

[Second Reprint]  
ASSEMBLY, No. 2875

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Assemblymen STUHLTRAGER, RUSSO and Felice

1 AN ACT concerning limited liability companies, amending P.L.1973,  
2 c.367 and amending and supplementing P.L.1993, c.210.

3

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

6

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

9 7. a. The registered agent of a domestic limited liability company  
10 or a foreign limited liability company authorized to transact business  
11 in this State may resign by complying with the provisions of this  
12 section.

13 b. The registered agent of a foreign or domestic limited liability  
14 company may resign and appoint a successor registered agent by filing  
15 a certificate in the office of the Secretary of State, stating that it  
16 resigns and the name and address of the successor registered agent.  
17 There shall be attached to such certificate a statement executed by the  
18 affected limited liability company ratifying and approving such change  
19 of registered agent. Upon such filing, the successor registered agent  
20 shall become the registered agent of each limited liability company  
21 which has ratified and approved the substitution and the successor  
22 registered agent's address, as stated in such certificate, shall become  
23 the address of each limited liability company's registered office in this  
24 State. The Secretary of State shall furnish to the successor registered  
25 agent upon request a certified copy of the certificate of resignation.  
26 Filing of the certificate of resignation shall be deemed to be an  
27 amendment of the certificate of formation of the limited liability  
28 company affected thereby and the limited liability company shall not  
29 be required to take any further action with respect thereto, to amend  
30 its certificate of formation under this act.

31 c. The registered agent of a limited liability company may resign

**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:**

<sup>1</sup> Assembly AJU committee amendments adopted May 1, 1997.

<sup>2</sup> Senate SJU committee amendments adopted June 5, 1997.

1 without appointing a successor registered agent by complying with the  
2 following provisions:

3 (1) The registered agent, or, in the case of a registered agent who  
4 is deceased or has been declared incompetent by a court of competent  
5 jurisdiction, his legal representative, shall serve a notice of resignation  
6 by certified mail, return receipt requested, upon the limited liability  
7 company at the address last known to the agent, and shall make an  
8 affidavit of such service. If service cannot be made, the affidavit shall  
9 so state, and shall state briefly why service cannot be made. The  
10 affidavit, together with a copy of notice of resignation, shall be filed  
11 in the office of the Secretary of State.

12 (2) The resignation shall become effective 30 days after filing the  
13 affidavit of service in the office of the Secretary of State or upon the  
14 designation by the limited liability company of a new registered agent  
15 pursuant to this act, whichever is earlier. If the limited liability  
16 company fails to designate a new registered agent within the 30 day  
17 period, the limited liability company shall thereafter be deemed to have  
18 no registered agent or registered office in this State, until the limited  
19 liability company files a certificate of change of address of registered  
20 office and registered agent indicating the new registered office and  
21 registered agent.

22 [(3) If any certificate of change replacing a resigned agent is not  
23 filed, the limited liability company shall, after written demand therefor  
24 by the Secretary of State, forfeit to the State a penalty of \$200 for  
25 each year or part thereof until an agent is appointed. The Secretary of  
26 State may issue a certificate to the Clerk of the Superior Court that the  
27 limited liability company is indebted for the payment of this penalty.  
28 This certificate shall be entered by the Clerk as a judgment docketed  
29 in the Superior Court, and shall have the same form as a docketed  
30 judgment.

31 (4) If a certificate of change replacing a resigned agent is not filed  
32 within two years from the effective date of the resignation, the  
33 certificate of formation of the limited liability company shall remain  
34 filed with the office of the Secretary of State but be transferred to an  
35 inactive list. A limited liability company whose certificate has been  
36 transferred to the inactive list shall remain a limited liability company  
37 formed under this act but no name reservations, transfers of reserved  
38 names or certificates of amendment may be filed until the limited  
39 liability company regains active status by making all required filings  
40 and payments. The transfer of the certificate of formation of a limited  
41 liability company to the inactive list shall have no effect on the liability  
42 of a member of a limited liability company.]<sup>2</sup>

43 (cf: P.L.1993, c.210, s.7)

44

45 <sup>2</sup>[1.] 2.<sup>2</sup> Section 11 of P.L.1993, c.210 (C.42:2B-11) is amended  
46 to read as follows:

1 11. a. In order to form a limited liability company, one or more  
2 authorized persons must execute a certificate of formation. The  
3 certificate of formation shall be filed in the office of the Secretary of  
4 State and set forth:

5 (1) The name of the limited liability company;

6 (2) The address of the registered office and the name and address  
7 of the registered agent for service of process required to be maintained  
8 by section 6 of this act;

9 (3) That the limited liability company has two or more members;

10 (4) If the limited liability company is to have perpetual existence,  
11 regardless of whether the limited liability company is subject to any  
12 dissolution contingencies, then the word “perpetual” shall be stated;  
13 if the limited liability company is to have a specific date of dissolution,  
14 regardless of whether the limited liability company is subject to any  
15 dissolution contingencies, the latest date on which the limited liability  
16 company is to dissolve; and

17 (5) Any other matters the members determine to include therein.

18 b. A limited liability company is formed at the time of the filing of  
19 the initial certificate of formation in the office of the Secretary of State  
20 or at any later date or time specified in the certificate of formation if,  
21 in either case, there has been substantial compliance with the  
22 requirements of this section. A limited liability company formed under  
23 this act shall be a separate legal entity, the existence of which as a  
24 separate legal entity shall continue until cancellation of the limited  
25 liability company's certificate of formation.

26 (cf: P.L.1993, c.210, s.11)

27  
28 <sup>2</sup>[2.] 3.<sup>2</sup> Section 14 of P.L.1993, c.210 (C.42:2B-14) is amended  
29 to read as follows:

30 14. a. A certificate of formation shall be canceled upon the  
31 dissolution and the completion of winding up of a limited liability  
32 company, [or at any other time there are fewer than two members,] or  
33 upon the filing of a certificate of merger or consolidation if the limited  
34 liability company is not the surviving or resulting entity in a merger or  
35 consolidation.

36 b. A certificate of cancellation shall be filed in the office of the  
37 Secretary of State to accomplish the cancellation of a certificate of  
38 formation upon the dissolution and the completion of winding up of a  
39 limited liability company [or at any other time there are not two  
40 members] and shall set forth:

41 (1) The name of the limited liability company;

42 (2) The date of filing of its certificate of formation;

43 (3) The reason for filing the certificate of cancellation;

44 (4) The future effective date or time (which shall be a date or time  
45 certain) of cancellation if it is not to be effective upon the filing of the  
46 certificate; and

1 (5) Any other information the person filing the certificate of  
2 cancellation determines.

3 c. A certificate of formation shall not be canceled, and no  
4 certificate of cancellation shall be required to be filed, when a limited  
5 liability company has only one member, and the certificate of  
6 formation shall remain valid when a limited liability company has only  
7 one member, if within 90 days of the date on which the limited liability  
8 company first had only one member, one or more additional members  
9 are admitted. If no additional member is admitted within that 90 day  
10 period, the certificate of formation of that limited liability company  
11 shall be canceled and a certificate of cancellation shall be filed on and  
12 as of the end of that 90 day period.

13 (cf: P.L.1993, c.210, s.14)

14  
15 <sup>2</sup>[3.] 4.<sup>2</sup> Section 18 of P.L.1993, c.210 (C.42:2B-18) is amended  
16 to read as follows:

17 18. A certificate of formation filed in the office of the Secretary of  
18 State is notice that the entity formed in connection with the filing of  
19 the certificate of formation is a limited liability company formed under  
20 the laws of this State and is notice of all other facts set forth therein  
21 which are required or permitted to be set forth in a certificate of  
22 formation by paragraphs (1) and (2) of subsection a. of section 11 of  
23 this act. If any provision of an operating agreement is inconsistent  
24 with the information contained in the certificate of formation of that  
25 limited liability company, as amended, on file with the office of the  
26 Secretary of State, the operating agreement shall be controlling except  
27 with respect to any third party who can show actual and reasonable  
28 reliance to the detriment of that third party, upon the information  
29 contained in the certificate of formation.

30 (cf: P.L.1993, c.210, s.18)

31  
32 <sup>2</sup>[4.] 5.<sup>2</sup> Section 22 of P.L.1993, c.210 (C.42:2B-22) is amended  
33 to read as follows:

34 22. a. An operating agreement may provide for classes or groups  
35 of members having such relative rights, powers and duties as the  
36 operating agreement may provide, and may make provision for the  
37 future creation in the manner provided in the operating agreement of  
38 additional classes or groups of members having such relative rights,  
39 powers and duties as may from time to time be established, including  
40 rights, powers and duties senior to existing classes and groups of  
41 members. An operating agreement may provide for the taking of an  
42 action, including the amendment of the operating agreement, without  
43 the vote or approval of any member or class or group of members,  
44 including an action to create under the provisions of the operating  
45 agreement a class or group of limited liability company interests that  
46 was not previously outstanding.

1 b. An operating agreement may grant to all or certain identified  
2 members or a specified class or group of the members the right to  
3 vote, separately or with all or any class or group of managers or  
4 members, on any matter. Voting by members may be on a per capita,  
5 number, financial interest, class, group or any other basis. [In the  
6 absence of any provision in the operating agreement, voting by  
7 members shall be on a per capita basis.]

8 c. An operating agreement which grants a right to vote may set  
9 forth provisions relating to notice of the time, place or purpose of any  
10 meeting at which any matter is to be voted on by any manager or class  
11 or group of managers, waiver of any such notice, action by consent  
12 without a meeting, the establishment of a record date, quorum  
13 requirements, voting in person or by proxy, or any other matter with  
14 respect to the exercise of any such right to vote.

15 (cf: P.L.1993, c.210, s.22)

16

17 <sup>2</sup>[5.] 6.<sup>2</sup> Section 24 of P.L.1993, c.210 (C.42:2B-24) is amended  
18 to read as follows:

19 24. A [person ceases to be a] member [of] shall be dissociated  
20 from a limited liability company upon the [happening] occurrence of  
21 any of the following events:

22 a. Unless otherwise provided in an operating agreement, or with  
23 the written consent of all members,

24 (1) the limited liability company receives notice of the member's  
25 resignation as a member, or on a later date specified by the member;

26 (2) an event agreed to in the operating agreement as causing the  
27 member's dissociation;

28 (3) a member:

29 [(1) Makes an assignment for the benefit of creditors;

30 (2) Files a voluntary petition in bankruptcy;

31 (3) Is adjudged bankrupt or insolvent, or has entered against him  
32 an order for relief, in any bankruptcy or insolvency proceeding;

33 (4) Files a petition or answer seeking for himself any  
34 reorganization, arrangement, composition, readjustment, liquidation,  
35 dissolution or similar relief under any statute, law or regulation;

36 (5) Files an answer or other pleading admitting or failing to contest  
37 the material allegations of a petition filed against him in any  
38 proceeding of this nature;

39 (6) Seeks]

40 (a) becomes a debtor in bankruptcy;

41 (b) executes an assignment for the benefit of creditors;

42 (c) seeks, consents to or acquiesces in the appointment of a  
43 trustee, receiver or liquidator of the member or of all or [any  
44 substantial part of his] substantially all of that member's properties; or

45 (d) fails, within 90 days after the appointment, without the  
46 member's consent or acquiescence, of a trustee, receiver or liquidator

1 of the member or of all or substantially all of that member's properties,  
2 to have the appointment vacated or stayed, or fails within 90 days after  
3 the expiration of a stay to have the appointment vacated; or

4 b. [Unless otherwise provided in an operating agreement, or with  
5 the written consent of all members, 120 days after the commencement  
6 of any proceeding against the member seeking reorganization,  
7 arrangement, composition, readjustment, liquidation, dissolution or  
8 similar relief under any statute, law or regulation, if the proceeding has  
9 not been dismissed, or if within 90 days after the appointment without  
10 his consent or acquiescence of a trustee, receiver or liquidator of the  
11 member or of all or any substantial part of his properties, the  
12 appointment is not vacated or stayed, or within 90 days after the  
13 expiration of any such stay, the appointment is not vacated.]

14 (1) the member's expulsion pursuant to the operating agreement;

15 (2) the member's expulsion by the unanimous vote of the other  
16 members if:

17 (a) it is unlawful to carry on the limited liability company  
18 <sup>1</sup>[without] with<sup>1</sup> that member;

19 (b) there has been a transfer of all <sup>1</sup>[or substantially all]<sup>1</sup> of that  
20 member's transferable interest in the limited liability company, other  
21 than a transfer for security purposes, or a court order charging the  
22 member's interest;

23 (c) within 90 days after the limited liability company notifies a  
24 corporate member that it will be expelled because it has filed a  
25 certificate of dissolution or the equivalent, its charter has been  
26 revoked, or its right to conduct business has been suspended by the  
27 jurisdiction of its incorporation, there is no revocation of the  
28 certificate of dissolution or no reinstatement of its charter or its right  
29 to conduct business; or

30 (d) a limited liability company <sup>1</sup>or a partnership<sup>1</sup> that is a member  
31 has been dissolved and its business is being wound up;

32 (3) on application by the limited liability company or another  
33 member, the member's expulsion by judicial determination because:

34 (a) the member engaged in wrongful conduct that adversely and  
35 materially affected the limited liability company's business;

36 (b) the member willfully or persistently committed a material  
37 breach of the operating agreement; or

38 (c) the member engaged in conduct relating to the limited liability  
39 company business which makes it not reasonably practicable to carry  
40 on the business with the member as a member of the limited liability  
41 company;

42 (4) in the case of a member who is an individual:

43 (a) the member's death;

44 (b) the appointment of a guardian or general conservator for the  
45 member; or

46 (c) a judicial determination that the member has otherwise become

1 incapable of performing the member's duties under the operating  
2 agreement:

3 (5) in the case of a member that is a trust or is acting as a member  
4 by virtue of being a trustee of a trust, distribution of the trust's entire  
5 transferable interest in the limited liability company, but not merely by  
6 reason of the substitution of a successor trustee;

7 (6) in the case of a member that is an estate or is acting as a  
8 member by virtue of being a personal representative of an estate,  
9 distribution of the estate's entire transferable interest in the limited  
10 liability company, but not merely by reason of the substitution of a  
11 successor personal representative; or

12 (7) <sup>1</sup>[termination] dissolution of a member who is not an  
13 individual, partnership, corporation, trust or estate.

14 (cf: P.L.1993, c.210, s.24)

15

16 <sup>2</sup>[6.] 7.<sup>2</sup> (New section) Upon a member's dissociation, the  
17 dissociated member has, subject to section 39 of P.L.1993, c.210  
18 (C.42:2B-39), only the rights of an assignee of a member's limited  
19 liability interest.

20

21 <sup>2</sup>[7.] 8.<sup>2</sup> Section 27 of P.L.1993, c.210 (C.42:2B-27) is amended  
22 to read as follows:

23 27. a. (1) Unless otherwise provided in an operating agreement,  
24 the management of a limited liability company shall be vested in its  
25 members in proportion to the then current percentage or other interest  
26 of members in the profits of the limited liability company owned by all  
27 of the members, the decision of members owning more than 50 percent  
28 of the then current percentage or other interest in the profits  
29 controlling; (2) provided, however, that if an operating agreement  
30 provides for the management, in whole or in part, of a limited liability  
31 company by [a manager] one or more managers, the management of  
32 the limited liability company, to the extent so provided, shall be vested  
33 in the manager or managers who shall be chosen by the members in the  
34 manner provided in the operating agreement. The [manager] managers  
35 shall also hold the offices and have the responsibilities accorded to  
36 [him] them by the members and set forth in an operating agreement.  
37 Subject to section 37 of this act, a manager shall cease to be a  
38 manager as provided in an operating agreement.

39 b. (1) If a limited liability company is managed by its members,  
40 unless otherwise provided in the operating agreement, each member  
41 shall have the authority to bind the limited liability company. In  
42 addition, unless otherwise provided in the operating agreement, or to  
43 the extent that a court of competent jurisdiction determines that the  
44 operating agreement is without effect in this regard, each member in  
45 a limited liability company managed by its members shall also have the  
46 authority to file for insolvency or reorganization under appropriate

1 State or federal law, so long as that filing has the prior approval of  
2 members then owning more than 50 percent of the interests in the  
3 profits of the limited liability company.

4 (2) If the limited liability company is managed by a manager or  
5 managers, the managers shall, in addition to all other authority  
6 accorded by the operating agreement, have the authority to file for  
7 insolvency or reorganization under appropriate State or federal law,  
8 unless otherwise provided in the operating agreement, except to the  
9 extent a court of competent jurisdiction determines that the operating  
10 agreement is without effect in this regard.

11 (cf: P.L.1993, c.210, s.27)

12

13 <sup>2</sup>[8.] 9.<sup>2</sup> Section 39 of P.L.1993, c.210 (C.42:2B-39) is amended  
14 to read as follows:

15 39. a. Except as provided in this act, upon resignation any  
16 resigning member is entitled to receive any distribution to which he is  
17 entitled under an operating agreement and, if not otherwise provided  
18 in an operating agreement, he is entitled to receive, within a reasonable  
19 time after resignation, the fair value of his limited liability company  
20 interest as of the date of resignation based upon the net present value  
21 of his right to share in distributions from the limited liability company,  
22 less all applicable valuation discounts, unless the operating agreement  
23 provides for another distribution formula. If the resignation of a  
24 member violates an operating agreement, in addition to any remedies  
25 otherwise available under applicable law, a limited liability company  
26 may recover from the resigning member damages for breach of the  
27 operating agreement and offset the damages against the amount  
28 otherwise distributable to the resigning member.

29 b. As used in subsection a. of this section, “all applicable valuation  
30 discounts” shall include discounts for lack of liquidity, relative size of  
31 holding, absence of any trading market and comparable factors.

32 (cf: P.L.1993, c.210, s.39)

33

34 <sup>2</sup>[9.] 10.<sup>2</sup> Section 44 of P.L.1993, c.210 (C.42:2B-44) is amended  
35 to read as follows:

36 44. a. A limited liability company interest is assignable in whole or  
37 in part except as provided in an operating agreement. The assignee of  
38 a member's limited liability company interest shall have no right to  
39 participate in the management of the business and affairs of a limited  
40 liability company except as provided in an operating agreement and  
41 upon:

42 (1) The approval of all of the members of the limited liability  
43 company other than the member assigning his limited liability company  
44 interest; or

45 (2) Compliance with any procedure provided for in the operating  
46 agreement.

1 b. Unless otherwise provided in an operating agreement:

2 (1) An assignment entitles the assignee to share in the profits and  
3 losses, to receive the distribution or distributions, and to receive the  
4 allocation of income, gain, loss, deduction, or credit or similar item to  
5 which the assignor was entitled, to the extent assigned;

6 (2) A member ceases to be a member and to have the power to  
7 exercise any rights or powers of a member upon assignment of all of  
8 his limited liability company interest; and

9 (3) The pledge of, or granting of a security interest, lien or other  
10 encumbrance in or against, any or all of the limited liability company  
11 interest of a member shall not cause the member to cease to be a  
12 member or to have the power to exercise any rights or powers of a  
13 member.

14 c. An operating agreement may provide that a member's interest in  
15 a limited liability company may be evidenced by a certificate of limited  
16 liability company interest issued by the limited liability company.

17 d. Unless otherwise provided in an operating agreement and except  
18 to the extent assumed by agreement, until an assignee of a limited  
19 liability company interest becomes a member, the assignee shall have  
20 no liability as a member solely as a result of the assignment.

21 e. An assignee shall have no authority to seek or obtain a court  
22 order dissolving or liquidating a limited liability company.

23 (cf: P.L.1993, c.210, s.44)

24

25 <sup>2</sup>[10.] 11.<sup>2</sup> Section 45 of P.L.1993, c.210 (C.42:2B-45) is amended  
26 to read as follows:

27 45. On application to a court of competent jurisdiction by any  
28 judgment creditor of a member, the court may charge the limited  
29 liability company interest of the member with payment of the  
30 unsatisfied amount of the judgment with interest. To the extent so  
31 charged, the judgment creditor has only the rights of an assignee of the  
32 limited liability company interest. An action by a court pursuant to  
33 this section does not deprive any member of the benefit of any  
34 exemption laws applicable to his limited liability company interest. A  
35 court order charging the limited liability company interest of a member  
36 pursuant to this section shall be the sole remedy of a judgment  
37 creditor, who shall have no right under P.L.1993, c.210 (42:2B-1 et  
38 seq.) or any other State law to interfere with the management or force  
39 dissolution of a limited liability company or to seek an order of the  
40 court requiring a foreclosure sale of <sup>1</sup>the<sup>1</sup> limited liability company  
41 interest. Nothing in this section shall be construed to affect in any way  
42 the rights of a judgment creditor of a member under federal  
43 bankruptcy or reorganization laws.

44 (cf: P.L.1993, c.210, s.45)

1       <sup>2</sup>[11.] 12.<sup>2</sup> Section 48 of P.L.1993, c.210 (C.42:2B-48) is amended  
2 to read as follows:

3       48. A limited liability company is dissolved and its affairs shall be  
4 wound up upon the first to occur of the following:

5       a. ~~[At] Unless the certificate of formation specifies that the limited~~  
6 ~~liability company is perpetual, at the time specified in an operating~~  
7 ~~agreement, or 30 years from the date of the formation of the limited~~  
8 ~~liability company if no [such] specified time for dissolution and~~  
9 ~~winding up, regardless of any dissolution contingencies, is set forth in~~  
10 the operating agreement;

11       b. Upon the happening of events specified in an operating  
12 agreement;

13       c. The written consent of all members, ~~which includes written~~  
14 ~~consent of the sole remaining member of a limited liability company;~~

15       d. ~~[The death, retirement, resignation, expulsion, bankruptcy or~~  
16 ~~dissolution of a member or the occurrence of any other event which~~  
17 ~~terminates the continued membership of a member in the limited~~  
18 ~~liability company unless the business of the limited liability company~~  
19 ~~is continued either by the consent of all the remaining members within~~  
20 ~~90 days following the occurrence of any such event or pursuant to a~~  
21 ~~right to continue stated in the operating agreement] Ninety days after~~  
22 ~~the date on which the limited liability company has only one member,~~  
23 ~~unless at least one additional member is admitted within 90 days after~~  
24 ~~the date on which the limited liability company had only one member;~~  
25 or

26       e. The entry of a decree of judicial dissolution under section 49 of  
27 this act.

28 (cf: P.L.1993, c.210, s.48)

29  
30       <sup>2</sup>[12.] 13.<sup>2</sup> Section 50 of P.L.1993, c.210 (C.42:2B-50) is amended  
31 to read as follows:

32       50. a. Unless otherwise provided in an operating agreement, a  
33 manager who has not wrongfully dissolved a limited liability company  
34 or, if there is no manager, the members or a person approved by the  
35 members or, if there is more than one class or group of members, then  
36 by each class or group of members, in either case, by members who  
37 own more than 50 percent of the then current percentage or other  
38 interest in the profits of the limited liability company owned by all of  
39 the members or by the members in each class or group, as appropriate,  
40 may wind up the limited liability company's affairs; but the ~~[Court of]~~  
41 ~~Chancery~~ Division, General Equity Part of Superior Court, upon cause  
42 shown, may wind up the limited liability company's affairs upon  
43 application of any member or manager, his legal representative or  
44 assignee, and in connection therewith, may appoint a liquidating  
45 trustee.

46       b. Upon dissolution of a limited liability company and until the

1 filing of a certificate of cancellation as provided in section 14 of this  
2 act, the persons winding up the limited liability company's affairs may,  
3 in the name of, and for and on behalf of, the limited liability company,  
4 prosecute and defend suits, whether civil, criminal or administrative,  
5 gradually settle and close the limited liability company's business,  
6 dispose of and convey the limited liability company's property,  
7 discharge or make reasonable provision for the limited liability  
8 company's liabilities, and distribute to the members any remaining  
9 assets of the limited liability company, all without affecting the liability  
10 of members and managers and without imposing liability on a  
11 liquidating trustee.

12 (cf: P.L.1993, c.210, s.50)

13

14 <sup>2</sup>[<sup>1</sup>13.] 14. <sup>2</sup> Section 65 of P.L.1993, c.210 (C.42:2B-65) is  
15 amended to read as follows:

16 65. a. No document required to be filed under this act shall be  
17 effective until the applicable fee required by this section is paid. The  
18 following fees shall be paid to and collected by the Secretary of State  
19 for the use of the State:

20 (1) Upon the receipt for filing of a certificate of registration of  
21 alternate name or a certificate of renewal pursuant to section 4 of this  
22 act, a fee in the amount of \$50.

23 (2) Upon the receipt for filing of an application for reservation of  
24 name, an application for renewal of reservation or a notice of transfer  
25 or cancellation of reservation pursuant to section 5 of this act, a fee in  
26 the amount of \$50.

27 (3) Upon the receipt for filing of a certificate under subsection b.  
28 of section 6 of this act, a fee in the amount of \$25, upon the receipt  
29 for filing of a certificate under subsection b. of section 7 of this act, a  
30 fee in the amount of \$25 and a further fee of \$10 for each limited  
31 liability company affected by such certificate.

32 (4) Upon the receipt for filing of a notice of resignation and  
33 affidavit pursuant to subsection c. of section 7 of this act, a fee in the  
34 amount of \$25 and upon the receipt for filing of a certificate of change  
35 pursuant to subsection c. of section 7 of this act, a fee in the amount  
36 of \$25.

37 (5) Upon the receipt for filing of a certificate of formation under  
38 section 11 of this act, a certificate of correction under section 12 of  
39 this act, a certificate of amendment under section 13 of this act, a  
40 certificate of cancellation under section 14 of this act, a certificate of  
41 merger or consolidation under section 20 of this act or a restated  
42 certificate of formation under section 19 of this act, a fee in the  
43 amount of \$100.

44 (6) Upon filing of a an annual report, a fee in the amount of  
45 \$50.00.

46 (7) Upon requesting a reinstatement of a certificate of a limited

1 liability company, a late filing fee of \$200.00 and a reinstatement filing  
2 fee of \$50.00.

3 ~~[(6)]~~ (8) For certifying copies of any paper on file as provided for  
4 by this act, a fee in the amount of \$25 for each copy certified.

5 ~~[(7)]~~ (9) The Secretary of State may issue photocopies of  
6 instruments on file as well as other copies, and for all of those copies,  
7 whether certified or not, a fee in the amount of \$10 for the first page  
8 and \$2 per page thereafter shall be paid.

9 ~~[(8)]~~ (10) Upon the receipt for filing of an application for  
10 registration as a foreign limited liability company under section 53 of  
11 this act or a certificate of cancellation under section 56 of this act, a  
12 fee in the amount of \$100.

13 ~~[(9)]~~ (11) For preclearance of any document for filing, a fee in the  
14 amount of \$50.

15 ~~[(10)]~~ (12) For preparing and providing a written report of a  
16 record search, a fee in the amount of \$50.

17 ~~[(11)]~~ (13) For issuing any certificate of the Secretary of State,  
18 including but not limited to a certificate of good standing, other than  
19 a certification of a copy under paragraph (6) of this subsection, a fee  
20 in the amount of \$50, except that for issuing any certificate of the  
21 Secretary of State that recites all of a limited liability company's filings  
22 with the Secretary of State, a fee of \$100 shall be paid for each such  
23 certificate.

24 ~~[(12)]~~ (14) For receiving and filing and/or indexing any certificate,  
25 affidavit, agreement or any other paper provided for by this act, for  
26 which no different fee is specifically prescribed, a fee in the amount of  
27 \$50.

28 ~~[(13)]~~ (15) The Secretary of State may in his discretion charge a  
29 fee of \$50 for each check received for payment of any fee that is  
30 returned due to insufficient funds or the result of a stop payment  
31 order.

32 b. In addition to those fees charged under subsection a. of this  
33 section, there shall be collected by and paid to the Secretary of State  
34 the following:

35 (1) for all services described in subsection a. of this section that are  
36 requested to be completed within the same day as the day of the  
37 request, an additional sum of up to \$50; and

38 (2) for all services described in subsection a. of this section that are  
39 requested to be completed within a 24-hour period from the time of  
40 the request, an additional sum of up to \$25.

41 The Secretary of State shall establish (and may from time to time  
42 amend) a schedule of specific fees payable pursuant to this subsection.

43 c. The Secretary of State may in his discretion permit the extension  
44 of credit for the fees required by this section upon such terms as he  
45 shall deem to be appropriate.<sup>1</sup>

46 (cf: P.L.1993, c.210, s.65)

1 <sup>1</sup>[13.] <sup>2</sup>[14.<sup>1</sup>] 15.<sup>2</sup> (New section) a. Each domestic and foreign  
2 limited liability company shall file an annual report with the office of  
3 the Secretary of State, setting forth:

- 4 (1) the name and address of the limited liability company;  
5 (2) the name and address of the registered agent of the limited  
6 liability company; and  
7 (3) the name and addresses of the managing members or managers,  
8 as the case may be.

9 b. If no annual report is filed as required by this section for two  
10 consecutive years,

11 (1) the certificate of a domestic limited liability company shall be  
12 transferred to an inactive list maintained by the Secretary of State. A  
13 limited liability company on the inactive list shall remain a limited  
14 liability company and the limited liability of its members and managers  
15 shall not be affected by its transfer to this list. The name of a limited  
16 liability company on the inactive list shall, subject to any other rights  
17 that limited liability company may have to its name, be available for  
18 use by any other limited liability company, including a newly-formed  
19 limited liability company.

20 (2) the certificate of a foreign limited liability company may be  
21 revoked by the Secretary of State.

22 <sup>1</sup>(3) if the certificate of a domestic limited liability company has  
23 been transferred to the inactive list or if the certificate of a foreign  
24 limited liability company has been revoked, the certificate shall be  
25 reinstated by proclamation of the Secretary of State upon payment of  
26 all fees due to the Secretary of State, consisting of a reinstatement  
27 filing fee, current annual report fee, all delinquent annual report fees,  
28 and a late filing fee. The reinstatement relates back to the date of  
29 transfer of the certificate of a domestic limited liability company to the  
30 inactive list or to the date of revocation of the certificate of a foreign  
31 limited liability company, as the case may be, and shall validate all  
32 actions taken in the interim. In the event that in the interim the name  
33 of the limited liability company has become unavailable, the Secretary  
34 of State shall reinstate the certificate upon, in the case of a domestic  
35 limited liability company, the filing of an amendment to its certificate  
36 of formation to change the name to an available name and in the case  
37 of a foreign limited liability company, the filing of an amended  
38 certificate of registration adopting an alternate name. The Secretary  
39 of State shall provide the forms necessary to effect annual report  
40 reinstatements.<sup>1</sup>

41

42 <sup>1</sup>[14.] <sup>2</sup>[15.<sup>1</sup>] 16.<sup>2</sup> Section 2 of P. L.1973, c.367 (C.54:50-13) is  
43 amended to read as follows:

44 2. Until all taxes owing by it have been paid, or provided for as set  
45 forth in section 4 of P.L.1973, c.367 (C.54:50-15):

46 a. no domestic or foreign corporation shall merge or consolidate

1 into a foreign corporation not authorized to transact business in this  
2 State; and

3 b. no domestic corporation shall dissolve and no domestic or  
4 foreign corporation shall distribute any of its assets in dissolution or  
5 liquidation to any shareholder unless

6 (1) one or more domestic corporations or foreign corporations  
7 authorized to transact business in this State are owners in the  
8 aggregate of 50% or more of all classes of such corporation's capital  
9 stock and, prior to such dissolution or distribution, all such holders of  
10 the corporation's capital stock jointly and severally undertake in  
11 writing to pay all such taxes on or before the date such taxes are  
12 payable; or

13 (2) such corporate action is pursuant to a plan of reorganization  
14 under which a domestic corporation or a foreign corporation  
15 authorized to transact business in this State has purchased, or is about  
16 to purchase, all, or substantially all, of the assets of such corporation  
17 in exchange for shares of its capital stock and has undertaken in  
18 writing to pay all such taxes on or before the date such taxes are  
19 payable; and

20 c. no business entity shall merge or consolidate into any other  
21 business entity other than a domestic [corporation] business entity or  
22 a foreign [corporation] business entity authorized to transact business  
23 in this State.

24 (cf: P.L.1995, c.279, s.23)

25

26 <sup>1</sup>[15.] <sup>2</sup>[16.<sup>1</sup>] 17.<sup>2</sup> Section 3 of P.L.1973, c.367 (C.54:50-14) is  
27 amended to read as follows:

28 3. The Secretary of State shall not:

29 a. accept for filing a certificate of dissolution of a domestic  
30 corporation;

31 b. issue a certificate of withdrawal of a foreign corporation, unless  
32 such withdrawal is effected by its merger or consolidation into a  
33 domestic corporation or a foreign corporation authorized to transact  
34 business in this State;

35 c. accept for filing a certificate of merger or consolidation of a  
36 domestic corporation into a foreign corporation not authorized to  
37 transact business in this State; or

38 d. accept for filing a certificate of merger or consolidation of any  
39 business entity into any other business entity other than a domestic  
40 [corporation] business entity or a foreign [corporation] business entity  
41 authorized to transact business in this State;

42 unless the business entity files with the Secretary of State a  
43 certificate issued by the Director of the Division of Taxation dated not  
44 earlier than 45 days prior to the effective date of the business entity

1 action evidencing that the business entity's taxes have been paid or  
2 provided for.

3 (cf: P.L.1995, c.279, s.24)

4

5 <sup>1</sup>[16.] <sup>2</sup>[17.1] 18.<sup>2</sup> This act shall take effect immediately.

6

7

8

9

10 Revises law concerning limited liability companies.