

Department of Legislative Services  
Maryland General Assembly  
2002 Session

FISCAL NOTE

House Bill 379  
Economic Matters

(Delegates Barve and Brown)

Judicial Proceedings

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Limited Liability Companies - Membership and Activities

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This bill facilitates the use of a limited liability company (LLC) for not-for-profit purposes and amends provisions relating to the organization, membership, and dissolution of an LLC.

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Fiscal Summary

**State Effect:** None. The bill would not directly affect governmental operations or finances.

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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Analysis

**Bill Summary:** The bill expands the definition of a “member” of a limited liability company (LLC) to include a person admitted as a member of a domestic or foreign limited liability company.

The bill alters the purposes for which an LLC may be organized and conduct activities, to include activities in any state related to any lawful business, purpose, investment, or activity, whether or not for profit. Unless otherwise provided in an LLC’s articles of organization or operating agreement, the bill allows a person to be admitted as a member of a limited liability company and to be the sole member of an LLC without: (1) making a contribution to the LLC; (2) being obligated to make a contribution to the LLC; or (3) acquiring an interest in the LLC.

Under the bill, an LLC may not be dissolved or required to wind up its affairs for failure to have any members if within 90 days after there are no remaining members or within a period provided in the operating agreement: (1) the last remaining member's personal representative or successor agrees in writing to continue the LLC and be admitted as a member or appoint a designee as a member, effective at the time the last remaining member ceased to be a member; or (2) under a provision in the operating agreement providing for the admission of a member when there are no remaining members, a member is admitted to the LLC in the manner set forth in the operating agreement, effective at the time the last remaining member ceased to be a member.

The bill authorizes an operating agreement to provide that the last remaining member's personal representative or successor must agree in writing to continue the LLC and be admitted as a member or appoint a designee as a member, effective at the time that the last remaining member ceases to be a member. Except as otherwise provided in statute or under the LLC's operating agreement, the termination of a person's membership may not cause an LLC to be dissolved or to wind up its affairs, and the LLC must continue in existence following the termination of a person's membership.

**Current Law:** A "member" of an LLC is a person with an "interest" in the LLC with the rights and obligations specified under law. An "interest" is a member's share in the LLC's profits and losses and the right to receive distributions from the LLC. An LLC's profits and losses must be allocated among its members in proportion to their respective capital interests, and its distributions must be made to the members in proportion to their share in the LLC's profits.

A person may become a member at the time the LLC is formed or at a later time specified in the operating agreement. After formation, a person may be admitted as a member by acquiring a membership interest directly, upon compliance with the operating agreement or, if the operating agreement does not speak to the acquisition of a membership, upon the unanimous consent of the members. A membership interest also may be assigned upon compliance with any conditions limiting the grant or exercise of membership powers.

A limited liability company may be organized in any state and may conduct business for any lawful purpose, except the business of an insurer. An LLC is dissolved and must wind up its affairs on the first of the following to occur: (1) at the time or on the happening of events specified in the articles of organization or the operating agreement; (2) at the time specified by the unanimous consent of its members; (3) at the time of entry of a decree of judicial dissolution; or (4) 90 days after the company loses its last member.

**Background:** Under the Internal Revenue Code's tax-exempt organization provisions, a member of a nonprofit, tax-exempt LLC may not receive an economic benefit from that organization.

**Small Business Effect:** The bill grants more flexibility to small business LLCs, allows for the formation of a Maryland nonprofit LLC, and offers LLCs greater ability to gain members and continue operating.

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### **Additional Information**

**Prior Introductions:** An identical bill, SB 663, passed third reading in the Senate during the 2001 session. SB 663 received a favorable report from the House Economic Matters Committee but no action was taken on the House floor before Sine Die. A similar bill, HB 1200, was introduced in the 2000 session and received an unfavorable report from the Economic Matters Committee.

**Cross File:** None.

**Information Source(s):** Department of Assessments and Taxation, Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2002  
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