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**By: Senator Pica**

Introduced and read first time: February 14, 1996

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Limited Liability Company Reform Act of 1996**

3 FOR the purpose of altering the requirement that a limited liability company be formed  
4 by two or more persons by allowing formation by any person; allowing a limited  
5 liability company to continue to carry on its business following dissolution if there is  
6 at least one remaining member and the remaining member consents; clarifying the  
7 manner of determining the fair market value of a person's interest in a limited  
8 liability company for certain purposes; providing for the effect of an assignment,  
9 pledge, or granting of an encumbrance in a member's interest in a limited liability  
10 company on the member and assignee; repealing certain provisions relating to the  
11 liability of members of limited liability companies who perform professional  
12 services; providing that certain provisions limiting the personal liability of a member  
13 of a limited liability company do not affect the liability of the member for certain  
14 debts and obligations under certain circumstances; repealing certain limitations on  
15 the authority of a member of a limited liability company; exempting certain limited  
16 liability companies from the requirement to file a State income tax return; requiring  
17 that the profit or loss of certain limited liability companies be reflected on the  
18 income tax returns filed by the owners of the limited liability companies; exempting  
19 from certain motor vehicle excise taxes certain transfers to and from limited liability  
20 companies; altering a certain definition; clarifying language; providing for the  
21 application of certain provisions of this Act; and generally relating to limited  
22 liability companies.

23 BY repealing and reenacting, with amendments,  
24 Article - Corporations and Associations  
25 Section 4A-101(l), 4A-202(a), 4A-301, 4A-401(d), 4A-603, 4A-904, and 4A-905  
26 Annotated Code of Maryland  
27 (1993 Replacement Volume and 1995 Supplement)

28 BY repealing  
29 Article - Corporations and Associations  
30 Section 4A-301.1  
31 Annotated Code of Maryland  
32 (1993 Replacement Volume and 1995 Supplement)

33 BY repealing and reenacting, with amendments,

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1 Article - Tax - General  
2 Section 10-819  
3 Annotated Code of Maryland  
4 (1988 Volume and 1995 Supplement)

5 BY repealing and reenacting, with amendments,  
6 Article - Transportation  
7 Section 13-810(c)  
8 Annotated Code of Maryland  
9 (1992 Replacement Volume and 1995 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Corporations and Associations**

13 4A-101.

14 (l) "Limited liability company" or "domestic limited liability company" means a  
15 permitted form of unincorporated business organization [having 2 or more members]  
16 which is organized and existing under this title.

17 4A-202.

18 (a) [Two or more persons] ANY PERSON may form a limited liability company by  
19 causing articles of organization to be executed and filed for record with the Department.

20 4A-301.

21 (A) Except as otherwise provided by this title, no member shall be personally  
22 liable for the obligations of the limited liability company, whether arising in contract, tort  
23 or otherwise, solely by reason of being a member of the limited liability company.

24 (B) SUBSECTION (A) OF THIS SECTION SHALL NOT AFFECT THE LIABILITY OF  
25 A MEMBER OF A LIMITED LIABILITY COMPANY FOR DEBTS AND OBLIGATIONS OF  
26 THE LIMITED LIABILITY COMPANY THAT ARISE FROM ANY NEGLIGENT OR  
27 WRONGFUL ACT OR OMISSION OF THE MEMBER OR OF ANOTHER MEMBER,  
28 EMPLOYEE, OR AGENT OF THE LIMITED LIABILITY COMPANY IF THE MEMBER IS  
29 NEGLIGENT IN APPOINTING, DIRECTLY SUPERVISING, OR COOPERATING WITH THE  
30 OTHER MEMBER, EMPLOYEE, OR AGENT.

31 [4A-301.1.

32 (a) (1) An individual who renders a professional service in this State as an  
33 employee of a domestic or foreign limited liability company is liable for a negligent or  
34 wrongful act or omission in which the individual personally participated to the same  
35 extent as if the individual rendered the service as a sole practitioner.

36 (2) An individual who renders a professional service in this State as an  
37 employee of a domestic or foreign limited liability company is not liable for a negligent or  
38 wrongful act or omission of another employee or member of the limited liability company

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1 unless the employee is negligent in appointing, supervising, or cooperating with the other  
2 employee or member.

3 (b) A domestic or foreign limited liability company whose employees perform  
4 professional services within the scope of their employment or within the scope of the  
5 employees' apparent authority to act for the limited liability company is liable to the same  
6 extent as its employees.

7 (c) The personal liability of a member of a domestic or foreign limited liability  
8 company that provides professional services is no greater in any respect than the liability  
9 of a member of a limited liability company which is not engaged in rendering professional  
10 services.]

11 4A-401.

12 (d) Unless the members unanimously consent or unless all other members have  
13 abandoned the business, no member has authority to:

14 (1) Assign the property of the limited liability company in trust for creditors  
15 or on the assignee's promise to pay the debts of the limited liability company;

16 (2) Dispose of the goodwill of the business; OR

17 (3) Do any other act which would make it impossible to carry on the  
18 ordinary business of the limited liability company[;

19 (4) Confess a judgment; or

20 (5) Submit a limited liability company claim or liability to arbitration or  
21 reference].

22 4A-603.

23 (a) Unless otherwise provided in the operating agreement, an interest in a limited  
24 liability company is assignable in whole or in part.

25 (b) An assignment of an interest in a limited liability company doesnot:

26 (1) Dissolve the limited liability company; or

27 (2) Unless the operating agreement provides otherwise, entitle the assignee  
28 to:

29 (i) Become a member; or

30 (ii) Exercise any rights of a member.

31 (c) Unless otherwise provided in the operating agreement, an assignment entitles  
32 the assignee to receive, to the extent assigned, only the distributionsAND THE SHARE OF  
33 PROFITS AND LOSSES to which the assignor would [be] HAVE BEEN entitled.

34 (D) (1) A MEMBER CEASES TO BE A MEMBER AND TO HAVE THE POWER TO  
35 EXERCISE ANY RIGHTS OR POWERS OF A MEMBER UPON THE ASSIGNMENT OF THAT  
36 MEMBER'S ENTIRE INTEREST IN THE LIMITED LIABILITY COMPANY.

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1 (2) UNLESS OTHERWISE PROVIDED IN THE OPERATING AGREEMENT,  
2 THE PLEDGE OF, OR THE GRANTING OF A SECURITY INTEREST, LIEN, OR OTHER  
3 ENCUMBRANCE IN OR AGAINST ANY OR ALL OF THE INTEREST OF A MEMBER SHALL  
4 NOT CAUSE THE MEMBER TO CEASE TO BE A MEMBER OR CEASE TO HAVE THE  
5 POWER TO EXERCISE ANY RIGHTS OR POWERS OF A MEMBER.

6 4A-904.

7 Notwithstanding any other provision of this title, if there [are 2 or more] IS AT  
8 LEAST ONE remaining [members] MEMBER, the limited liability company may continue  
9 to carry on its business or affairs following dissolution, other than a judicial decree of  
10 dissolution, if, within 90 days after the event causing dissolution, THE REMAINING  
11 MEMBER CONSENTS, OR, IF THERE IS MORE THAN ONE REMAINING MEMBER, the  
12 remaining members unanimously consent TO THE CONTINUATION OF THE LIMITED  
13 LIABILITY COMPANY.

14 4A-905.

15 Unless the operating agreement provides otherwise, if the limited liability company  
16 is continued under § 4A-904 of this subtitle following dissolution:

17 (1) Subject to the limitations of § 4A-503 of this title, a person ceasing to be  
18 a member, or the legal representative or other successor to the interest of that member,  
19 shall be entitled to receive, in liquidation of the member's interest:

20 (i) The distributions, if any, which that member is entitled to receive  
21 under the operating agreement; or

22 (ii) If not otherwise provided in the operating agreement, within a  
23 reasonable time after that person has ceased to be a member, the fair market value of  
24 that person's interest in the limited liability company BASED UPON THAT PERSON'S  
25 RIGHT TO SHARE IN DISTRIBUTIONS FROM THE LIMITED LIABILITY COMPANY as of  
26 the date the person ceased to be a member; and

27 (2) Unless otherwise agreed, the members of the limited liability company  
28 continuing the business following dissolution will be deemed to have entered into an  
29 operating agreement under § 4A-402 of this title containing the same terms and  
30 conditions as those contained in the operating agreement in effect immediately prior to  
31 the dissolution, except that the members bound by the operating agreement shall be only  
32 those members whose interests are not required to be liquidated pursuant to this section  
33 or the operating agreement.

34 **Article - Tax - General**

35 10-819.

36 (a) Each limited liability company as defined under Title 4A of the Corporations  
37 and Associations Article shall file an income tax return, UNLESS IT IS OWNED BY ONLY  
38 ONE PERSON AND IS TREATED FOR FEDERAL INCOME TAX PURPOSES AS A SOLE  
39 PROPRIETORSHIP OR AS A DIVISION OF A CORPORATION, A PARTNERSHIP, OR  
40 ANOTHER LIMITED LIABILITY COMPANY.

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1 (b) (1) If the limited liability company is taxable as a partnership, as defined in  
2 § 761 of the Internal Revenue Code, it shall file a partnership tax return.

3 (2) If the limited liability company is taxable as a corporation under Chapter  
4 1, Subchapter C of the Internal Revenue Code, it shall file a corporatetax return.

5 (C) IF THE LIMITED LIABILITY COMPANY IS OWNED BY ONLY ONE PERSON  
6 AND IS TREATED FOR FEDERAL INCOME TAX PURPOSES AS A SOLE  
7 PROPRIETORSHIP OR AS A DIVISION OF A CORPORATION, A PARTNERSHIP, OR  
8 ANOTHER LIMITED LIABILITY COMPANY, THE PROFIT OR LOSS OF THE LIMITED  
9 LIABILITY COMPANY SHALL BE REFLECTED ON THE INCOME TAX RETURN FILED BY  
10 THE PERSON THAT OWNS THE LIMITED LIABILITY COMPANY.

11 **Article - Transportation**

12 13-810.

13 (c) On transfer of a vehicle titled in this State and issuance of a subsequent  
14 certificate of title, the vehicle is exempt from the excise tax imposed by this part, if it is:

15 (1) A vehicle transferred to a spouse, son, daughter, grandchild, parent,  
16 sister, brother, grandparent, father-in-law, mother-in-law, son-in-law, or  
17 daughter-in-law of the transferor, and no money or other valuable consideration is  
18 involved in the transfer;

19 (2) A vehicle repossessed under a security agreement, unless the sale of the  
20 vehicle is required under the agreement;

21 (3) A vehicle transferred from an individual to a partnership, LIMITED  
22 LIABILITY COMPANY, or corporation or from a partnership, LIMITED LIABILITY  
23 COMPANY, or corporation to a subpartnership, SUBSIDIARY LIMITED LIABILITY  
24 COMPANY, or subsidiary corporation, if the individual, [partner,] PARTNERSHIP,  
25 LIMITED LIABILITY COMPANY, or corporation is a partner, MEMBER, or principal  
26 stockholder of the newly formed partnership, subpartnership, LIMITED LIABILITY  
27 COMPANY, SUBSIDIARY LIMITED LIABILITY COMPANY, corporation, or subsidiary  
28 corporation, as the case may be;

29 (4) A vehicle transferred to a legal heir, legatee, or distributee;

30 (5) A vehicle involuntarily transferred as a result of divorce or separation  
31 proceedings;

32 (6) A vehicle that is jointly owned and transferred to the name of one of the  
33 owners, if the transferee can establish to the satisfaction of the Administration that the  
34 transferor did not pay any part of the original purchase price of the vehicle or any  
35 applicable taxes or fees for the vehicle;

36 (7) A vehicle transferred by a corporation to its stockholder or stockholders  
37 OR BY A LIMITED LIABILITY COMPANY TO ITS MEMBER OR MEMBERS as a liquidating  
38 distribution of tangible personal property where the vehicle or vehicles transferred are  
39 not a principal or substantial asset of the corporation OR LIMITED LIABILITY COMPANY  
40 as determined by the Administration; or

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1                   (8) A vehicle transferred as a result of a reorganization within the meaning  
2 of § 368(a) of the Internal Revenue Code.

3                   SECTION 2. AND BE IT FURTHER ENACTED, That the changes made to §  
4 10-819 of the Tax - General Article by this Act shall be applicable to all taxable years  
5 beginning after December 31, 1995.

6                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 1996.