

2002 Maryland Legislation Corporate and Business Interests

Limited Liability Companies

Membership and Activities

Since enactment of the Maryland Limited Liability Company Act of 1992, the limited liability company (LLC) has grown in popularity and has been used for a wider range of purposes than was originally anticipated. One new area of use is in the not-for-profit arena. In other states, LLCs are used as the vehicle through which tax-exempt organizations can conduct activities related to or supporting their purposes. In Maryland, however, it is not clear that an LLC can be used for not-for-profit purposes.

[House Bill 379](#) (*passed*) alters Maryland's Limited Liability Company Act to modernize the law and facilitate the use of LLCs for not-for-profit purposes. The bill broadens the purposes for which an LLC may be organized by authorizing an LLC to conduct activities related to any lawful activity, whether or not for profit, except the business of acting as an insurer. The bill also changes the current law requirement that a member must hold an economic interest in the LLC by expanding the current definition of a "member" to include a person who is admitted as a member, and allowing a person to be admitted as a member without making a contribution or acquiring an interest in the LLC. These changes are intended to ensure that a nonprofit LLC can qualify for tax-exempt status under the Internal Revenue Code, which prohibits the inurement to a member of any economic benefit derived from a tax-exempt organization. [House Bill 379](#) also alters the method for dissolving or winding up the affairs of an LLC, and establishes a mechanism for continuation of an LLC after it ceases to have any members.

The bill also allows commercial lenders who lend money to an LLC to take a noneconomic voting interest in the LLC and protects the lender's lien by ensuring that the LLC will continue in existence even if all the economic owners withdraw from the entity. The bill brings Maryland's LLC statute into conformity with the neighboring states of Delaware, Virginia, and North Carolina.

Mergers

[House Bill 1357](#) (*passed*) authorizes a domestic, or Maryland, LLC to merge into one or more domestic or foreign LLCs, unless the operating agreement provides otherwise, and authorizes the merger of multiple foreign or domestic LLCs into a single domestic LLC. The bill also alters the manner in which a domestic LLC must approve a merger by requiring the consent of the members holding at least two-thirds of the interests in profits of the LLC.

Businesses That Create New Jobs Tax Credit

The Businesses That Create New Jobs tax credit authorizes a county or municipality to grant property tax credits against real and personal property taxes of a business that locates or expands within its jurisdiction.

Under current law, to qualify for the tax credit, a business must locate in new or expanded office space of at least 5,000 square feet that has not been previously occupied and must create at least 25 new full-time jobs.

The county and municipal governments may provide a tax credit equal to a percentage of the amount of property tax imposed on the assessment of the new or expanded premises. The State participates by granting a credit against State taxes equal to as much as 35 percent of the property tax credit granted by the county or municipality. Because this is enabling legislation for local governments, a State tax credit is only granted if a local jurisdiction first grants a local property tax credit.

A business can qualify for an enhanced Businesses That Create New Jobs property tax credit if it: (1) obtains at least 250,000 square feet of new or expanded premises, continues to employ at least 2,500 individuals in existing full-time positions, and employs at least 500 individuals in new permanent full-time positions; or (2) obtains 250,000 square feet of new or expanded premises and employs at least 1,250 individuals in new permanent full-time positions.

The enhanced property tax credit provides a county or municipal corporation property tax credit for each of the first 12 taxable years after the business qualifies for the credit in an amount equal to 58.5 percent of the amount of property tax imposed on the increase in assessment.

[House Bill 707](#) (*passed*) expands the enhanced credit portion of this tax credit for Montgomery County only. The bill provides that in Montgomery County, to qualify for an enhanced property tax credit, a business must spend at least \$150 million to obtain at least 700,000 square feet of new or expanded premises and employ at least 1,100 individuals in full-time positions, under specified conditions.

The positions may be either full-time and of indefinite duration or contract positions of definite duration. All positions must receive an employer subsidized health care benefits package, pay at least 150 percent of the federal minimum wage, and actually be located in or adjacent to the new/expanded premises. At least 500 of the permanent full-time positions must be new positions.

Renovated or Rehabilitated Business Property

[House Bill 1003](#) (*Ch. 90*) authorizes Charles County to grant a real property tax credit on business real property located in a priority funding area that has been renovated or rehabilitated. The credit is limited to the increase in assessed value as a result of the renovation or rehabilitation and is limited to five years.

Commercial Law

Electronic Commerce

The electronic commerce movement has given Marylanders new ways to engage in buying and selling consumer goods. However, incidents of fraud have interfered with such commerce.

[Senate Bill 538/House Bill 915](#) (*both passed*) prohibit a person from initiating, conspiring to initiate, or assisting in the transmission of a commercial electronic mail (e-mail) message that: (1) uses a third party's Internet domain name or e-mail address without permission; (2) misrepresents or obscures any information relating to the point of origin or transmission path of the message; or (3) contains false or misleading information in the subject line. The bills apply to commercial e-mail messages that are sent from a computer located in Maryland or to an

electronic mail address that the sender knows or has reason to know is held by a resident of the State. Violators are liable to a recipient of the e-mail or a third party without whose permission the third party's domain name or e-mail address was used for attorney's fees and the greater of \$500 or actual damages. Violators are liable to an interactive service provider for attorney's fees and the greater of \$1,000 or actual damages.

Payment Device Privacy

[Senate Bill 25](#) (*passed*) prohibits a person from printing on a receipt provided to a credit device holder more than the last eight digits of a credit card or other credit device number. The bill applies only to receipts that are electronically printed in connection with the purchase of consumer goods or services and excludes receipts where the sole means of recording the credit card or credit device number is by handwriting, imprinting, or copying the card or device. The bill is effective October 1, 2002, for receipts from machines that are first put into service on or after October 1, 2002. Receipts from machines in service before that date must comply by January 1, 2006.

Heritage Structure Rehabilitation Tax Credit

Under current law a person may claim a tax credit in an amount equal to 25 percent of the taxpayer's qualified rehabilitation expenditures for the rehabilitation of a certified heritage structure for the taxable year in which a certified rehabilitation is completed. The heritage credit is allowed for both residential and commercial projects and may be claimed by nonprofit organizations.

[House Bill 759](#) (*passed*) significantly limits the Maryland Heritage Structure Rehabilitation Tax Credit. The bill reduces the credit percentage to 20 percent and provides that a State tax credit for a single rehabilitation under the program may not exceed \$3 million. Rehabilitation expenditures that qualify for the credit are limited to the estimated expenditures stated in the application for approval of a proposed rehabilitation submitted to the Maryland Historical Trust. [House Bill 759](#) also eliminates a loophole in the law under which the credit could be taken for expenditures financed by State grants and other State financing.

Other Legislation of Interest:

[SB 426](#) Alcoholic Beverages -- Wholesaler's Licenses

Repealing a provision of law prohibiting two locations under one wholesaler's license from being located in any one county or in Baltimore City.

EFFECTIVE JULY 1, 2002

[SB 494](#) Alcoholic Beverages -- Direct Wine Seller's Permit

Establishing a direct wine seller's permit to be issued by the Office of the Comptroller to specified persons who are domiciled outside of the State; entitling a permit holder to sell wine to a specified personal consumer in the State by receiving and filling orders that the personal consumer transmits by electronic or other means; etc.

EFFECTIVE JULY 1, 2002

[SB 543](#) Maryland Service Contracts and Consumer Products Guaranty Act

Requiring service contracts for consumer products to be in writing; requiring service contracts to contain specified information and terms; authorizing the cancellation of a service contract by a specified person under specified circumstances; providing that specified service contracts are void under specified circumstances; requiring a provider of a service contract to pay to or credit the account of a specified person who has canceled a service contract a specified amount under specified circumstances; etc.

[SB 774](#) Maryland Money Transmission Act

Prohibiting a person from engaging in the business of money transmission unless licensed by the Commission of Financial Regulation; altering the scope of specified provisions of law relating to money transmission; establishing a Money Transmission Fund; requiring an applicant to provide specified business and financial information, pay specified application and license fees, file evidence of a surety device, and provide fingerprints; imposing requirements and restrictions on an authorized delegate of a licensee; etc.

[HB 182](#) Commercial Law -- Dishonored Instruments -- Notice of Dishonor

Requiring a holder of a dishonored instrument to certify mailing of a notice of dishonor to the maker or drawer by executing an affidavit of service.