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LAW/RWH

P.L.2013, CHAPTER 276, *approved January 17, 2014*
Assembly, No. 4023 (*First Reprint*)

1 AN ACT concerning limited liability companies and amending
2 P.L.2012, c.50.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 8 of P.L.2012, c.50 (C.42:2C-8) is amended to read
8 as follows:

9 8. Name.

10 a. The name of a limited liability company shall contain the
11 words "limited liability company" or the abbreviation "L.L.C." or
12 "LLC". "Limited" may be abbreviated as "Ltd.", and "company"
13 may be abbreviated as "Co.".

14 b. Unless authorized by subsection **[c.] d.** of this section, the
15 name of a limited liability company shall be distinguishable in the
16 records of the filing office from:

17 (1) the name of each person that is not an individual and that is
18 incorporated, organized, or authorized to transact business in this
19 State; and

20 (2) each name reserved under section 10 of this act.

21 c. Furthermore, the name of a limited liability company shall
22 not contain any word or phrase, or any abbreviation or derivative
23 thereof, the use of which is prohibited or restricted by any other
24 statute of this State, unless the limited liability company has
25 complied with the restrictions.

26 d. A limited liability company may apply to the filing office for
27 authorization to use a name that does not comply with subsection b.
28 of this section. The filing office shall authorize use of the name
29 applied for if, as to each noncomplying name:

30 (1) the present user, registrant, or owner of the noncomplying
31 name consents in a signed record to the use and submits an
32 undertaking in a form satisfactory to the filing office to change the
33 noncomplying name to a name that complies with subsection b. of
34 this section and is distinguishable in the records of the filing office
35 from the name applied for; or

36 (2) the applicant delivers to the filing office a certified copy of
37 the final judgment of a court establishing the applicant's right to use
38 in this State the name applied for.

39 e. Subject to section 61, the provisions of this act shall apply to
40 a foreign limited liability company transacting business in this State

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:

¹Senate floor amendments adopted January 9, 2014.

1 which has a certificate of authority to transact business in this State
2 or which has applied for a certificate of authority.

3 (cf: P.L.2012, c.50, s.8)

4

5 2. Section 11 of P.L.2012, c.50 (C.42:2C-11) is amended to
6 read as follows:

7 11. Operating Agreement; Scope, Function, and Limitations.

8 a. Except as provided in subsections b. and c. of this section,
9 the operating agreement governs:

10 (1) relations among the members as members and between the
11 members and the limited liability company;

12 (2) the rights and duties under this act of a person in the
13 capacity of manager;

14 (3) the activities of the company and the conduct of those
15 activities; and

16 (4) the means and conditions for amending the operating
17 agreement.

18 b. To the extent the operating agreement does not otherwise
19 provide for a matter described in subsection a. of this section, this
20 act governs the matter.

21 c. An operating agreement may not:

22 (1) vary a limited liability company's capacity under section 5 of
23 this act to sue and be sued in its own name;

24 (2) vary the law applicable under section 6 of this act;

25 (3) vary the power of the court under section 21 of this act;

26 (4) subject to subsections d. through g. of this section, eliminate
27 the duty of loyalty, the duty of care, or any other fiduciary duty;

28 (5) subject to subsections d. through g. of this section, eliminate
29 the contractual obligation of good faith and fair dealing under
30 subsection d. of section 39 of this act;

31 (6) unreasonably restrict the duties and rights stated in section
32 40 of this act;

33 (7) vary the power of a court to decree dissolution in the
34 circumstances specified in paragraphs (4) and (5) of subsection a. of
35 section 48 of this act;

36 (8) vary the requirement to wind up a limited liability company's
37 business as specified in subsection a. and paragraph (1) of
38 subsection b. of section 49 of this act;

39 (9) unreasonably restrict the right of a member to maintain an
40 action under Article 9 (sections 67 through 72 of this act);

41 (10) restrict the right to approve a merger, conversion, or
42 domestication under section 86 of this act to a member that will
43 have personal liability with respect to a surviving, converted, or
44 domesticated organization; or

45 (11) except as otherwise provided in subsection b. of section 13
46 of this act, restrict the rights under this act of a person other than a
47 member or manager.

- 1 d. If not manifestly unreasonable, the operating agreement
2 may:
- 3 (1) restrict or eliminate the duty:
- 4 (a) as required in paragraph (1) of subsection b. and subsection
5 **[g.] i.** of section 39 of this act, to account to the limited liability
6 company and to hold as trustee for it any property, profit, or benefit
7 derived by the member in the conduct or winding up of the
8 company's business, from a use by the member of the company's
9 property, or from the appropriation of a limited liability company
10 opportunity;
- 11 (b) as required in paragraph (2) of subsection b. and subsection
12 **[g.] i.** of section 39 of this act, to refrain from dealing with the
13 company in the conduct or winding up of the company's business as
14 or on behalf of a party having an interest adverse to the company;
15 and
- 16 (c) as required by paragraph (3) of subsection b. and subsection
17 **[g.] i.** of section 39 of this act, to refrain from competing with the
18 company in the conduct of the company's business before the
19 dissolution of the company;
- 20 (2) identify specific types or categories of activities that do not
21 violate the duty of loyalty;
- 22 (3) alter the duty of care, except to authorize intentional
23 misconduct or knowing violation of law;
- 24 (4) alter any other fiduciary duty, including eliminating
25 particular aspects of that duty; and
- 26 (5) prescribe the standards by which to measure the performance
27 of the contractual obligation of good faith and fair dealing under
28 subsection d. and subsection **[g.] i.** of section 39 of this act.
- 29 e. The operating agreement may specify the method by which a
30 specific act or transaction that would otherwise violate the duty of
31 loyalty may be authorized or ratified by one or more disinterested
32 and independent persons after full disclosure of all material facts.
- 33 f. To the extent the operating agreement of a member-managed
34 limited liability company expressly relieves a member of a
35 responsibility that the member would otherwise have under this act
36 and imposes the responsibility on one or more other members, the
37 operating agreement may, to the benefit of the member that the
38 operating agreement relieves of the responsibility, also eliminate or
39 limit any fiduciary duty that would have pertained to the
40 responsibility.
- 41 g. The operating agreement may alter or eliminate the
42 indemnification for a member or manager provided by section 38 of
43 this act and may eliminate or limit a **[member]** member's or
44 manager's liability to the limited liability company and members for
45 money damages, except for:
- 46 (1) breach of the duty of loyalty;
- 47 (2) a financial benefit received by the member or manager to
48 which the member or manager is not entitled;

- 1 (3) a breach of a duty under section 36 of this act;
2 (4) intentional infliction of harm on the company or a member;
3 or
4 (5) an intentional violation of criminal law.

5 h. The court shall decide any claim under **【paragraph (1) of】**
6 subsection d. of this section that a term of an operating agreement is
7 manifestly unreasonable. The court:

8 (1) shall make its determination as of the time the challenged
9 term became part of the operating agreement and by considering
10 only circumstances existing at that time; and

11 (2) may invalidate the term only if, in light of the purposes and
12 activities of the limited liability company, it is readily apparent that:

13 (a) the objective of the term is unreasonable; or

14 (b) the term is an unreasonable means to achieve the provision's
15 objective.

16 i. This act is to be liberally construed to give the maximum
17 effect to the principle of freedom of contract and to the
18 enforceability of operating agreements.

19 (cf: P.L.2012, c.50, s.11)

20

21 ¹3. Section 13 of P.L.2012, c.50 (C.42:2C-13) is amended to
22 read as follows:

23 13. Operating Agreement; Effect on Third Parties and
24 Relationship to Records Effective on Behalf of Limited Liability
25 Company.

26 a. An operating agreement may specify that its amendment
27 requires the approval of a person that is not a party to the operating
28 agreement or the satisfaction of a condition. An amendment is
29 ineffective if its adoption does not include the required approval or
30 satisfy the specified condition.

31 b. The obligations of a limited liability company and its
32 members to a person in the person's capacity as a transferee or
33 dissociated member are governed by the operating agreement.
34 **【Subject only to any court order issued under paragraph (2) of**
35 **subsection b. of section 43 of this act to effectuate a charging**
36 **order, an】** An amendment to the operating agreement made after a
37 person becomes a transferee or dissociated member is effective with
38 regard to any debt, obligation, or other liability of the limited
39 liability company or its members to the person in the person's
40 capacity as a transferee or dissociated member.

41 c. If a record that has been delivered by a limited liability
42 company to the filing office for filing and has become effective
43 under this act contains a provision that would be ineffective under
44 subsection c. of section 11 of this act, if contained in the operating
45 agreement, the provision is likewise ineffective in the record.

46 d. Subject to subsection c. of this section, if a record that has
47 been delivered by a limited liability company to the filing office for

1 filing and has become effective under this act conflicts with a
2 provision of the operating agreement:

3 (1) the operating agreement prevails as to members, dissociated
4 members, transferees, and managers; and

5 (2) the record prevails as to other persons to the extent they
6 reasonably rely on the record.¹

7 (cf: P.L.2012, c.50, s.13)

8

9 ^{14.} Section 34 of P.L.2012, c.50 (C.42:2C-34) is amended to
10 read as follows:

11 34. Sharing of and Right to Distributions before Dissolution.

12 a. Any distributions made by a limited liability company before
13 its dissolution and winding up shall be in equal shares among
14 members and dissociated members, except to the extent necessary
15 to comply with any transfer effective under section 42 and any
16 **[charging]** order in effect under section 43 of this act.

17 b. A person has a right to a distribution before the dissolution
18 and winding up of a limited liability company only if the company
19 decides to make an interim distribution. A person's dissociation
20 does not entitle the person to a distribution.

21 c. A person does not have a right to demand or receive a
22 distribution from a limited liability company in any form other than
23 money. Except as otherwise provided in subsection c. of section 56
24 of this act, a limited liability company may distribute an asset in
25 kind if each part of the asset is fungible with each other part and
26 each person receives a percentage of the asset equal in value to the
27 person's share of distributions.

28 d. If a member or transferee becomes entitled to receive a
29 distribution, the member or transferee has the status of, and is
30 entitled to all remedies available to, a creditor of the limited
31 liability company with respect to the distribution.¹

32 (cf: P.L.2012, c.50, s.34)

33

34 ^{15.} Section 42 of P.L.2012, c.50 (C.42:2C-42) is amended to
35 read as follows:

36 42. Transfer of Transferable Interest.

37 a. A transfer, in whole or in part, of a transferable interest:

38 (1) is permissible;

39 (2) does not by itself cause a member's dissociation or a
40 dissolution and winding up of the limited liability company's
41 activities; and

42 (3) subject to section 44 of this act, does not entitle the
43 transferee to:

44 (a) participate in the management or conduct of the company's
45 activities; or

46 (b) except as otherwise provided in subsection c. of this section,
47 have access to records or other information concerning the
48 company's activities.

- 1 b. A transferee has the right to receive, in accordance with the
2 transfer, distributions to which the transferor would otherwise be
3 entitled.
- 4 c. In a dissolution and winding up of a limited liability
5 company, a transferee is entitled to an account of the company's
6 transactions only from the date of dissolution.
- 7 d. A transferable interest may be evidenced by a certificate of
8 the interest issued by the limited liability company in a record, and,
9 subject to this section, the interest represented by the certificate
10 may be transferred by a transfer of the certificate.
- 11 e. A limited liability company need not give effect to a
12 transferee's rights under this section until the company has notice of
13 the transfer.
- 14 f. A transfer of a transferable interest in violation of a
15 restriction on transfer contained in the operating agreement is
16 ineffective as to a person having notice of the restriction at the time
17 of transfer.
- 18 g. Except as otherwise provided in paragraph (2) of subsection
19 d. of section 46 of this act, when a member transfers a transferable
20 interest, the transferor retains the rights of a member other than the
21 interest in distributions transferred and retains all duties and
22 obligations of a member.
- 23 h. When a member transfers a transferable interest to a person
24 that becomes a member with respect to the transferred interest, the
25 transferee is liable for the member's obligations **【**under section 43
26 and subsection c. of section 36 of this act**】** known to the transferee
27 when the transferee becomes a member.¹
28 (cf: P.L.2012, c.50, s.42)

29
30 ¹6. Section 43 of P.L.2012, c.50 (C.42:2C-43) is amended to
31 read as follows:

32 43. **【Charging Order】** Rights of Judgment Creditor of a
33 Member.

34 **【a.】** On application by a judgment creditor of a member **【**or
35 transferee**】**, a court may **【**enter a charging order against the
36 transferable interest of the judgment debtor for the unsatisfied
37 amount of the judgment. A charging order constitutes a lien on a
38 judgment debtor's transferable interest and requires the limited
39 liability company to pay over to the person to which the charging
40 order was issued any distribution that would otherwise be paid to
41 the judgment debtor.

42 b. To the extent necessary to effectuate the collection of
43 distributions pursuant to a charging order in effect under subsection
44 a. of this section, the court may:

45 (1) appoint a receiver of the distributions subject to the charging
46 order, with the power to make all inquiries the judgment debtor
47 might have made; and

1 (2) make all other orders necessary to give effect to the charging
2 order.

3 c. Upon a showing that distributions under a charging order
4 will not pay the judgment debt within a reasonable time, the court
5 may foreclose the lien and order the sale of the transferable interest.
6 The purchaser at the foreclosure sale only obtains the transferable
7 interest, does not thereby become a member, and is subject to
8 section 42 of this act.

9 d. At any time before foreclosure under subsection c. of this
10 section, the member or transferee whose transferable interest is
11 subject to a charging order under subsection a. of this section may
12 extinguish the charging order by satisfying the judgment and filing
13 a certified copy of the satisfaction with the court that issued the
14 charging order.

15 e. At any time before foreclosure under subsection c. of this
16 section, a limited liability company or one or more members whose
17 transferable interests are not subject to the charging order may pay
18 to the judgment creditor the full amount due under the judgment
19 and thereby succeed to the rights of the judgment creditor,
20 including the charging order.

21 f. This act shall not deprive any member or transferee of the
22 benefit of any exemption laws applicable to the member's or
23 transferee's transferable interest.

24 g. This section provides the exclusive remedy by which a
25 person seeking to enforce a judgment against a member or
26 transferee may, in the capacity of judgment creditor, satisfy the
27 judgment from the judgment debtor's transferable interest] charge
28 the transferable interest of the member with payment of the
29 unsatisfied amount of the judgment with interest. To the extent so
30 charged, the judgment creditor has only the rights of an assignee of
31 the limited liability company interest. An action by a court
32 pursuant to this section does not deprive any member of the benefit
33 of any exemption laws applicable to his transferable interest. A
34 court order charging the transferable interest of a member pursuant
35 to this section shall be the sole remedy of a judgment creditor, who
36 shall have no right under 42:2C-1 et seq. or any other State law to
37 interfere with the management or force dissolution of a limited
38 liability company or to seek an order of the court requiring a
39 foreclosure sale of the transferable interest. Nothing in this section
40 shall be construed to affect in any way the rights of a judgment
41 creditor of a member under federal bankruptcy or reorganization
42 laws.¹

43 (cf: P.L.2012, c.50, s.43)

44

45 ^{17.} Section 46 of P.L.2012, c.50 (C.42:2C-46) is amended to
46 read as follows:

47 46. Events Causing Dissociation. A person is dissociated as a
48 member from a limited liability company when:

- 1 a. The company has notice of the person's express will to
2 withdraw as a member, but, if the person specified a withdrawal
3 date later than the date the company had notice, on that later date;
- 4 b. An event stated in the operating agreement as causing the
5 person's dissociation occurs;
- 6 c. The person is expelled as a member pursuant to the
7 operating agreement;
- 8 d. The person is expelled as a member by the unanimous
9 consent of the other members if:
 - 10 (1) it is unlawful to carry on the company's activities with the
11 person as a member;
 - 12 (2) there has been a transfer of all of the person's transferable
13 interest in the company, other than:
 - 14 (a) a transfer for security purposes; or
 - 15 (b) **[a charging] an** order in effect under section 43 of this act
16 **[which has not been foreclosed]**;
 - 17 (3) the person is a corporation and, within 90 days after the
18 company notifies the person that it will be expelled as a member
19 because the person has filed a certificate of dissolution or the
20 equivalent, its charter has been revoked, or its right to conduct
21 business has been suspended by the jurisdiction of its incorporation,
22 the certificate of dissolution has not been revoked or its charter or
23 right to conduct business has not been reinstated; or
 - 24 (4) the person is a limited liability company or partnership that
25 has been dissolved and whose business is being wound up;
- 26 e. On application by the company, the person is expelled as a
27 member by judicial order because the person:
 - 28 (1) has engaged, or is engaging, in wrongful conduct that has
29 adversely and materially affected, or will adversely and materially
30 affect, the company's activities;
 - 31 (2) has willfully or persistently committed, or is willfully and
32 persistently committing, a material breach of the operating
33 agreement or the person's duties or obligations under section 39 of
34 this act; or
 - 35 (3) has engaged, or is engaging, in conduct relating to the
36 company's activities which makes it not reasonably practicable to
37 carry on the activities with the person as a member;
- 38 f. In the case of a person who is an individual:
 - 39 (1) the person dies; or
 - 40 (2) in a member-managed limited liability company:
 - 41 (a) a guardian or general conservator for the person is
42 appointed; or
 - 43 (b) there is a judicial order that the person has otherwise become
44 incapable of performing the person's duties as a member under this
45 act or the operating agreement;
- 46 g. In a member-managed limited liability company, the person:
 - 47 (1) becomes a debtor in bankruptcy;
 - 48 (2) executes an assignment for the benefit of creditors; or

- 1 (3) seeks, consents to, or acquiesces in the appointment of a
2 trustee, receiver, or liquidator of the person or of all or substantially
3 all of the person's property;
- 4 h. In the case of a person that is a trust or is acting as a member
5 by virtue of being a trustee of a trust, the trust's entire transferable
6 interest in the company is distributed;
- 7 i. In the case of a person that is an estate or is acting as a
8 member by virtue of being a personal representative of an estate,
9 the estate's entire transferable interest in the company is distributed;
- 10 j. In the case of a member that is not an individual,
11 partnership, limited liability company, corporation, trust, or estate,
12 the termination of the member;
- 13 k. The company participates in a merger under Article 10
14 (sections 73 through 87 of this act) if:
- 15 (1) the company is not the surviving entity; or
16 (2) otherwise as a result of the merger, the person ceases to be a
17 member;
- 18 l. The company participates in a conversion under Article 10
19 (sections 73 through 87 of this act);
- 20 m. The company participates in a domestication under Article
21 10 (sections 73 through 87 of this act), if, as a result of the
22 domestication, the person ceases to be a member; or
- 23 n. The company terminates.¹
24 (cf: P.L.2012, c.50, s.46)
25
- 26 ¹8. Section 56 of P.L.2012, c.50 (C.42:2C-56) is amended to
27 read as follows:
- 28 56. Distribution of Assets in Winding Up Limited Liability
29 Company's Activities.
- 30 a. In winding up its activities, a limited liability company shall
31 apply its assets to discharge its obligations to creditors, including
32 members that are creditors.
- 33 b. After a limited liability company complies with subsection a.
34 of this section, any surplus shall be distributed in the following
35 order, subject to any **【charging】** order in effect under section 43 of
36 this act:
- 37 (1) to each person owning a transferable interest that reflects
38 contributions made by a member and not previously returned, an
39 amount equal to the value of the unreturned contributions; and
- 40 (2) in equal shares among members and dissociated members,
41 except to the extent necessary to comply with any transfer effective
42 under section 42 of this act.
- 43 c. If a limited liability company does not have sufficient
44 surplus to comply with paragraph (1) of subsection b. of this
45 section, any surplus shall be distributed among the owners of
46 transferable interests in proportion to the value of their respective
47 unreturned contributions.

1 d. All distributions made under subsections b. and c. of this
2 section shall be paid in money.¹

3 (cf: P.L.2012, c.50, s.56)

4

5 ¹**[3.] 9.**¹ Section 91 of P.L.2012, c.50 (C.42:2C-91) is
6 amended to read as follows:

7 91. Application to Existing Relationships.

8 a. Before **[the first day of the 18th month next following the**
9 **enactment date of this act]** March 1, 2014, this act governs only:

10 (1) a limited liability company formed on or after the effective
11 date of this act; and

12 (2) a limited liability company formed before the effective date
13 of this act, which elects, in the manner provided in its operating
14 agreement or by law for amending the operating agreement, to be
15 subject to this act.

16 b. On and after **[the first day of the 18th month next following**
17 **the enactment date of this act]** March 1, 2014, this act governs all
18 limited liability companies.

19 (cf: P.L.2012, c.50, s.91)

20

21 ¹**[4.] 10.**¹ Section 95 of P.L.2012, c.50 is amended to read as
22 follows:

23 95. Repeals. Effective on **[the first day of the 18 month next**
24 **following the enactment date of this act]** March 1, 2014, the
25 following are repealed:

26 P.L.1993, c.210 (C.42:2B-1 et seq.); Section 22 of P.L.1997,
27 c.139 (C.42:2B-8.1);

28 Section 14 of P.L.1997, c.139 (C.42:2B-24.1); and

29 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
30 49.2).

31 (cf: P.L. 2012, c.50, s.95)

32

33 ¹**[5.] 11.**¹ This act shall take effect immediately, and shall be
34 retroactive to September 19, 2012.

35

36

37

38

39 Modifies rights of judgment creditor of limited liability company
40 member; makes certain technical corrections to the “Revised
41 Uniform Limited Liability Company Act.”

ASSEMBLY, No. 4023

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED APRIL 25, 2013

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)
Assemblyman SCOTT T. RUMANA
District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

Assemblyman Diegnan

SYNOPSIS

Makes certain technical corrections to the "Revised Uniform Limited Liability Company Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/17/2013)

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2 P.L.2012, c.50.

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

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8 as follows:

9 8. Name.

10 a. The name of a limited liability company shall contain the
11 words "limited liability company" or the abbreviation "L.L.C." or
12 "LLC". "Limited" may be abbreviated as "Ltd.", and "company"
13 may be abbreviated as "Co."

14 b. Unless authorized by subsection **[c.] d.** of this section, the
15 name of a limited liability company shall be distinguishable in the
16 records of the filing office from:

17 (1) the name of each person that is not an individual and that is
18 incorporated, organized, or authorized to transact business in this
19 State; and

20 (2) each name reserved under section 10 of this act.

21 c. Furthermore, the name of a limited liability company shall
22 not contain any word or phrase, or any abbreviation or derivative
23 thereof, the use of which is prohibited or restricted by any other
24 statute of this State, unless the limited liability company has
25 complied with the restrictions.

26 d. A limited liability company may apply to the filing office for
27 authorization to use a name that does not comply with subsection b.
28 of this section. The filing office shall authorize use of the name
29 applied for if, as to each noncomplying name:

30 (1) the present user, registrant, or owner of the noncomplying
31 name consents in a signed record to the use and submits an
32 undertaking in a form satisfactory to the filing office to change the
33 noncomplying name to a name that complies with subsection b. of
34 this section and is distinguishable in the records of the filing office
35 from the name applied for; or

36 (2) the applicant delivers to the filing office a certified copy of
37 the final judgment of a court establishing the applicant's right to use
38 in this State the name applied for.

39 e. Subject to section 61, the provisions of this act shall apply to
40 a foreign limited liability company transacting business in this State
41 which has a certificate of authority to transact business in this State
42 or which has applied for a certificate of authority.

43 (cf: P.L.2012, c.50, s.8)

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not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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2 read as follows:

3 11. Operating Agreement; Scope, Function, and Limitations.

4 a. Except as provided in subsections b. and c. of this section,
5 the operating agreement governs:

6 (1) relations among the members as members and between the
7 members and the limited liability company;

8 (2) the rights and duties under this act of a person in the
9 capacity of manager;

10 (3) the activities of the company and the conduct of those
11 activities; and

12 (4) the means and conditions for amending the operating
13 agreement.

14 b. To the extent the operating agreement does not otherwise
15 provide for a matter described in subsection a. of this section, this
16 act governs the matter.

17 c. An operating agreement may not:

18 (1) vary a limited liability company's capacity under section 5 of
19 this act to sue and be sued in its own name;

20 (2) vary the law applicable under section 6 of this act;

21 (3) vary the power of the court under section 21 of this act;

22 (4) subject to subsections d. through g. of this section, eliminate
23 the duty of loyalty, the duty of care, or any other fiduciary duty;

24 (5) subject to subsections d. through g. of this section, eliminate
25 the contractual obligation of good faith and fair dealing under
26 subsection d. of section 39 of this act;

27 (6) unreasonably restrict the duties and rights stated in section
28 40 of this act;

29 (7) vary the power of a court to decree dissolution in the
30 circumstances specified in paragraphs (4) and (5) of subsection a. of
31 section 48 of this act;

32 (8) vary the requirement to wind up a limited liability company's
33 business as specified in subsection a. and paragraph (1) of
34 subsection b. of section 49 of this act;

35 (9) unreasonably restrict the right of a member to maintain an
36 action under Article 9 (sections 67 through 72 of this act);

37 (10) restrict the right to approve a merger, conversion, or
38 domestication under section 86 of this act to a member that will
39 have personal liability with respect to a surviving, converted, or
40 domesticated organization; or

41 (11) except as otherwise provided in subsection b. of section 13
42 of this act, restrict the rights under this act of a person other than a
43 member or manager.

44 d. If not manifestly unreasonable, the operating agreement
45 may:

46 (1) restrict or eliminate the duty:

47 (a) as required in paragraph (1) of subsection b. and subsection
48 **[g.] i.** of section 39 of this act, to account to the limited liability

1 company and to hold as trustee for it any property, profit, or benefit
2 derived by the member in the conduct or winding up of the
3 company's business, from a use by the member of the company's
4 property, or from the appropriation of a limited liability company
5 opportunity;

6 (b) as required in paragraph (2) of subsection b. and subsection
7 **[g.] i.** of section 39 of this act, to refrain from dealing with the
8 company in the conduct or winding up of the company's business as
9 or on behalf of a party having an interest adverse to the company;
10 and

11 (c) as required by paragraph (3) of subsection b. and subsection
12 **[g.] i.** of section 39 of this act, to refrain from competing with the
13 company in the conduct of the company's business before the
14 dissolution of the company;

15 (2) identify specific types or categories of activities that do not
16 violate the duty of loyalty;

17 (3) alter the duty of care, except to authorize intentional
18 misconduct or knowing violation of law;

19 (4) alter any other fiduciary duty, including eliminating
20 particular aspects of that duty; and

21 (5) prescribe the standards by which to measure the performance
22 of the contractual obligation of good faith and fair dealing under
23 subsection d. and subsection **[g.] i.** of section 39 of this act.

24 e. The operating agreement may specify the method by which a
25 specific act or transaction that would otherwise violate the duty of
26 loyalty may be authorized or ratified by one or more disinterested
27 and independent persons after full disclosure of all material facts.

28 f. To the extent the operating agreement of a member-managed
29 limited liability company expressly relieves a member of a
30 responsibility that the member would otherwise have under this act
31 and imposes the responsibility on one or more other members, the
32 operating agreement may, to the benefit of the member that the
33 operating agreement relieves of the responsibility, also eliminate or
34 limit any fiduciary duty that would have pertained to the
35 responsibility.

36 g. The operating agreement may alter or eliminate the
37 indemnification for a member or manager provided by section 38 of
38 this act and may eliminate or limit a **[member]** member's or
39 manager's liability to the limited liability company and members for
40 money damages, except for:

41 (1) breach of the duty of loyalty;

42 (2) a financial benefit received by the member or manager to
43 which the member or manager is not entitled;

44 (3) a breach of a duty under section 36 of this act;

45 (4) intentional infliction of harm on the company or a member;

46 or

47 (5) an intentional violation of criminal law.

1 h. The court shall decide any claim under **【paragraph (1) of】**
2 subsection d. of this section that a term of an operating agreement is
3 manifestly unreasonable. The court:

4 (1) shall make its determination as of the time the challenged
5 term became part of the operating agreement and by considering
6 only circumstances existing at that time; and

7 (2) may invalidate the term only if, in light of the purposes and
8 activities of the limited liability company, it is readily apparent that:

9 (a) the objective of the term is unreasonable; or

10 (b) the term is an unreasonable means to achieve the provision's
11 objective.

12 i. This act is to be liberally construed to give the maximum
13 effect to the principle of freedom of contract and to the
14 enforceability of operating agreements.

15 (cf: P.L.2012, c.50, s.11)

16
17 3. Section 91 of P.L.2012, c.50 (C.42:2C-91) is amended to
18 read as follows:

19 91. Application to Existing Relationships.

20 a. Before **【the first day of the 18th month next following the**
21 **enactment date of this act】** March 1, 2014, this act governs only:

22 (1) a limited liability company formed on or after the effective
23 date of this act; and

24 (2) a limited liability company formed before the effective date
25 of this act, which elects, in the manner provided in its operating
26 agreement or by law for amending the operating agreement, to be
27 subject to this act.

28 b. On and after **【the first day of the 18th month next following**
29 **the enactment date of this act】** March 1, 2014, this act governs all
30 limited liability companies.

31 (cf: P.L.2012, c.50, s.91)

32
33 4. Section 95 of P.L.2012, c.50 is amended to read as follows:

34 95. Repeals. Effective on **【the first day of the 18 month next**
35 **following the enactment date of this act】** March 1, 2014, the
36 following are repealed:

37 P.L.1993, c.210 (C.42:2B-1 et seq.); Section 22 of P.L.1997,
38 c.139 (C.42:2B-8.1);

39 Section 14 of P.L.1997, c.139 (C.42:2B-24.1); and

40 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
41 49.2).

42 (cf: P.L. 2012, c.50, s.95)

43
44 5. This act shall take effect immediately, and shall be
45 retroactive to September 19, 2012.

1 STATEMENT

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This bill makes certain technical corrections to the “Revised Uniform Limited Liability Company Act.” The bill corrects certain inadvertent cross-referencing errors in the act. It also changes certain references in the act to specify that March 1, 2014, which is the first day of the eighteenth month following the date of enactment, September 19, 2012, is the act’s effective date. In so doing, the bill is intended to clarify when the act governs the operations of various limited liability companies, formed either before or after that date, and when certain earlier laws regarding limited liability companies are repealed.

ASSEMBLY REGULATORY OVERSIGHT AND GAMING
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4023

STATE OF NEW JERSEY

DATED: MAY 6, 2013

The Assembly Regulatory Oversight and Gaming Committee reports favorably Assembly Bill No. 4023.

This bill would make certain technical corrections to the “Revised Uniform Limited Liability Company Act,” enacted in 2012. In particular, the bill would correct certain inadvertent cross-referencing errors contained in the act, and it would specify that the act’s effective date is March 1, 2014, which is the first day of the 18th month following the date of enactment of the 2012 act. In making these corrections, the bill would provide clarification as to when the act will begin to govern the operations of various limited liability companies, and when certain earlier laws regarding limited liability companies will be repealed.

STATEMENT TO
ASSEMBLY, No. 4023

with Senate Floor Amendments
(Proposed by Senator SARLO)

ADOPTED: JANUARY 9, 2014

These Senate amendments delete the foreclosure provision for judgment creditors against limited liability members from the “Revised Uniform Limited Liability Company Act.” The amendments instead allow, upon application by a judgment creditor of a member to a court of competent jurisdiction, the court to charge the transferable interest of the member with payment of the unsatisfied amount of the judgment with interest.

SENATE, No. 2556

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED FEBRUARY 7, 2013

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Makes certain technical corrections to the "Revised Uniform Limited Liability Company Act."

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning limited liability companies and amending
2 P.L.2012, c.50.

3

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

6

7 1. Section 8 of P.L.2012, c.50 (C.42:2C-8) is amended to read
8 as follows:

9 8. Name.

10 a. The name of a limited liability company shall contain the
11 words "limited liability company" or the abbreviation "L.L.C." or
12 "LLC". "Limited" may be abbreviated as "Ltd.", and "company"
13 may be abbreviated as "Co."

14 b. Unless authorized by subsection **[c.] d.** of this section, the
15 name of a limited liability company shall be distinguishable in the
16 records of the filing office from:

17 (1) the name of each person that is not an individual and that is
18 incorporated, organized, or authorized to transact business in this
19 State; and

20 (2) each name reserved under section 10 of this act.

21 c. Furthermore, the name of a limited liability company shall
22 not contain any word or phrase, or any abbreviation or derivative
23 thereof, the use of which is prohibited or restricted by any other
24 statute of this State, unless the limited liability company has
25 complied with the restrictions.

26 d. A limited liability company may apply to the filing office for
27 authorization to use a name that does not comply with subsection b.
28 of this section. The filing office shall authorize use of the name
29 applied for if, as to each noncomplying name:

30 (1) the present user, registrant, or owner of the noncomplying
31 name consents in a signed record to the use and submits an
32 undertaking in a form satisfactory to the filing office to change the
33 noncomplying name to a name that complies with subsection b. of
34 this section and is distinguishable in the records of the filing office
35 from the name applied for; or

36 (2) the applicant delivers to the filing office a certified copy of
37 the final judgment of a court establishing the applicant's right to use
38 in this State the name applied for.

39 e. Subject to section 61, the provisions of this act shall apply to
40 a foreign limited liability company transacting business in this State
41 which has a certificate of authority to transact business in this State
42 or which has applied for a certificate of authority.

43 (cf: P.L.2012, c.50, s.8)

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.

1 2. Section 11 of P.L.2012, c.50 (C.42:2C-11) is amended to
2 read as follows:

3 11. Operating Agreement; Scope, Function, and Limitations.

4 a. Except as provided in subsections b. and c. of this section,
5 the operating agreement governs:

6 (1) relations among the members as members and between the
7 members and the limited liability company;

8 (2) the rights and duties under this act of a person in the
9 capacity of manager;

10 (3) the activities of the company and the conduct of those
11 activities; and

12 (4) the means and conditions for amending the operating
13 agreement.

14 b. To the extent the operating agreement does not otherwise
15 provide for a matter described in subsection a. of this section, this
16 act governs the matter.

17 c. An operating agreement may not:

18 (1) vary a limited liability company's capacity under section 5 of
19 this act to sue and be sued in its own name;

20 (2) vary the law applicable under section 6 of this act;

21 (3) vary the power of the court under section 21 of this act;

22 (4) subject to subsections d. through g. of this section, eliminate
23 the duty of loyalty, the duty of care, or any other fiduciary duty;

24 (5) subject to subsections d. through g. of this section, eliminate
25 the contractual obligation of good faith and fair dealing under
26 subsection d. of section 39 of this act;

27 (6) unreasonably restrict the duties and rights stated in section
28 40 of this act;

29 (7) vary the power of a court to decree dissolution in the
30 circumstances specified in paragraphs (4) and (5) of subsection a. of
31 section 48 of this act;

32 (8) vary the requirement to wind up a limited liability company's
33 business as specified in subsection a. and paragraph (1) of
34 subsection b. of section 49 of this act;

35 (9) unreasonably restrict the right of a member to maintain an
36 action under Article 9 (sections 67 through 72 of this act);

37 (10) restrict the right to approve a merger, conversion, or
38 domestication under section 86 of this act to a member that will
39 have personal liability with respect to a surviving, converted, or
40 domesticated organization; or

41 (11) except as otherwise provided in subsection b. of section 13
42 of this act, restrict the rights under this act of a person other than a
43 member or manager.

44 d. If not manifestly unreasonable, the operating agreement
45 may:

46 (1) restrict or eliminate the duty:

47 (a) as required in paragraph (1) of subsection b. and subsection
48 **[g.] i.** of section 39 of this act, to account to the limited liability

1 company and to hold as trustee for it any property, profit, or benefit
2 derived by the member in the conduct or winding up of the
3 company's business, from a use by the member of the company's
4 property, or from the appropriation of a limited liability company
5 opportunity;

6 (b) as required in paragraph (2) of subsection b. and subsection
7 **[g.] i.** of section 39 of this act, to refrain from dealing with the
8 company in the conduct or winding up of the company's business as
9 or on behalf of a party having an interest adverse to the company;
10 and

11 (c) as required by paragraph (3) of subsection b. and subsection
12 **[g.] i.** of section 39 of this act, to refrain from competing with the
13 company in the conduct of the company's business before the
14 dissolution of the company;

15 (2) identify specific types or categories of activities that do not
16 violate the duty of loyalty;

17 (3) alter the duty of care, except to authorize intentional
18 misconduct or knowing violation of law;

19 (4) alter any other fiduciary duty, including eliminating
20 particular aspects of that duty; and

21 (5) prescribe the standards by which to measure the performance
22 of the contractual obligation of good faith and fair dealing under
23 subsection d. and subsection **[g.] i.** of section 39 of this act.

24 e. The operating agreement may specify the method by which a
25 specific act or transaction that would otherwise violate the duty of
26 loyalty may be authorized or ratified by one or more disinterested
27 and independent persons after full disclosure of all material facts.

28 f. To the extent the operating agreement of a member-managed
29 limited liability company expressly relieves a member of a
30 responsibility that the member would otherwise have under this act
31 and imposes the responsibility on one or more other members, the
32 operating agreement may, to the benefit of the member that the
33 operating agreement relieves of the responsibility, also eliminate or
34 limit any fiduciary duty that would have pertained to the
35 responsibility.

36 g. The operating agreement may alter or eliminate the
37 indemnification for a member or manager provided by section 38 of
38 this act and may eliminate or limit a **[member]** member's or
39 manager's liability to the limited liability company and members for
40 money damages, except for:

41 (1) breach of the duty of loyalty;

42 (2) a financial benefit received by the member or manager to
43 which the member or manager is not entitled;

44 (3) a breach of a duty under section 36 of this act;

45 (4) intentional infliction of harm on the company or a member;

46 or

47 (5) an intentional violation of criminal law.

1 h. The court shall decide any claim under paragraph (1) of
2 subsection d. of this section that a term of an operating agreement is
3 manifestly unreasonable. The court:

4 (1) shall make its determination as of the time the challenged
5 term became part of the operating agreement and by considering
6 only circumstances existing at that time; and

7 (2) may invalidate the term only if, in light of the purposes and
8 activities of the limited liability company, it is readily apparent that:

9 (a) the objective of the term is unreasonable; or

10 (b) the term is an unreasonable means to achieve the provision's
11 objective.

12 i. This act is to be liberally construed to give the maximum
13 effect to the principle of freedom of contract and to the
14 enforceability of operating agreements.

15 (cf: P.L.2012, c.50, s.11)

16

17 3. Section 91 of P.L.2012, c.50 (C.42:2C-91) is amended to
18 read as follows:

19 91. Application to Existing Relationships.

20 a. Before **【the first day of the 18th month next following the**
21 **enactment date of this act】** March 1, 2014, this act governs only:

22 (1) a limited liability company formed on or after the effective
23 date of this act; and

24 (2) a limited liability company formed before the effective date
25 of this act, which elects, in the manner provided in its operating
26 agreement or by law for amending the operating agreement, to be
27 subject to this act.

28 b. On and after **【the first day of the 18th month next following**
29 **the enactment date of this act】** March 1, 2014, this act governs all
30 limited liability companies.

31 (cf: P.L.2012, c.50, s.91)

32

33 4. Section 95 of P.L.2012, c.50 is amended to read as follows:

34 95. Repeals. Effective on **【the first day of the 18 month next**
35 **following the enactment date of this act】** March 1, 2014, the
36 following are repealed:

37 P.L.1993, c.210 (C.42:2B-1 et seq.); Section 22 of P.L.1997,
38 c.139 (C.42:2B-8.1);

39 Section 14 of P.L.1997, c.139 (C.42:2B-24.1); and

40 Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-
41 49.2).

42 (cf: P.L. 2012, c.50, s.95)

43

44 5. This act shall take effect immediately, and shall be
45 retroactive to September 19, 2012.

1 STATEMENT

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This bill makes certain technical corrections to the “Revised Uniform Limited Liability Company Act.” The bill corrects certain inadvertent cross-referencing errors in the act. It also changes certain references in the act to specify that March 1, 2014, which is the first day of the eighteenth month following the date of enactment, September 19, 2012, is the act’s effective date. In so doing, the bill is intended to clarify when the act governs the operations of various limited liability companies, formed either before or after that date, and when certain earlier laws regarding limited liability companies are repealed.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2556

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2013

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 2556.

The bill, as amended, makes certain technical corrections to the “Revised Uniform Limited Liability Company Act.” The bill corrects certain inadvertent cross-referencing errors in the act. It also changes certain references in the act to specify that March 1, 2014, which is the first day of the eighteenth month following the date of enactment, September 19, 2012, is the act’s effective date. In so doing, the bill is intended to clarify when the act governs the operations of various limited liability companies, formed either before or after that date, and when certain earlier laws regarding limited liability companies are repealed.

As amended, the bill deletes the foreclosure provision for judgment creditors against limited liability members from the “Revised Uniform Limited Liability Company Act,” and allows, upon application by a judgment creditor of a member to a court of competent jurisdiction, the court to charge the transferable interest of the member with payment of the unsatisfied amount of the judgment with interest.

Committee amendments

The committee amended the bill to:

1) Delete the foreclosure provision for judgment creditors against limited liability members from the “Revised Uniform Limited Liability Company Act.” The amendments instead allow, upon application by a judgment creditor of a member to a court of competent jurisdiction, the court to charge the transferable interest of the member with payment of the unsatisfied amount of the judgment with interest.

2) Make an additional technical correction to correct an inadvertent cross-referencing error.