

31:1-6

LEGISLATIVE HISTORY CHECKLIST
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(Limited liability companies)

NJSA: 31:1-6

LAWS OF: 1997 CHAPTER: 426

BILL NO: A2320

SPONSOR(S): Weingarten & Augustine

DATE INTRODUCED: September 16, 1996

COMMITTEE: ASSEMBLY: Financial Institutions
SENATE: Commerce

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

DATE OF PASSAGE: ASSEMBLY: November 14, 1996
SENATE: December 11, 1997

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[Passed Both Houses]

[First Reprint]

ASSEMBLY, No. 2320

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1996

By Assemblymen WEINGARTEN and AUGUSTINE

1 AN ACT concerning limited liability companies and limited liability
2 partnerships and amending ¹[P.L.1953, c.30] R.S.31:1-6 and
3 N.J.S. 2C:21-19¹.

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

7
8 1. ¹[Section 4 of P.L.1953, c.30 (C.) R.S. 31:1-6 ¹[]¹] is amended
9 to read as follows:

10 ¹[4]31:1-6¹. No corporation, limited liability company or limited
11 liability partnership shall plead or set up the defense of usury to any
12 action brought against it to recover damages or enforce a remedy on
13 any obligation executed by said corporation, limited liability company
14 or limited liability partnership.

15 (cf: P.L.1953, c.30, s.4)

16
17 ¹2. N.J.S. 2C:21-19 is amended to read as follows:

18 2C:21-19. Wrongful Credit Practices and Related Offenses.

19 a. Criminal usury. A person is guilty of criminal usury when not
20 being authorized or permitted by law to do so, he:

21 (1) Loans or agrees to loan, directly or indirectly, any money or
22 other property at a rate exceeding the maximum rate permitted by law;
23 or

24 (2) Takes, agrees to take, or receives any money or other property
25 as interest on the loan or on the forbearance of any money or other
26 interest in excess of the maximum rate permitted by law.

27 For the purposes of this section and notwithstanding any law of this
28 State which permits as a maximum interest rate a rate or rates agreed

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 Senate SCM committee amendments adopted January 14, 1997.

1 to by the parties of the transaction, any loan or forbearance with an
2 interest rate which exceeds 30% per annum shall not be a rate
3 authorized or permitted by law, except if the loan or forbearance is
4 made to a corporation, limited liability company or limited liability
5 partnership any rate not in excess of 50% per annum shall be a rate
6 authorized or permitted by law.

7 Criminal usury is a crime of the second degree if the rate of interest
8 on any loan made to any person exceeds 50% per annum or the
9 equivalent rate for a longer or shorter period. It is a crime of the third
10 degree if the interest rate on any loan made to any person except a
11 corporation, limited liability company or limited liability partnership
12 does not exceed 50% per annum but the amount of the loan or
13 forbearance exceeds \$1,000.00. Otherwise, making a loan to any
14 person in violation of subsection a.(1) and a.(2) of this section is a
15 disorderly persons offense.

16 b. Business of criminal usury. Any person who knowingly engages
17 in the business of making loans or forbearances in violation of
18 subsection a. of this section is guilty of a crime of the second degree
19 and, notwithstanding the provisions of N.J.S. 2C:43-3, shall be subject
20 to a fine of not more than \$250,000.00 and any other appropriate
21 disposition authorized by N.J.S. 2C:43-2b.

22 c. Possession of usurious loan records. A person is guilty of a
23 crime of the third degree when, with knowledge of the nature thereof,
24 he possesses any writing, paper instrument or article used to record
25 criminally usurious transactions prohibited by subsection a. of this
26 section.

27 d. Unlawful collection practices. A person is guilty of a disorderly
28 persons offense when, with purpose to enforce a claim or judgment for
29 money or property, he sends, mails or delivers to another person a
30 notice, document or other instrument which has no judicial or official
31 sanction and which in its format or appearance simulates a summons,
32 complaint, court order or process or an insignia, seal or printed form
33 of a federal, State or local government or an instrumentality thereof,
34 or is otherwise calculated to induce a belief that such notice, document
35 or instrument has a judicial or official sanction.

36 e. Making a false statement of credit terms. A person is guilty of
37 a disorderly persons offense when he understates or fails to state the
38 interest rate, or makes a false or inaccurate or incomplete statement of
39 any other credit terms.

40 f. Debt adjusters. Any person who shall act or offer to act as a
41 debt adjuster shall be guilty of a crime of the fourth degree.

42 "Debt adjuster" means a person who either (1) acts or offers to act
43 for a consideration as an intermediary between a debtor and his
44 creditors for the purpose of settling, compounding, or otherwise
45 altering the terms of payment of any debts of the debtor, or (2) who,
46 to that end, receives money or other property from the debtor, or on

1 behalf of the debtor, for payment to, or distribution among, the
2 creditors of the debtor. "Debtor" means an individual or two or more
3 individuals who are jointly and severally, or jointly or severally
4 indebted.

5 The following persons shall not be deemed debt adjusters for the
6 purposes of this section: an attorney at law of this State who is not
7 principally engaged as a debt adjuster; a nonprofit social service or
8 consumer credit counseling agency licensed pursuant to P.L. 1979, c.
9 16 (C. 17:16G-1 et seq.); a person who is a regular, full-time
10 employee of a debtor, and who acts as an adjuster of his employer's
11 debts; a person acting pursuant to any order or judgment of court, or
12 pursuant to authority conferred by any law of this State or of the
13 United States; a person who is a creditor of the debtor, or an agent of
14 one or more creditors of the debtor, and whose services in adjusting
15 the debtor's debts are rendered without cost to the debtor; or a person
16 who, at the request of the debtor, arranges for or makes a loan to the
17 debtor, and who, at the authorization of the debtor, acts as an adjuster
18 of the debtor's debts in the disbursement of the proceeds of the loan,
19 without compensation for the services rendered in adjusting such
20 debts.¹

21 (cf: P.L.1986, c.184, s.6)

22

23 ¹[2.] 3.¹ This act shall take effect immediately.

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28 Concerns limited liability companies and partnerships and criminal
29 usury and the defense of usury.

ASSEMBLY, No. 2320

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1996

By Assemblymen WEINGARTEN and AUGUSTINE

1 AN ACT concerning limited liability companies and limited liability
2 partnerships and amending P.L.1953, c.30.

3

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

6

7 1. Section 4 of P.L.1953, c.30 (C.31:1-6) is amended to read as
8 follows:

9 4. No corporation, limited liability company or limited liability
10 partnership shall plead or set up the defense of usury to any action
11 brought against it to recover damages or enforce a remedy on any
12 obligation executed by said corporation, limited liability company or
13 limited liability partnership.

14 (cf: P.L.1953, c.30, s.4)

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16 2. This act shall take effect immediately.

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STATEMENT

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21 Limited liability companies and limited liability partnerships are
22 types of entities recently authorized by the Legislature. These entities
23 are used in business in a manner similar to corporations. This bill will
24 make these new limited liability entities subject to the New Jersey
25 usury law in the same manner as New Jersey corporations.

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30 Concerns limited liability companies and partnerships and the
31 defense of usury.

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.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2320

STATE OF NEW JERSEY

DATED: OCTOBER 7, 1996

The Assembly Financial Institutions Committee reports favorably
Assembly Bill No. 2320.

Limited liability companies and limited liability partnerships are
types of entities recently authorized by the Legislature. These entities
are used in business in a manner similar to corporations. This bill will
make these new limited liability entities subject to the New Jersey
usury law in the same manner as New Jersey corporations.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2320

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 14, 1997

The Senate Commerce Committee reports favorably and with committee amendments Assembly Bill No. 2320.

Limited liability companies and limited liability partnerships are organizational forms recently authorized by the Legislature. These companies and partnerships have many of the same characteristics as corporations. This bill imposes a prohibition on limited liability companies and limited liability partnerships which is currently imposed on corporations. It prohibits limited liability companies and limited liability partnerships from pleading or using the defense of usury in an action brought against them for damages or enforcing a remedy on an obligation executed by them.

Currently, a person who makes a loan to a corporation at a rate in excess of 50% per annum is guilty of criminal usury. The committee amended the bill to apply this same provision to limited liability companies and limited liability partnerships.