all general partners of each partnership which is to  
46 merge or consolidate.

47 The bill requires that the partnership or other business entity  
48 which survives or results from, or in the merger or consolidation,  
49 file a certificate of merger in the office of the Secretary of  
50 State, which sets forth various information stipulated by the bill.

51 Under the bill's provisions, all of the rights, privileges, powers,  
52 debts, causes of action and property of each of the partnerships  
53 and other business entities that have merged or consolidated  
54 become vested in the surviving or resulting partnership or other

1 business entity.

2 The bill provides that a partnership may not merge or  
3 consolidate with an other business entity if authority for such  
4 merger or consolidation is not granted by the laws of the  
5 jurisdiction under which the other business entity is organized.

6 The bill also provides that partnerships shall comply with the  
7 provisions of the bill with respect to merger or consolidation and  
8 that other business entities shall comply with the requirements  
9 for merger or consolidation of the laws of the jurisdiction under  
10 which they are organized.

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16 Allows partnerships to merge or consolidate with certain other  
business entities.

ASSEMBLY LABOR, BUSINESS AND INDUSTRY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2152

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 23, 1995

The Assembly Labor, Business and Industry Committee reports favorably, Assembly, No. 2152, with committee amendments.

This bill allows partnerships to merge or consolidate with or into one or more partnerships or other business entities formed or organized under the laws of this State or any other state or the United States or any foreign country or other foreign jurisdiction. The bill defines "other business entity" as a business corporation, partnership, or a limited liability company.

The bill provides that, unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by all general partners of each partnership which is to merge or consolidate.

The bill requires that the partnership or other business entity which survives or results from, or in the merger or consolidation, file a certificate of merger in the office of the Secretary of State, which sets forth various information stipulated by the bill.

Under the bill's provisions, all of the rights, privileges, powers, debts, causes of action and property of each of the partnerships and other business entities that have merged or consolidated become vested in the surviving or resulting partnership or other business entity.

The bill provides that a partnership may not merge or consolidate with another business entity if authority for such merger or consolidation is not granted by the laws of the jurisdiction under which the other business entity is organized.

The bill also provides that partnerships shall comply with the provisions of the bill with respect to merger or consolidation and that other business entities shall comply with the requirements for merger or consolidation of the laws of the jurisdiction under which they are organized.

The committee amended the bill to provide the following: change the term "operating agreement" to the term "partnership agreement" in subsection f. of section 1 to correct the unintentional misnaming of that particular business agreement; that the bill shall take effect on the 90th day following the date of enactment; 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 partnerships have been made by way of the Assembly Labor, Business and Industry Committee amendments to Assembly, No. 2155.