

Why New Jersey Is Not Delaware

Our state could be more business friendly by continuing to improve its LLC laws

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I am a corporate lawyer at a large New Jersey law firm. I am a former chair of the Business Law Section of the New Jersey State Bar Association and a member of the select committee that drafted the New Jersey Revised Uniform Limited Liability Company Act (NJ-RULLCA). The opinions that follow, however, are mine and should not be attributed to anyone else.

Delaware is the leading state for business formations. One reason Delaware dominates is because its corporation, limited liability company (LLC) and other business entity laws are advanced, comprehensive, flexible and, significantly, updated annually. The Delaware Bar Association and the Delaware Legislature work together on improving their business entities laws. As a result, Delaware is business friendly.

New Jersey talks about being business friendly, but it lags in improving its business entities laws. NJ-RULLCA was introduced in the New Jersey Legislature in June 2011 and enacted in September 2012 (P.L. 2012, c.50). A hat tip to the New Jersey Red Tape Commission, especially to Sens. Steven V. Oroho (R) and Paul A Sarlo (D) and Assemblymen John J. Burzichelli (D) and Scott T. Rumana (R), who were early sponsors and supporters of the legislation. NJ-RULLCA became effective in March 2013 for new LLCs and in March 2014 for all LLCs. While the enactment of NJRULLCA was a tremendous accomplishment, work on the LLC statute remains incomplete.

One important aspect of NJ-RULLCA was to allow corporations and partnerships to convert to LLCs. However, they cannot do so until New Jersey's corporation and partnership statutes are amended to authorize conversions. Legislation to amend the corporation statute was introduced in the New Jersey Legislature in June 2013 and November 2013, and reintroduced in February 2014 (A2464 and S1609). Legislation to amend the partnership statutes was introduced in June 2015 (A4571). There are also improvements to be made to NJ-RULLCA, some of which are included in pending legislation (A4571). None of these bills moved since being introduced in the New Jersey Legislature, and with the legislative session ending on Jan. 11, 2016, efforts to amend the existing statutes must start from scratch. Having failed to achieve success on something so obvious, my fellow drafting committee members and I are hesitant to propose other amendments to improve NJ-RULLCA in the next legislative

session. Although LLCs are the entity of choice, comprising over 80 percent of all business entities formed in New Jersey, apparently LLCs are not a sexy topic for legislation.

By comparison, California and Florida also enacted their new LLC laws in September 2012 and May 2013, respectively. Yet, Florida amended its statute in June 2015, and California in October 2015, to address glitches and make improvements. It's a sad commentary that Florida and California have acted faster than New Jersey.

A redux of the pending LLC legislation should garner support from both parties. A2464 was sponsored by Assemblymen John J. Burzichelli (D) and Scott T. Rumana (R), S1609 by Sen. Anthony R. Bucco (R), and A4571 by Assemblyman John J. Burzichelli (D). These bills are not controversial, and any new bills that replace them will not be controversial. The sponsors need to press for hearings to move the legislation. The committee chairs need to schedule hearings on the legislation. Other legislators need to support and co-sponsor the pending legislation. The professional and business community, including the New Jersey State Bar Association, New Jersey Society of Certified Public Accountants, New Jersey Business and Industry Association, Commerce and Industry Association of New Jersey and the New Jersey Chamber of Commerce, need to lobby legislators to move the bills, as they did with NJ-RULLCA. I am ready, willing and able to discuss the legislation and, if necessary, testify at hearings, as are my fellow drafting committee members.

New Jersey is not Delaware, but New Jersey can be more business friendly by continuing to improve its LLC laws. The Legislature has the power to make New Jersey more business friendly, and a good start would be to amend its LLC and other business entities laws.

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