

SENATE, No. 682

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 29 (Essex)

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SYNOPSIS

Expands liability of certain individuals associated with limited liability companies and other commercial entities, when acting as residential landlord.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning rental housing and liability of individuals
2 associated with limited liability companies and other commercial
3 entities, and supplementing and amending various parts of the
4 statutory law.

5

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

8

9 1. (New section) a. A court may hold a corporation, limited
10 liability company, or other legal or commercial entity liable for
11 charges issued to that entity pursuant to a housing code, building
12 code, or health code.

13 b. Notwithstanding any provision of section 30 of the “Revised
14 Uniform Limited Liability Company Act,” P.L.2012, c.50
15 (C.42:2C-30), or any other provision of law to the contrary, with
16 regard to any charge issued following the effective date of
17 P.L. , c. (C.) (pending before the Legislature as this bill), a
18 court may hold the members of a member-managed limited liability
19 company, the managers of a manager-managed limited liability
20 company, and the directors and officers of a corporation, jointly and
21 severally liable for housing code, building code, or health code
22 charges, so long as:

23 (1) there are at least three charges concerning the property
24 leased by the entity for residential purposes;

25 (2) at least three charges remain unpaid on the first day of the
26 thirteenth month next following the due date of the first charge;

27 (3) notice of the charge and impending enforcement under this
28 section has been issued to the address of the record owner, the
29 registered agent, the managing agent, the members and managers in
30 the case of a limited liability company, the directors and officers in
31 the case of a corporation, and each holder of a recorded mortgage
32 and other existing lienholders, if provided within the landlord’s
33 registration information pursuant to section 2 of P.L.1974, c.50
34 (C.46:8-28). If the landlord is not registered, in violation of section
35 2 of P.L.1974, c.50 (C.46:8-28), then the notice required under this
36 paragraph shall not apply. The notice provided to an individual
37 pursuant to this paragraph shall be sufficient even if the corporation
38 or limited liability company ceases to own the property, so long as
39 the same individual has a role as a registered agent, managing
40 agent, member, manager, director, or officer of the commercial
41 entity serving as the new owner of the property;

42 (4) the individual, if a member of a member-managed limited
43 liability company, possesses at least a 10 percent interest in the
44 business; and

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 (5) the individual does not successfully assert an affirmative
2 defense pursuant to subsection c. of this section.

3 c. It is an affirmative defense to joint and several liability
4 under this section, if the defendant did not have the ability to ensure
5 payment of the charge, due to a limited duration of involvement
6 with the commercial entity or for another reason, if determined by
7 the court to eliminate the defendant's culpability for the non-
8 payment of the charge.

9 d. As used in this section, "charge" means any fee, fine,
10 penalty, or other charge issued to a landlord, concerning residential
11 property leased by the landlord, pursuant to a housing, building, or
12 health code.

13

14 2. (New section) a. A court may hold a corporation, limited
15 liability company, or other legal or commercial entity liable for
16 charges issued to that entity pursuant to the "Hotel and Multiple
17 Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.).

18 b. Notwithstanding any provision of section 30 of the "Revised
19 Uniform Limited Liability Company Act," P.L.2012, c.50
20 (C.42:2C-30), or any other provision of law to the contrary, with
21 regard to any charge issued following the effective date of
22 P.L. , c. (C.) (pending before the Legislature as this bill), a
23 court may hold the members of a member-managed limited liability
24 company, the managers of a manager-managed limited liability
25 company, and the directors and officers of a corporation, jointly and
26 severally liable for charges issued pursuant to the "Hotel and
27 Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.), so
28 long as:

29 (1) there are at least three charges concerning the property
30 leased by the entity for residential purposes;

31 (2) at least three charges remain unpaid on the first day of the
32 thirteenth month next following the due date of the first charge;

33 (3) notice of the charge and impending enforcement under this
34 section has been issued to the address of the record owner, the
35 registered agent, the managing agent, the members and managers in
36 the case of a limited liability company, the directors and officers in
37 the case of a corporation, and each holder of a recorded mortgage
38 and other existing lienholders, if provided within the landlord's
39 registration information pursuant to section 2 of P.L.1974, c.50
40 (C.46:8-28). If the landlord is not registered, in violation of section
41 2 of P.L.1974, c.50 (C.46:8-28), then the notice required under this
42 paragraph shall not apply. The notice provided to an individual
43 pursuant to this paragraph shall be sufficient even if the corporation
44 or limited liability company ceases to own the property, so long as
45 the same individual has a role as a registered agent, managing
46 agent, member, manager, director, or officer of the commercial
47 entity serving as the new owner of the property;

1 (4) the individual, if a member of a member-managed limited
2 liability company, possesses at least a 10 percent interest in the
3 business; and

4 the individual does not successfully assert an affirmative defense
5 pursuant to subsection c. of this section.

6 c. It is an affirmative defense to joint and several liability
7 under this section, if the defendant did not have the ability to ensure
8 payment of the charge, due to a limited duration of involvement
9 with the commercial entity or for another reason, if determined by
10 the court to eliminate the defendant's culpability for the non-
11 payment of the charge.

12 d. As used in this section, "charge" means any fee, fine,
13 penalty, or other charge issued to a landlord, concerning residential
14 property leased by the landlord, pursuant to the "Hotel and Multiple
15 Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.).
16

17 3. (New section) a. With regard to any charge issued
18 following the effective date of P.L. , c. (C.) (pending
19 before the Legislature as this bill), the directors of a corporation
20 shall be jointly and severally liable for:

21 (1) housing code, building code, or health code charges, so long
22 as the conditions under subsection b. of section 1 of P.L. , c. (C.)
23 (pending before the Legislature as this bill) have been satisfied; and

24 (2) charges issued pursuant to the "Hotel and Multiple Dwelling
25 Law," P.L.1967, c.76 (C.55:13A-1 et seq.), so long as the
26 conditions under subsection b. of section 2 of P.L. , c. (C.)
27 (pending before the Legislature as this bill) have been satisfied.

28 b. As used in this section, "charge" means any fee, fine,
29 penalty, or other charge issued to a landlord, concerning residential
30 property leased by the landlord, pursuant to a housing, building, or
31 health code, and any charge issued pursuant to the "Hotel and
32 Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.).
33

34 4. (New section) a. With regard to any charge issued
35 following the effective date of P.L. , c. (C.) (pending
36 before the Legislature as this bill), the officers of a corporation shall
37 be jointly and severally liable for:

38 (1) housing code, building code, or health code charges, so long
39 as the conditions under subsection b. of section 1 of P.L. , c. (C.)
40 (pending before the Legislature as this bill) have been satisfied; and

41 (2) charges issued pursuant to the "Hotel and Multiple Dwelling
42 Law," P.L.1967, c.76 (C.55:13A-1 et seq.), so long as the
43 conditions under subsection b. of section 2 of P.L. , c. (C.)
44 (pending before the Legislature as this bill) have been satisfied.

45 b. As used in this section, "charge" means any fee, fine,
46 penalty, or other charge issued to a landlord, concerning residential
47 property leased by the landlord, pursuant to a housing, building, or

1 health code, and any charge issued pursuant to the "Hotel and
2 Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.).

3
4 5. Section 30 of P.L.2012, c.50 (C.42:2C-30) is amended to
5 read as follows:

6 30. a. The debts, obligations, or other liabilities of a limited
7 liability company, whether arising in contract, tort, or otherwise:

8 (1) are solely the debts, obligations, or other liabilities of the
9 company; and

10 (2) do not become the debts, obligations, or other liabilities of a
11 member or manager solely by reason of the member acting as a
12 member or manager acting as a manager.

13 b. The failure of a limited liability company to observe any
14 particular formalities relating to the exercise of its powers or
15 management of its activities is not a ground for imposing liability
16 on the members or managers for the debts, obligations, or other
17 liabilities of the company.

18 c. Notwithstanding any provision of this section to the
19 contrary, with regard to any charge issued following the effective
20 date of P.L., c. (C.) (pending before the Legislature as this
21 bill), the members of a member-managed limited liability company
22 who possess at least a 10 percent interest in the business, and the
23 managers of a manager-managed limited liability company, shall be
24 jointly and severally liable for:

25 (1) housing code, building code, or health code charges, so long
26 as the conditions under subsection b. of section 1 of
27 P.L. , c. (C.) (pending before the Legislature as this bill) have
28 been satisfied; and

29 (2) charges issued pursuant to the "Hotel and Multiple Dwelling
30 Law," P.L.1967, c.76 (C.55:13A-1 et seq.), so long as the
31 conditions under subsection b. of section 2 of P.L. , c. (C.)
32 (pending before the Legislature as this bill) have been satisfied.

33 (cf: P.L.2012, c.50, s.30)

34
35 6. Section 2 of P.L.1974, c.50 (C.46:8-28) is amended to read
36 as follows:

37 2. Every landlord shall, within 30 days following the effective
38 date of **【this act】** P.L.1974, c.50 (C.46:8-28), or at the time of the
39 creation of the first tenancy in any newly constructed or
40 reconstructed building, file with the clerk of the municipality, or
41 with such other municipal official as is designated by the clerk, in
42 which the residential property is situated, in the case of a one-
43 dwelling unit rental or a two-dwelling unit non-owner occupied
44 premises, or with the Bureau of Housing Inspection in the
45 Department of Community Affairs in the case of a multiple
46 dwelling as defined in section 3 of the "Hotel and Multiple
47 Dwelling Law" (C.55:13A-3), a certificate of registration on forms

- 1 prescribed by the Commissioner of Community Affairs, which
- 2 shall contain the following information:
- 3 a. The name and address of the record owner or owners of the
- 4 premises and the record owner or owners of the rental business if
- 5 not the same persons. In the case of a partnership the names of all
- 6 general partners shall be provided;
- 7 b. If the record owner is a corporation, a limited liability
- 8 company, or any other legal or commercial entity, the name and
- 9 address of the registered agent, the members with at least a 10
- 10 percent interest in a member-managed limited liability company,
- 11 the managers of a manager-managed limited liability company, and
- 12 【corporate】 the officers 【of said corporation】 and directors of a
- 13 corporation, as applicable;
- 14 c. If the address of any record owner is not located in the
- 15 county in which the premises are located, the name and address of a
- 16 person who resides in the county in which the premises are located
- 17 and is authorized to accept notices from a tenant and to issue
- 18 receipts therefor and to accept service of process on behalf of the
- 19 record owner;
- 20 d. The name and address of the managing agent of the
- 21 premises, if any;
- 22 e. The name and address, including the dwelling unit,
- 23 apartment or room number of the superintendent, janitor, custodian
- 24 or other individual employed by the record owner or managing
- 25 agent to provide regular maintenance service, if any;
- 26 f. The name, address and telephone number of an individual
- 27 representative of the record owner or managing agent who may be
- 28 reached or contacted at any time in the event of an emergency
- 29 affecting the premises or any unit of dwelling space therein,
- 30 including such emergencies as the failure of any essential service or
- 31 system, and who has the authority to make emergency decisions
- 32 concerning the building and any repair thereto or expenditure in
- 33 connection therewith and shall, at all times, have access to a current
- 34 list of building tenants that shall be made available to emergency
- 35 personnel as required in the event of an emergency;
- 36 g. The name and address of every holder of a recorded
- 37 mortgage on the premises;
- 38 h. If fuel oil is used to heat the building and the landlord
- 39 furnishes the heat in the building, the name and address of the fuel
- 40 oil dealer servicing the building and the grade of fuel oil used.
- 41 (cf: P.L.2003, c.56, s.2)
- 42
- 43 7. Section 3 of P.L.1981, c.442 (C.46:8-28.1) is amended to
- 44 read as follows:
- 45 3. In the case of a filing under section 2 of P.L.1974, c.50
- 46 (C.46:8-28) with the municipal clerk, or with such other municipal
- 47 official as is designated by the clerk, the clerk or designated official
- 48 shall index and file the certificate **【and】** , make it reasonably

1 available for public inspection, and shall notify the construction
2 official, appointed pursuant to section 8 of P.L.1975, c.217
3 (C.52:27D-126), of the name and address of the record owner, and
4 registered agent as applicable. In the case of a filing with the
5 Bureau of Housing Inspection, the filing shall be accompanied by
6 the filing fee required pursuant to section 12 of
7 P.L.1967, c. 76 (C. 55:13A-12). The bureau shall review the
8 certificate and, if it is found to be in conformity with this law and
9 any regulations promulgated hereunder, validate the certificate and
10 issue a validated copy to the landlord and a validated copy to the
11 clerk of the municipality in which the building or project is located.
12 The clerk shall index the validated certificates, or forward them to
13 the designated official for indexing, and the certificates shall be
14 made available as with the certificates required of one and two
15 dwelling unit nonowner occupied premises.
16 (cf: P.L.2001, c.264, s.2)

17
18 8. (New section) a. A municipality may direct by ordinance of
19 the governing body that any charge issued to a landlord pursuant to
20 a housing code, building code, or health code, concerning
21 residential property leased by the landlord, shall become a lien on
22 the property, enforceable in the manner provided for real property
23 tax liens in chapter 5 of Title 54 of the Revised Statutes, if the
24 charge remains unpaid on the first day of the thirteenth month next
25 following the date when the charge becomes due and owing. At
26 least 90 days prior to filing an unpaid charge as a municipal lien
27 against the property pursuant to this section, the municipality shall
28 serve written notice to the property owner, and the other parties in
29 interest, indicating that if the charge remains unpaid it shall be
30 converted into a municipal lien, and shall provide the owner the
31 opportunity to pay the fine or request a hearing before a court of
32 competent jurisdiction. If the landlord is not registered, in violation
33 of section 2 of P.L.1974, c.50 (C.46:8-28), then this additional
34 notice requirement concerning the landlord shall not apply prior to
35 conversion into a municipal lien. In a municipality that has adopted
36 an ordinance under this subsection, at the time when the charge
37 becomes a lien, the municipal officer responsible for housing code
38 enforcement shall file a copy of the lien and certification with the
39 municipal tax collector. This lien shall be added to and become and
40 form part of the taxes next to be assessed and levied upon such
41 dwelling or lands, the same to bear interest at the same rate as taxes,
42 and shall be collected and enforced by the same officers and in the
43 same manner as taxes.

44 b. As used in this section, "charge" means any fee, fine,
45 penalty, or other charge issued to a landlord, concerning residential
46 property leased by the landlord, pursuant to a housing, building, or
47 health code.

1 9. This act shall take effect immediately.

2

3

4

STATEMENT

5

6 This bill expands the liability of certain individuals associated with
7 limited liability companies and other commercial entities in relation to
8 residential properties that they lease.

9 Specifically, the bill provides that, in addition to retaining the
10 ability to hold a commercial entity itself liable for housing, building,
11 and health code charges, and charges issued under the "Hotel and
12 Multiple Dwelling Law," ("HMDL") P.L.1967, c.76 (C.55:13A-
13 1 et seq.), a court may hold certain members of a member-managed
14 limited liability company, the managers of a manager-managed limited
15 liability company, and the directors and officers of a corporation,
16 jointly and severally liable for such charges, so long as:

- 17 (1) there are at least three charges concerning the property
18 leased by the entity for residential purposes;
19 (2) at least three charges remain unpaid on the first day of the
20 thirteenth month following the due date of the first charge;
21 (3) notice of the charge and impending enforcement has been
22 issued to the address of the record owner, the registered
23 agent, the managing agent, the members in the case of a
24 limited liability company, the directors and officers in the
25 case of a corporation, and each holder of a recorded
26 mortgage and other existing lienholders, if provided within
27 the landlord's registration information. If the landlord is not
28 registered, in violation of section 2 of P.L.1974, c.50
29 (C.46:8-28), then this notice requirement would not apply.
30 The notice provided to an individual would be sufficient
31 even if the commercial entity ceases to own the property, so
32 long as the same individual has a role as a registered agent,
33 managing agent, member, manager, director, or officer of
34 the property's new owner;
35 (4) the individual, if a member of a member-managed limited
36 liability company, possesses at least a 10 percent interest in
37 the business and
38 (5) the defendant does not successfully assert an affirmative
39 defense showing a lack of ability to ensure payment of the
40 charge.

41 Additionally, landlord registration requirements, under section 2 of
42 P.L.1974, c.50 (C.46:8-28), currently require submission of the name
43 and address of a registered agent who may accept service of process if
44 the landlord is a corporation. This bill requires a landlord organized as
45 any other legal or commercial entity, to also submit of the name and
46 address of a registered agent, as well as the name and address of the
47 members a member-managed limited liability company who possess at
48 least a 10 percent interest in the business, and the officers and directors

1 in the case of a corporation, when registering as a landlord. Upon
2 filing this information, the bill requires the municipal clerk to notify
3 the construction official of the name and address of the record owner,
4 and registered agent as applicable.

5 Finally, this bill allows municipalities to amend their housing,
6 building, and health codes to direct that any charge issued to a landlord
7 for violating the code may, after serving notice, be enforced as a lien
8 on the property. However, enforcement as a lien would only be
9 permitted if the charge remains unpaid on the first day of the thirteenth
10 month following the due date of the charge.