

SENATE, No. 226

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Senator Oroho

SYNOPSIS

Revises law concerning partnerships, limited partnerships, and limited liability companies.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning partnerships, limited partnerships, and limited
2 liability companies, supplementing P.L.2000, c.161 (C.42:1A-1
3 et seq.) and P.L.1983, c.489 (C.42:2A-1 et seq.), and amending
4 P.L.2012, c.50.

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

8
9 1. (New section) a. As used in this section:

10 “Converted entity” or “resulting converted entity” means a
11 converting entity after it has been converted pursuant to this
12 section.

13 “Converting entity” means an entity that will be converted
14 pursuant to this section.

15 “Filing office” means the Division of Revenue in the Department
16 of the Treasury, or such other State office as designated by law.

17 “Governing documents” means the: (1) certificate of
18 incorporation, bylaws, and shareholders agreement, if any, of a
19 corporation; (2) the certificate of formation and operating
20 agreement or limited liability company agreement of a limited
21 liability company; and (3) the certificate of formation, if any, and
22 partnership agreement of a partnership.

23 “Other business entity” or “another business entity” means a
24 business corporation, partnership, limited partnership, or a limited
25 liability company.

26 b. (1) Pursuant to a plan of conversion, a partnership may
27 convert into another business entity formed or organized under the
28 laws of this State or any other state of the United States or any
29 foreign country or other foreign jurisdiction, as the plan of
30 conversion shall provide. Unless otherwise provided in the
31 partnership agreement, a plan of conversion shall be approved by all
32 partners of the converting entity. In connection with a conversion
33 hereunder, interests in the converting entity may be exchanged for
34 or converted into cash, property, rights, or securities of, or interests
35 in, the converted entity or, in addition to or in lieu thereof, may be
36 exchanged for or converted into cash, property, rights, or securities
37 of, or interests in, a domestic limited partnership or other business
38 entity which is not the converted entity. Notwithstanding prior
39 approval, a plan of conversion may be terminated or amended
40 pursuant to a provision for that termination or amendment contained
41 in the plan of conversion.

42 (2) A partnership may not convert to another business entity if
43 authority for that conversion is not granted by the laws of the
44 jurisdiction under which the other business entity is organized.

45 (3) With respect to the conversion of a partnership to another
46 business entity, that partnership shall comply with the provisions of
47 this section and the resulting converted entity shall comply with the

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 applicable provisions of the laws of the jurisdiction under which it
2 is organized.

3 c. (1) Pursuant to a plan of conversion, another business
4 entity formed or organized under the laws of this State or any other
5 state of the United States or any foreign country or other foreign
6 jurisdiction may convert into a domestic partnership, as the plan of
7 conversion shall provide. Unless otherwise provided in the
8 governing documents of the converting entity, a conversion shall be
9 approved by the converting entity in accordance with the laws of
10 the jurisdiction under which the other business entity is organized.
11 In connection with a conversion hereunder, rights or securities of,
12 or interests in, the converting entity may be exchanged for or
13 converted into cash, property, rights, or securities of, or interests in,
14 the converted entity or, in addition to or in lieu thereof, may be
15 exchanged for or converted into cash, property, rights, or securities
16 of, or interests in, a domestic limited partnership or other business
17 entity which is not the converted entity. Notwithstanding prior
18 approval, a plan of conversion may be terminated or amended
19 pursuant to a provision for that termination or amendment contained
20 in the plan of conversion.

21 (2) Another business entity may not convert to a domestic
22 partnership if authority for that conversion is not granted by the
23 laws of the jurisdiction under which the converting entity is
24 organized.

25 (3) With respect to the conversion of another business entity to a
26 domestic partnership, that other business entity shall comply with
27 the provisions of the laws of the jurisdiction under which it is
28 organized and the resulting converted entity shall comply with the
29 provisions of this section.

30 d. If a converting entity converts under this section, the
31 converted entity resulting from the conversion shall file a certificate
32 of conversion in the filing office. The filing office shall, upon
33 filing, forward a copy of the certificate of conversion to the
34 Director of the Division of Taxation. The certificate of conversion
35 shall state:

36 (1) The name and jurisdiction of formation or organization of
37 the converting entity;

38 (2) That a plan of conversion has been approved and executed
39 by the converting entity;

40 (3) The name of the resulting converted entity;

41 (4) The future effective date or time, which shall be a date or
42 time certain, of the conversion if it is not to be effective upon the
43 filing of the certificate of conversion;

44 (5) That the plan of conversion is on file at a place of business
45 of the converted entity, and shall state the address thereof;

46 (6) That a copy of the plan of conversion shall be furnished by
47 the converted entity, on request and without cost, to any member,
48 partner, or shareholder of the converting entity; and

1 (7) If the resulting converted entity is not a domestic partnership
2 or other business entity organized under the laws of this State, a
3 statement that the converted entity agrees that it may be served with
4 process in this State in any action, suit, or proceeding for the
5 enforcement of any obligation of the converting entity, irrevocably
6 appointing the filing office as its agent to accept service of process
7 in that action, suit, or proceeding and specifying the address within
8 or outside this State to which a copy of process shall be mailed to it
9 by the filing office.

10 e. Unless a future effective date or time is provided in a
11 certificate of conversion, in which event a conversion shall be
12 effective at that future effective date or time, a conversion shall be
13 effective upon the filing in the filing office of a certificate of
14 conversion.

15 f. (1) When any conversion becomes effective under this
16 section, for all purposes of the laws of this State, all of the rights,
17 privileges, and powers of the converting entity, and all property,
18 real, personal, and mixed, and all debts due to the converting entity,
19 as well as all other things and causes of action belonging to the
20 converting entity, shall be vested in the resulting converted entity,
21 and shall thereafter be the property of the resulting converted entity
22 as they were of the converting entity, and the title to any real
23 property vested by deed or otherwise, under the laws of this State,
24 in the converting entity, shall not revert or be in any way impaired
25 by reason of this section; but all rights of creditors and all liens
26 upon any property of the converting entity shall be preserved
27 unimpaired, and all debts, liabilities, and duties of the converting
28 entity shall attach to the resulting converted entity, and may be
29 enforced against it to the same extent as if the debts, liabilities, and
30 duties had been incurred or contracted by it.

31 (2) Unless otherwise agreed or as required under the applicable
32 provisions of the laws of the jurisdiction under which the
33 converting entity is organized, the converting entity shall not be
34 required to wind up its affairs or pay its liabilities and distribute its
35 assets, and the conversion shall not be deemed to constitute a
36 dissolution of that other entity and shall constitute a continuation of
37 the existence of the converting entity in the form of entity of the
38 resulting converted entity.

39

40 2. (New section) a. As used in this section:

41 “Converted entity” or “resulting converted entity” means a
42 converting entity after it has been converted pursuant to this
43 section.

44 “Converting entity” means an entity that will be converted
45 pursuant to this section.

46 “Filing office” means the Division of Revenue in the Department
47 of the Treasury, or such other State office as designated by law.

1 “Governing documents” means the: (1) certificate of
2 incorporation, bylaws, and shareholders agreement, if any, of a
3 corporation; (2) the certificate of formation and operating
4 agreement or limited liability company agreement of a limited
5 liability company; and (3) the certificate of formation, if any, and
6 partnership agreement of a partnership.

7 “Other business entity” or “another business entity” means a
8 business corporation, partnership, or a limited liability company.

9 b. (1) Pursuant to a plan of conversion, a domestic limited
10 partnership may convert into another business entity formed or
11 organized under the laws of this State or any other state of the
12 United States or any foreign country or other foreign jurisdiction, as
13 the plan of conversion shall provide. Unless otherwise provided in
14 the partnership agreement, a conversion shall be approved by the
15 converting entity as follows: (a) by all general partners; and (b) by
16 the limited partners, or, if there is more than one class or group of
17 limited partners, then by each class or group of limited partners, in
18 either case, by the limited partners who own more than 50 percent
19 of the then current percentage or other interest in the profits of the
20 domestic limited partnership owned by all of the limited partners or
21 by the limited partners in each class or group, as appropriate. In
22 connection with a conversion hereunder, interests in the converting
23 entity may be exchanged for or converted into cash, property,
24 rights, or securities of, or interests in, the converted entity or, in
25 addition to or in lieu thereof, may be exchanged for or converted
26 into cash, property, rights, or securities of, or interests in, a
27 domestic limited partnership or other business entity which is not
28 the converted entity. Notwithstanding prior approval, a plan of
29 conversion may be terminated or amended pursuant to a provision
30 for that termination or amendment contained in the plan of
31 conversion.

32 (2) A domestic limited partnership may not convert to another
33 business entity if authority for that conversion is not granted by the
34 laws of the jurisdiction under which the other business entity is
35 organized.

36 (3) With respect to the conversion of a domestic limited
37 partnership to another business entity, that domestic limited
38 partnership shall comply with the provisions of this section and the
39 resulting converted entity shall comply with the applicable
40 provisions of the laws of the jurisdiction under which it is
41 organized.

42 c. (1) Pursuant to a plan of conversion, another business
43 entity formed or organized under the laws of this State or any other
44 state of the United States or any foreign country or other foreign
45 jurisdiction may convert into a domestic limited partnership, as the
46 plan of conversion shall provide. Unless otherwise provided in the
47 governing documents of the converting entity, a conversion shall be
48 approved by the converting entity in accordance with the laws of

1 the jurisdiction under which the other business is organized. In
2 connection with a conversion hereunder, rights, or securities of, or
3 interests in, the converting entity may be exchanged for or
4 converted into cash, property, rights, or securities of, or interests in,
5 the converted entity or, in addition to or in lieu thereof, may be
6 exchanged for or converted into cash, property, rights, or securities
7 of, or interests in, a domestic limited partnership or other business
8 entity which is not the converted entity. Notwithstanding prior
9 approval, a plan of conversion may be terminated or amended
10 pursuant to a provision for that termination or amendment contained
11 in the plan of conversion.

12 (2) Another business entity may not convert to a domestic
13 limited partnership if authority for that conversion is not granted by
14 the laws of the jurisdiction under which the converting entity is
15 organized.

16 (3) With respect to the conversion of another business entity to a
17 domestic limited partnership, that other business entity shall comply
18 with the provisions of the laws of the jurisdiction under which it is
19 organized and the resulting converted entity shall comply with the
20 provisions of this section.

21 d. If a converting entity converts under this section, the
22 converted entity resulting from the conversion shall file a certificate
23 of conversion in the filing office. The filing office shall, upon
24 filing, forward a copy of the certificate of conversion to the
25 Director of the Division of Taxation. The certificate of conversion
26 shall state:

27 (1) The name and jurisdiction of formation or organization of
28 the converting entity;

29 (2) That a plan of conversion has been approved and executed
30 by the converting entity;

31 (3) The name of the resulting converted entity;

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

35 (5) That the plan of conversion is on file at a place of business
36 of the converted entity, and shall state the address thereof;

37 (6) That a copy of the plan of conversion shall be furnished by
38 the converted entity, on request and without cost, to any member,
39 partner, or shareholder of the converting entity; and

40 (7) If the resulting converted entity is not a domestic limited
41 partnership or other business entity organized under the laws of this
42 State, a statement that the converted entity agrees that it may be
43 served with process in this State in any action, suit, or proceeding
44 for the enforcement of any obligation of the converting entity,
45 irrevocably appointing the filing office as its agent to accept service
46 of process in that action, suit, or proceeding and specifying the
47 address within or outside this State to which a copy of process shall
48 be mailed to it by the filing office.

1 e. Unless a future effective date or time is provided in a
2 certificate of conversion, in which event a conversion shall be
3 effective at that future effective date or time, a conversion shall be
4 effective upon the filing in the filing office of a certificate of
5 conversion.

6 f. (1) When any conversion becomes effective under this
7 section, for all purposes of the laws of this State, all of the rights,
8 privileges, and powers of the converting entity, and all property,
9 real, personal, and mixed, and all debts due to the converting entity,
10 as well as all other things and causes of action belonging to the
11 converting entity, shall be vested in the resulting converted entity,
12 and shall thereafter be the property of the resulting converted entity
13 as they were of the converting entity, and the title to any real
14 property vested by deed or otherwise, under the laws of this State,
15 in the converting entity, shall not revert or be in any way impaired
16 by reason of this section; but all rights of creditors and all liens
17 upon any property of the converting entity shall be preserved
18 unimpaired, and all debts, liabilities, and duties of the converting
19 entity shall attach to the resulting converted entity, and may be
20 enforced against it to the same extent as if the debts, liabilities, and
21 duties had been incurred or contracted by it.

22 (2) Unless otherwise agreed or as required under the applicable
23 provisions of the laws of the jurisdiction under which the
24 converting entity is organized, the converting entity shall not be
25 required to wind up its affairs or pay its liabilities and distribute its
26 assets, and the conversion shall not be deemed to constitute a
27 dissolution of that other entity and shall constitute a continuation of
28 the existence of the converting entity in the form of entity of the
29 resulting converted entity.

30

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

33 8. Name.

34 a. The name of a limited liability company shall contain the
35 words "limited liability company" or the abbreviation "L.L.C." or
36 "LLC". "Limited" may be abbreviated as "Ltd.", and "company"
37 may be abbreviated as "Co.".

38 b. Unless authorized by subsection d. of this section, the name
39 of a limited liability company shall be distinguishable in the records
40 of the filing office from:

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

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

45 c. Furthermore, the name of a limited liability company shall
46 not contain any word or phrase, or any abbreviation or derivative
47 thereof, the use of which is prohibited or restricted by any other

1 statute of this State, unless the limited liability company has
2 complied with the restrictions.

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

7 (1) the present user, registrant, or owner of the noncomplying
8 name consents **【in a signed record】** to the use and submits **【an**
9 **undertaking】** a signed record of consent in a form satisfactory to the
10 filing office **【to change the noncomplying name to a name that**
11 **complies with subsection b. of this section and is distinguishable in**
12 **the records of the filing office from the name applied for】**; or

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

16 e. Subject to section 61, the provisions of this act shall apply to
17 a foreign limited liability company transacting business in this State
18 which has a certificate of authority to transact business in this State
19 or which has applied for a certificate of authority.

20 (cf: P.L.2013, c.276, s.1)

21

22 4. Section 18 of P.L.2012, c.50 (C.42:2C-18) is amended to
23 read as follows:

24 18. Formation of Limited Liability Company; Certificate of
25 Formation.

26 a. One or more persons may act as organizers to form a limited
27 liability company by signing and delivering to the filing office for
28 filing a certificate of formation.

29 b. A certificate of formation shall state:

30 (1) the name of the limited liability company, which complies
31 with section 8 of this act; and

32 (2) the street and mailing addresses of the initial registered
33 office and the name of the initial agent at that office for service of
34 process of the company.

35 c. Subject to subsection c. of section 12 of this act, a certificate
36 of formation may also contain statements as to matters other than
37 those required by subsection b. of this section. However, a
38 statement in a certificate of formation is not effective as a statement
39 of authority.

40 d. A limited liability company is formed when the filing office
41 has filed the certificate of formation **【and the company has at least**
42 **one member】**, unless the certificate states a delayed effective date
43 pursuant to subsection c. of section 22 of this act.

44 e. If the certificate states a delayed effective date, a limited
45 liability company is not formed if, before the certificate takes
46 effect, a certificate of dissolution is signed and delivered to the
47 filing office for filing and the filing office files the certificate.

1 f. Subject to any delayed effective date and except in a
2 proceeding by this State to dissolve a limited liability company, the
3 filing of the certificate of formation by the filing office is
4 conclusive proof that the organizer satisfied all conditions to the
5 formation of a limited liability company.

6 (cf: P.L.2012, c.50, s.18)

7
8 5. Section 38 of P.L.2012, c.50 (C.42:2C-38) is amended to
9 read as follows:

10 38. Indemnification and Insurance.

11 a. As used in this section:

12 (1) "Company agent" means any person who is or was a member
13 of a member-managed company, a manager of a manager-managed
14 company, an officer, employee or agent of the indemnifying
15 company or of any constituent company absorbed by the
16 indemnifying company in a consolidation or merger and any person
17 who is or was a member, manager, officer, director, trustee,
18 employee or agent of any other enterprise, serving as such at the
19 request of the indemnifying company, or any such constituent
20 company, or the legal representatives of any such member,
21 manager, officer, director, trustee, employee or agent.

22 (2) "Other enterprise" and "another enterprise" mean any
23 domestic or foreign limited liability company other than the
24 company, and any corporation, partnership, joint venture, sole
25 proprietorship, trust or other enterprise, whether or not for profit,
26 served by a company agent;

27 (3) "Expenses" means reasonable costs, disbursements and
28 attorney's fees;

29 (4) "Liabilities" means amounts paid or incurred in satisfaction
30 of settlements, judgments, fines and penalties; and

31 (5) "Proceeding" means any pending, threatened or completed
32 civil, criminal, administrative or arbitrative action, suit or
33 proceeding, and any appeal therein, and any inquiry or investigation
34 which could lead to that action or proceeding.

35 (6) References to an "other enterprise" or "another enterprise"
36 include employee benefit plans; and references to "fines" include
37 any excise taxes assessed on a person with respect to an employee
38 benefit plan.

39 b. A limited liability company shall indemnify a company
40 agent against expenses to the extent that such company agent has
41 been successful on the merits or otherwise in any proceeding
42 brought against the company agent by reason of the company agent
43 serving as a company agent or serving another enterprise at the
44 request of the limited liability company. If the company agent is
45 successful on the merits or otherwise in defense of any claim, issue
46 or matter in any such proceeding, indemnification shall be provided
47 under this subsection with respect to the claim, issue or matter.

1 c. A limited liability company shall indemnify a company
2 agent against any debt, obligation, expense or other liability
3 incurred by that company agent in the course of the company
4 agent's activities on behalf of the limited liability company or
5 another enterprise at the request of the limited liability company, if,
6 in making the payment or incurring the debt, obligation, expense or
7 other liability, the company agent :

8 (1) is a member of a member-managed limited liability company
9 or a manager of a manager-managed limited liability company and
10 complied with the duties stated in sections 35 and 39 of this act ; or

11 (2) is other than a member of a member-managed limited
12 liability company or a manager of a manager-managed limited
13 liability company and acted in good faith and in a manner the
14 company agent reasonably believed to be in the best interests of the
15 limited liability company.

16 d. A limited liability company may purchase and maintain
17 insurance on behalf of any company agent against any expenses
18 incurred in any proceeding and any liabilities asserted against the
19 company agent in his or her capacity as a company agent, whether
20 or not the limited liability company could eliminate or limit the
21 person's liability to the company for the conduct giving rise to the
22 liability under subsection g. of section 11 of this act. The limited
23 liability company may purchase such insurance from, or such
24 insurance may be reinsured in whole or in part by, an insurer owned
25 by or otherwise affiliated with the limited liability company,
26 whether or not such insurer does business with other insureds.

27 (cf: P.L.2012, c.50, s.38)

28
29 6. Section 39 of P.L.2012, c.50 (C.42:2C-39) is amended to
30 read as follows:

31 39. Standards of Conduct for Members and Managers.

32 a. A member of a member-managed limited liability company
33 owes to the company and, subject to subsection b. of section 67 of
34 this act, the other members, the duties of loyalty and care stated in
35 subsections b. and c. of this section.

36 b. The fiduciary duty of loyalty of a member in a member-
37 managed limited liability company includes the duties:

38 (1) to account to the company and to hold as trustee for it any
39 property, profit, or benefit derived by the member:

40 (a) in the conduct or winding up of the company's activities;

41 (b) from a use by the member of the company's property; or

42 (c) from the appropriation of a company opportunity;

43 (2) to refrain from dealing with the company in the conduct or
44 winding up of the company's activities as or on behalf of a person
45 having an interest adverse to the company; and

46 (3) to refrain from competing with the company in the conduct
47 of the company's activities before the dissolution of the company.

- 1 c. The duty of care of a member of a member-managed limited
2 liability company in the conduct and winding up of the company's
3 activities is to refrain from engaging in grossly negligent or reckless
4 conduct, intentional misconduct, or a knowing violation of law.
- 5 d. A member shall discharge the duties under this act or under
6 the operating agreement and exercise any rights consistently with
7 the contractual obligation of good faith and fair dealing.
- 8 e. A member does not violate a duty or obligation under this
9 act or under the operating agreement merely because the member's
10 conduct furthers the member's own interest.
- 11 f. All of the members of a member-managed limited liability
12 company or a manager-managed limited liability company may
13 authorize or ratify, after full disclosure of all material facts, a
14 specific act or transaction that otherwise would violate the duty of
15 loyalty.
- 16 g. It is a defense to a claim under paragraph (2) of subsection
17 b. of this section and any comparable claim in equity or at common
18 law that the transaction was fair to the limited liability company.
- 19 h. If, as permitted by subsection f. of this section or the
20 operating agreement, a member enters into a transaction with the
21 company that would otherwise be prohibited by paragraph (2) of
22 subsection b. of this section, the member's rights and obligations are
23 the same as those of a person not a member.
- 24 i. In a manager-managed limited liability company, the
25 following rules apply:
- 26 (1) Subsections a., b., c. and g. of this section apply to the
27 manager or managers and not the members, and the duty stated
28 under paragraph (3) of subsection b. of this section continues until
29 winding up is completed.
- 30 (2) Subsections d. and e. of this section apply to the managers as
31 well as the members and, subject to subsection d. of this section, a
32 member does not have any duty to the company or any other
33 member solely by reason of being a member.
- 34 (3) The power to ratify stated in subsection f. of this section
35 pertains only to the members.
- 36 j. A member of a member-managed limited liability company
37 and a manager of a manager-managed limited liability company
38 shall be fully protected in relying in good faith upon the records of
39 the limited liability company and upon information, opinions,
40 reports, or statements presented by another manager, member, or
41 liquidating trustee, an officer or employee of the limited liability
42 company, or committees of the limited liability company, members,
43 or managers, or by any other person as to matters the member or
44 manager reasonably believes are within that other person's
45 professional or expert competence, including information, opinions,
46 reports, or statements as to the value and amount of the assets,
47 liabilities, profits, or losses of the limited liability company, or the
48 value and amount of assets, reserves, or contracts, agreements or

1 other undertakings that would be sufficient to pay claims and
2 obligations of the limited liability company or to make reasonable
3 provision to pay those claims and obligations, or any other facts
4 pertinent to the existence and amount of assets from which
5 distributions to members or creditors might properly be paid. The
6 protection afforded by this subsection shall extend to any claims
7 under subsection c. of this section and any comparable claim in
8 equity or at common law that the member or manager breached the
9 duty of care required of that member or manager.

10 (cf: P.L.2012, c.50, s.39)

11
12 7. Section 51 of P.L.2012, c.50 (C.42:2C-51) is amended to
13 read as follows:

14 51. Other Claims Against Dissolved Limited Liability Company.

15 a. A dissolved limited liability company may publish notice of
16 its dissolution and request persons having claims against the
17 company to present them in accordance with the notice.

18 b. The notice authorized by subsection a. of this section shall:

19 (1) be published at least once in a newspaper of general
20 circulation in the county in this State in which the dissolved limited
21 liability company's principal office is located or, if it has none in
22 this State, in the county in which the company's registered office is
23 or was last located;

24 (2) describe the information required to be contained in a claim
25 and provide a mailing address to which the claim is to be sent;
26 **【and】**

27 (3) state **【that a claim against the company is barred unless an**
28 **action to enforce the claim is commenced within five years】** the
29 deadline for receipt of the claim, which may not be less than six
30 months after publication of the notice; and

31 (4) state that the claim will be barred if not received by the
32 deadline.

33 c. If a dissolved limited liability company publishes a notice in
34 accordance with subsection b. of this section, **【unless the claimant**
35 **commences an action to enforce the claim against the company**
36 **within five years after the publication date of the notice, the claim**
37 **of each of the following claimants】** a claim against a dissolved
38 limited liability company is barred if the requirements of subsection
39 b. of this section are met and:

40 (1) the claim is not received by the specified deadline except in
41 the case of a claimant 【that did not receive notice in a record under
42 section 50 of this act】 who shows good cause for not having timely
43 sent a claim, to the extent as the Superior Court may allow; or

44 (2) **【a claimant whose claim was timely sent to the company but**
45 **not acted on; and】** if the claim is timely received but rejected by the
46 company:

(a) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant received the notice; and

(b) the claimant does not commence the required action within 90 days.

(3) **【a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution】** (Deleted by amendment, P.L. , c. (C.) (pending before the Legislature as this bill).

d. A claim not barred under this section may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

(cf: P.L.2012, c.50, s.51)

8. This act shall take effect immediately.

STATEMENT

This bill makes various revisions to the laws governing partnerships, limited partnerships, and limited liability companies. The revisions permit partnerships and limited partnerships to convert to and from other business entities and clarify indemnification standards, address notice issues, and make certain other changes to the “Revised Uniform Limited Liability Company Act.”

The bill provides that, pursuant to a plan of conversion, a partnership or limited partnership may convert into another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction, as provided in the plan of conversion. The bill also provides that, pursuant to a plan of conversion, another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction may convert into a domestic partnership or limited partnership, as provided in the plan of conversion. Under the bill, “other business entity” means a business corporation, partnership, limited partnership, or a limited liability company.

The bill provides that, in order for a limited liability company to use a name that is similar to that of another entity, a limited liability

1 company must submit to the filing office a signed record of consent
2 from the entity currently using the name in a form satisfactory to
3 the filing office.

4 The bill eliminates the requirement that a limited liability
5 company must have a member before it may be formed. Instead, a
6 limited liability company is formed when the filing office has filed
7 the certificate of formation, unless the certificate states a delayed
8 effective date.

9 Under the bill, a limited liability company shall indemnify a
10 company agent against any debt, obligation, expense or other
11 liability incurred by that company agent in the course of the
12 company agent's activities on behalf of the limited liability
13 company or another enterprise at the request of the limited liability
14 company, if, in making the payment or incurring the debt,
15 obligation, expense or other liability, the company agent: (1) is a
16 member of a member-managed limited liability company or a
17 manager of a manager-managed limited liability company and
18 complied with certain duties or (2) is other than a member of a
19 member-managed limited liability company or a manager of a
20 manager-managed limited liability company and acted in good faith
21 and in a manner the company agent reasonably believed to be in the
22 best interests of the limited liability company.

23 The bill provides that a member of a member-managed limited
24 liability company and a manager of a manager-managed limited
25 liability company shall be fully protected in relying in good faith
26 upon certain information and records of the limited liability
27 company. This protection extends to claims that the applicable
28 member or manager breached duty of care required of that member
29 or manager.

30 The bill shortens the time following the newspaper publication of
31 notice of the dissolution of a limited liability company in which a
32 claim against the limited liability company must be brought before
33 the claim is barred, currently five years. Under the bill, the claim
34 must be received not less than six months following newspaper
35 publication of notice.