



# **LEGISLATIVE HISTORY CHECKLIST**

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**LAWS OF:** 1998

**CHAPTER:** 79

**NJSA:** 42:2B-2

"Limited liability companies -- one member"

**BILL NO:** S378 (Substituted for A1855)

**SPONSOR(S):** Cardinale

**DATE INTRODUCED:** January 20, 1998

**COMMITTEE:**

**ASSEMBLY:** Judiciary

**SENATE:** Commerce

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**

**ASSEMBLY:** June 18, 1998

**SENATE:** June 22, 1998

**DATE OF APPROVAL:** August 14, 1998

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## **THE FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL:** Senate Committee substitute enacted ( 1<sup>st</sup> reprint)  
(Amendments during passage denoted by superscript numbers)

**S378**

**SPONSORS STATEMENT:** *Yes* (Begins on page 4 of original bill)

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *Yes*

**SENATE:** *Yes*

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

**A1855**

**SPONSORS STATEMENT:** *Yes* (Begins on page 10 of original bill)

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *Yes*

(Identical to Assembly Statement for S378)

**SENATE:** *No*

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

**VETO MESSAGE:** *No*

**GOVERNOR'S PRESS RELEASE ON SIGNING:** *Yes*

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**HEARINGS:** *No*

**NEWSPAPER ARTICLES:** *No*

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[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 378**

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**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

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ADOPTED MARCH 23, 1998

**Sponsored by:**

**Senator GERALD CARDINALE**  
**District 39 (Bergen)**

**Co-Sponsored by:**

**Assemblymen Bateman and Cohen**

**SYNOPSIS**

Provides for single member limited liability companies.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Judiciary Committee on June 4, 1998, with amendments.



**(Sponsorship Updated As Of: 6/19/1998)**

1 AN ACT concerning limited liability companies and amending  
2 P.L.1993, c.210.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 2 of P.L.1993, c.210 (C.42:2B-2) is amended to read  
8 as follows:

9 2. As used in this act unless the context otherwise requires:

10 "Bankruptcy" means an event that causes a person to **[**cease to be  
11 a member **]** become disassociated from a limited liability company as  
12 provided in section 24 of this act.

13 "Certificate of formation" means the certificate referred to in  
14 section 11 of this act, and the certificate as amended.

15 "Contribution" means any cash, property, services rendered or a  
16 promissory note or other obligation to contribute cash or property or  
17 to perform services, which a person contributes to a limited liability  
18 company in his capacity as a member; provided however, that services  
19 rendered and obligations to perform services are contributions only to  
20 the extent designated as contributions in the operating agreement.

21 "Foreign limited liability company" means a limited liability  
22 company formed under the laws of any state or under the laws of any  
23 foreign country or other foreign jurisdiction and denominated as such  
24 under the laws of such state or foreign country or other foreign  
25 jurisdiction.

26 "Limited liability company" and "domestic limited liability  
27 company" means a limited liability company formed under the laws of  
28 this State and having **[two]** one or more members.

29 "Limited liability company interest" means a member's share of the  
30 profits and losses of a limited liability company and a member's right  
31 to receive distributions of the limited liability company's assets.

32 "Liquidating trustee" means a person carrying out the winding up  
33 of a limited liability company.

34 "Manager" means a person who is named as a manager of a limited  
35 liability company in, or designated as a manager of a limited liability  
36 company pursuant to, an operating agreement or similar instrument  
37 under which the limited liability company is formed.

38 "Member" means a person who has been admitted to a limited  
39 liability company as a member as provided in section 21 of this act or,  
40 in the case of a foreign limited liability company, in accordance with  
41 the laws of the state or foreign country or other foreign jurisdiction

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly AJU committee amendments adopted June 4, 1998.**

1 under which the foreign limited liability company is organized.

2 "Operating agreement" means a written agreement **[of] among** the  
3 members, or in the case of a limited liability company with only one  
4 member, the member and the limited liability company, as to the affairs  
5 of a limited liability company and the conduct of its business.

6 "Person" means a natural person, partnership (whether general or  
7 limited and whether domestic or foreign), limited liability company,  
8 foreign limited liability company, trust, estate, association,  
9 corporation, custodian, nominee or any other individual or entity in its  
10 own or any representative capacity.

11 "State" means the District of Columbia or the Commonwealth of  
12 Puerto Rico or any state, territory, possession, or other jurisdiction of  
13 the United States other than this State.

14 (cf: P.L.1995, c.96, s.13)

15

16 2. Section 11 of P.L.1993, c.210 (C.42:2B-11) is amended to read  
17 as follows:

18 11. a. In order to form a limited liability company, one or more  
19 authorized persons must execute a certificate of formation. The  
20 certificate of formation shall be filed in the office of the Secretary of  
21 State and set forth:

22 (1) The name of the limited liability company;

23 (2) The address of the registered office and the name and address  
24 of the registered agent for service of process required to be maintained  
25 by section 6 of this act;

26 (3) **[That the limited liability company has two or more**  
27 **members;]** (Deleted by amendment, P.L. \_\_, c. \_\_.)

28 (4) If the limited liability company is to have perpetual existence,  
29 regardless of whether the limited liability company is subject to any  
30 dissolution contingencies, then the word "perpetual" shall be stated; if  
31 the limited liability company is to have a specific date of dissolution,  
32 regardless of whether the limited liability company is subject to any  
33 dissolution contingencies, the latest date on which the limited liability  
34 company is to dissolve; and

35 (5) Any other matters the members determine to include therein.

36 b. A limited liability company is formed at the time of the filing of  
37 the initial certificate of formation in the office of the Secretary of State  
38 or at any later date or time specified in the certificate of formation if,  
39 in either case, there has been substantial compliance with the  
40 requirements of this section. A limited liability company formed under  
41 this act shall be a separate legal entity, the existence of which as a  
42 separate legal entity shall continue until cancellation of the limited  
43 liability company's certificate of formation.

44 (cf: P.L.1997, c.139, s.9)

45

46 3. Section 14 of P.L.1993, c.210 (C.42:2B-14) is amended to read

1 as follows:

2 14. a. A certificate of formation shall be canceled upon the  
3 dissolution and the completion of winding up of a limited liability  
4 company, or upon the filing of a certificate of merger or consolidation  
5 if the limited liability company is not the surviving or resulting entity  
6 in a merger or consolidation.

7 b. A certificate of cancellation shall be filed in the office of the  
8 Secretary of State to accomplish the cancellation of a certificate of  
9 formation upon the dissolution and the completion of winding up of a  
10 limited liability company and shall set forth:

11 (1) The name of the limited liability company;

12 (2) The date of filing of its certificate of formation;

13 (3) The reason for filing the certificate of cancellation;

14 (4) The future effective date or time (which shall be a date or time  
15 certain) of cancellation if it is not to be effective upon the filing of the  
16 certificate; and

17 (5) Any other information the person filing the certificate of  
18 cancellation determines.

19 c. **[A certificate of formation shall not be canceled, and no**  
20 **certificate of cancellation shall be required to be filed, when a limited**  
21 **liability company has only one member, and the certificate of**  
22 **formation shall remain valid when a limited liability company has only**  
23 **one member, if within 90 days of the date on which the limited liability**  
24 **company first had only one member, one or more additional members**  
25 **are admitted. If no additional member is admitted within that 90-day**  
26 **period, the certificate of formation of that limited liability company**  
27 **shall be canceled and a certificate of cancellation shall be filed on and**  
28 **as of the end of that 90-day period.]** (Deleted by amendment,  
29 P.L. . . . , c. . . . .)

30 (cf: P.L.1997, c.139, s.10)

31

32 4. Section 24 of P.L.1993, c.210 (C.42:2B-24) is amended to read  
33 as follows:

34 24. A member shall be dissociated from a limited liability company  
35 upon the occurrence of any of the following events:

36 a. Unless otherwise provided in an operating agreement, or with  
37 the written consent of all members,

38 (1) <sup>1</sup>on the date<sup>1</sup> the limited liability company receives notice of  
39 the member's resignation as a member, or on a later date specified by  
40 the member;

41 (2) an event agreed to in the operating agreement as causing the  
42 member's dissociation;

43 (3) a member:

44 (a) becomes a debtor in bankruptcy;

45 (b) executes an assignment for the benefit of creditors;

46 (c) seeks, consents to or acquiesces in the appointment of a

1 trustee, receiver or liquidator of the member or of all or substantially  
2 all of that member's properties; or  
3 (d) fails, within 90 days after the appointment, without the  
4 member's consent or acquiescence, of a trustee, receiver or liquidator  
5 of the member or of all or substantially all of that member's properties,  
6 to have the appointment vacated or stayed, or fails within 90 days after  
7 the expiration of a stay to have the appointment vacated; or  
8 b. (1) the member's expulsion pursuant to the operating  
9 agreement;  
10 (2) the member's expulsion by the unanimous vote of the other  
11 members if:  
12 (a) it is unlawful to carry on the limited liability company with that  
13 member;  
14 (b) there has been a transfer of all of that member's transferable  
15 interest in the limited liability company, other than a transfer for  
16 security purposes, or a court order charging the member's interest;  
17 (c) within 90 days after the limited liability company notifies a  
18 corporate member that it will be expelled because it has filed a  
19 certificate of dissolution or the equivalent, its charter has been  
20 revoked, or its right to conduct business has been suspended by the  
21 jurisdiction of its incorporation, there is no revocation of the  
22 certificate of dissolution or no reinstatement of its charter or its right  
23 to conduct business; or  
24 (d) a limited liability company or a partnership that is a member  
25 has been dissolved and its business is being wound up;  
26 (3) on application by the limited liability company or another  
27 member, the member's expulsion by judicial determination because:  
28 (a) the member engaged in wrongful conduct that adversely and  
29 materially affected the limited liability company's business;  
30 (b) the member willfully or persistently committed a material  
31 breach of the operating agreement; or  
32 (c) the member engaged in conduct relating to the limited liability  
33 company business which makes it not reasonably practicable to carry  
34 on the business with the member as a member of the limited liability  
35 company;  
36 (4) in the case of a member who is an individual:  
37 (a) the member's death;  
38 (b) the appointment of a guardian or general conservator for the  
39 member; or  
40 (c) a judicial determination that the member has <sup>1</sup>[otherwise]<sup>1</sup>  
41 become incapable of performing the member's duties under the  
42 operating agreement;  
43 (5) in the case of a member that is a trust or is acting as a member  
44 by virtue of being a trustee of a trust, distribution of the trust's entire  
45 transferable interest in the limited liability company, but not merely by  
46 reason of the substitution of a successor trustee;

1 (6) in the case of a member that is an estate or is acting as a  
2 member by virtue of being a personal representative of an estate,  
3 distribution of the estate's entire transferable interest in the limited  
4 liability company, but not merely by reason of the substitution of a  
5 successor personal representative; or

6 (7) <sup>1</sup> ~~【dissolution】~~ termination<sup>1</sup> of a member who is not an  
7 individual, partnership, limited liability company, corporation, trust or  
8 estate.

9 (cf: P.L.1997, c.139, s.13)

10  
11 5. Section 27 of P.L.1993, c.210 (C.42:2B-27) is amended to read  
12 as follows:

13 27. a. (1) Unless otherwise provided in an operating agreement,  
14 the management of a limited liability company shall be vested in its  
15 members in proportion to the then current percentage or other interest  
16 of members in the profits of the limited liability company owned by all  
17 of the members, the decision of members owning more than 50 percent  
18 of the then current percentage or other interest in the profits  
19 controlling; (2) provided, however, that if an operating agreement  
20 provides for the management, in whole or in part, of a limited liability  
21 company by one or more managers, the management of the limited  
22 liability company, to the extent so provided, shall be vested in the  
23 manager or managers who shall be chosen by the member or members  
24 in the manner provided in the operating agreement. The managers  
25 shall also hold the offices and have the responsibilities accorded to  
26 them by the members and set forth in an operating agreement. Subject  
27 to section 37 of this act, a manager shall cease to be a manager as  
28 provided in an operating agreement.

29 b. (1) If a limited liability company is managed by its members,  
30 unless otherwise provided in the operating agreement, each member  
31 shall have the authority to bind the limited liability company. In  
32 addition, unless otherwise provided in the operating agreement, or to  
33 the extent that a court of competent jurisdiction determines that the  
34 operating agreement is without effect in this regard, each member in  
35 a limited liability company managed by its members shall also have the  
36 authority to file for insolvency or reorganization under appropriate  
37 State or federal law, so long as that filing has the prior approval of  
38 members then owning more than 50 percent of the interests in the  
39 profits of the limited liability company.

40 (2) If the limited liability company is managed by a manager or  
41 managers, the managers shall, in addition to all other authority  
42 accorded by the operating agreement, have the authority to file for  
43 insolvency or reorganization under appropriate State or federal law,  
44 unless otherwise provided in the operating agreement, except to the  
45 extent a court of competent jurisdiction determines that the operating



1 agreement is without effect in this regard.

2 (cf: P.L.1997, c.139, s.15)

3

4 6. Section 31 of P.L.1993, c.210 (C.42:2B-31) is amended to read  
5 as follows:

6 31. A member or manager of a limited liability company shall be  
7 fully protected in <sup>1</sup>reasonably<sup>1</sup> relying in good faith upon the  
8 records of the limited liability company <sup>1</sup>created by others<sup>1</sup> and  
9 upon such information, opinions, reports or statements presented to  
10 the limited liability company by any of its other managers, members,  
11 officers, employees, or committees of the limited liability company, or  
12 by any other person, as to matters the member or manager reasonably  
13 believes are within such other person's professional or expert  
14 competence and who has been selected with reasonable care by or on  
15 behalf of the limited liability company, including information, opinions,  
16 reports or statements as to the value and amount of the assets,  
17 liabilities, profits or losses of the limited liability company or any other  
18 facts pertinent to the existence and amount of assets from which  
19 distributions to members might properly be paid. <sup>1</sup>For purposes of this  
20 section, a member or manager who is the person responsible for the  
21 making of any records of a limited liability company may only rely on  
22 those records in good faith if that reliance is reasonable.<sup>1</sup>

23 (cf: P.L.1993, c.210, s.31)

24

25 7. Section 37 of P.L.1993, c.210 (C.42:2B-37) is amended to read  
26 as follows:

27 37. A manager may resign as a manager of a limited liability  
28 company at the time or upon the happening of events specified in an  
29 operating agreement and in accordance with the operating agreement.  
30 An operating agreement may provide that a manager shall not have the  
31 right to resign as a manager of a limited liability company.  
32 Notwithstanding that an operating agreement provides that a manager  
33 does not have the right to resign as a manager of a limited liability  
34 company, a manager may resign as a manager of a limited liability  
35 company at any time by giving written notice to the member or  
36 members, as the case may be, and other managers. If the resignation  
37 of a manager violates an operating agreement, in addition to any  
38 remedies otherwise available under applicable law, a limited liability  
39 company may recover from the resigning manager damages for breach  
40 of the operating agreement and offset the damages against the amount  
41 otherwise distributable to the resigning manager.

42 (cf: P.L.1993, c.210, s.37)

43

44 <sup>1</sup>8. Section 38 of P.L.1993, c.210 (C.42:2B-38) is amended to  
45 read as follows:

46 38. **[A]** In the case of a limit liability company with two or more

1 members. a member may resign from a limited liability company at the  
2 time or upon the happening of events specified in an operating  
3 agreement and in accordance with the operating agreement. If an  
4 operating agreement does not specify the time or the events upon the  
5 happening of which a member may resign or a definite time for the  
6 dissolution and winding up of a limited liability company, a member  
7 may resign upon not less than six months' prior written notice to the  
8 limited liability company at its registered office as set forth in the  
9 certificate of formation filed in the office of the Secretary of State and  
10 to each member and manager at each member's and manager's address  
11 as set forth on the records of the limited liability company.  
12 Notwithstanding anything to the contrary set forth in this act, an  
13 operating agreement may provide that a member may not resign from  
14 a limited liability company or assign his limited liability company  
15 interest prior to the dissolution and winding up of the limited liability  
16 company.

17 (cf: P.L.1993, c.210, s.38)]<sup>1</sup>

18

19 <sup>1</sup>[9.] §.<sup>1</sup> Section 39 of P.L.1993, c.210 (C.42:2B-39) is amended  
20 to read as follows:

21 39. a. Except as provided in this act, upon resignation any  
22 resigning member from a limited liability company with at least one  
23 remaining member is entitled to receive any distribution to which he  
24 is entitled under an operating agreement and, if not otherwise provided  
25 <sup>1</sup>or permitted<sup>1</sup> in an operating agreement, he is entitled to receive,  
26 within a reasonable time after resignation, the fair value of his limited  
27 liability company interest as of the date of resignation <sup>1</sup>[based upon  
28 the net present value of his right to share in distributions from the  
29 limited liability company]<sup>1</sup>, less all applicable valuation discounts,  
30 unless the operating agreement provides for another distribution  
31 formula. <sup>1</sup>Upon resignation from a limited liability company of which  
32 that member had been the last member, unless the limited liability  
33 company continues as permitted pursuant to subsection d. of section  
34 48 of P.L.1993, c.210 (C.42:2B-48), the resigning member shall not  
35 be entitled to receive any distribution except pursuant to section 51 of  
36 P.L.1993, c.210 (C.42:2B-51). If the limited liability company  
37 continues as permitted under subsection d. of section 48 of P.L.1993,  
38 c.210 (C.42:2B-48), the resigning member shall be treated as, and  
39 have the rights of, a resigning member from a limited liability company  
40 with at least one remaining member.<sup>1</sup> If the resignation of a member  
41 violates an operating agreement, in addition to any remedies otherwise  
42 available under applicable law, a limited liability company may recover  
43 from the resigning member damages for breach of the operating  
44 agreement and offset the damages against the amount otherwise  
45 distributable to the resigning member.

46 b. As used in subsection a. of this section, "all applicable valuation

1 discounts" shall include discounts for lack of liquidity, relative size of  
2 holding, absence of any trading market and comparable factors.

3 (cf: P.L.1997, c.139, s.16)

4

5 <sup>1</sup> **[10.] 9.**<sup>1</sup> Section 44 of P.L.1993, c.210 (C.42:2B-44) is  
6 amended to read as follows:

7 44. a. A limited liability company interest is assignable in whole  
8 or in part except as provided in an operating agreement. The assignee  
9 of a member's limited liability company interest shall have no right to  
10 participate in the management of the business and affairs of a limited  
11 liability company except as provided in an operating agreement and  
12 upon:

13 (1) The approval of all of the non-assigning members of that  
14 interest, if any, of the limited liability company **[other than the member**  
15 **assigning his limited liability company interest]**; or

16 (2) Compliance with any procedure provided for in the operating  
17 agreement.

18 b. Unless otherwise provided in an operating agreement:

19 (1) An assignment entitles the assignee **[to share in the profits and**  
20 **losses,]** to receive the distribution or distributions, and to receive the  
21 allocation of income, gain, loss, deduction, or credit or similar item to  
22 which the assignor was entitled, to the extent assigned;

23 (2) A member ceases to be a member and to have the power to  
24 exercise any rights or powers of a member upon assignment of all of  
25 his limited liability company interest; and

26 (3) The pledge of, or granting of a security interest, lien or other  
27 encumbrance in or against, any or all of the limited liability company  
28 interest of a member shall not cause the member to cease to be a  
29 member, to become disassociated or to fail to have the power to  
30 exercise any rights or powers of a member.

31 c. An operating agreement may provide that a member's interest  
32 in a limited liability company may be evidenced by a certificate of  
33 limited liability company interest issued by the limited liability  
34 company.

35 d. Unless otherwise provided in an operating agreement and  
36 except to the extent assumed by agreement, until an assignee of a  
37 limited liability company interest becomes a member, the assignee shall  
38 have no liability as a member solely as a result of the assignment.

39 e. An assignee shall have no authority to seek or obtain a court  
40 order dissolving or liquidating a limited liability company.

41 (cf: P.L.1997, c.139, s.17)

42

43 <sup>1</sup>10. Section 46 of P.L.1993, c.210 (C.42:2B-46) is amended to  
44 read as follows:

45 46. a. An assignee of a limited liability company interest may  
46 become a member as provided in an operating agreement and upon:

1 (1) The approval of all of the members of the limited liability  
2 company other than the member assigning his limited liability company  
3 interest; or

4 (2) Compliance with any procedure provided for in the operating  
5 agreement.

6 b. An assignee who has become a member has, to the extent  
7 assigned, the rights and powers, and is subject to the restrictions and  
8 liabilities, of a member under an operating agreement and this act.  
9 Notwithstanding the foregoing, unless otherwise provided in an  
10 operating agreement, an assignee who becomes a member is liable for  
11 the obligations of his assignor to make contributions as provided in  
12 section 33 of this act, but shall not be liable for the obligations of his  
13 assignor under sections 37 or 38. However, the assignee is not  
14 obligated for liabilities, including the obligations of his assignor to  
15 make contributions as provided in section 33 of this act, unknown to  
16 the assignee at the time he became a member and which could not be  
17 ascertained from an operating agreement.

18 c. Whether or not an assignee of a limited liability company  
19 interest becomes a member, the assignor is not released from his  
20 liability to a limited liability company under sections 32 through 42 of  
21 this act.

22 d. In addition to subsection a. of this section, an assignee of a  
23 limited liability company interest may become a member of a limited  
24 liability company unless otherwise provided or expressly precluded by  
25 a provision of the operating agreement, upon that assignee's election  
26 when:

27 (1) there are no members of the limited liability company;

28 (2) that election is made within 90 days after the date on which the  
29 limited liability company no longer has at least one member; and

30 (3) the assignee either first became an assignee when there were  
31 no members of the limited liability company remaining in connection  
32 with the resignation or other dissociation of the last remaining member  
33 of the limited liability company or is an assignee of a member of the  
34 limited liability company when that member is the only member of the  
35 limited liability company.

36 If an assignee timely elects to become a member of the limited  
37 liability company as provided in this section, the certificate of  
38 formation shall remain valid and the limited liability company shall  
39 continue to have existence as though it has always had at least one  
40 member.<sup>1</sup>

41 (cf: P.L.1993, c.210, s.46)

42  
43 <sup>1</sup>11. Section 47 of P.L. 1993, c. 210 (C. 42:2B-47) is amended to  
44 read as follows:

45 47. If a member who is an individual dies or a court of competent  
46 jurisdiction adjudges him to be incompetent to manage his person or

1 his property, the member's executor, administrator, guardian,  
2 conservator or other legal representative may exercise all of the  
3 member's rights for the purpose of settling his estate or administering  
4 his property, including any power under an operating agreement of an  
5 assignee to become a member and the power given to an assignee  
6 under subsection d. of section 46 of P.L.1993, c.210 (C.42:2B-46).  
7 If a member is a corporation, trust or other entity and is dissolved or  
8 terminated, the powers of that member may , in addition to the powers  
9 given to an assignee under subsection d. of section 46 of P.L.1993,  
10 c.210 (C.42:2B-46), be exercised by its legal representative or  
11 successor.<sup>1</sup>

12 (cf: P.L.1993, c.210, s.47)

13

14 <sup>1</sup>~~11.~~ 12.<sup>1</sup> Section 48 of P.L.1993, c.210 (C.42:2B-48) is  
15 amended to read as follows:

16 48. A limited liability company is dissolved and its affairs shall be  
17 wound up upon the first to occur of the following:

18 a. Unless the certificate of formation specifies that the limited  
19 liability company is perpetual, at the time specified in an operating  
20 agreement, or 30 years from the date of the formation of the limited  
21 liability company if no specified time for dissolution and winding up,  
22 regardless of any dissolution contingencies, is set forth in the operating  
23 agreement;

24 b. Upon the happening of events specified in an operating  
25 agreement;

26 c. The written consent of all members, which includes written  
27 consent of the sole ~~remaining~~ member of a limited liability company  
28 with only one member; <sup>1</sup>~~or~~<sup>1</sup>

29 d. ~~90 days after the date on which the limited liability~~  
30 ~~company has only one member, unless at least one additional member~~  
31 ~~is admitted within 90 days after the date on which the limited liability~~  
32 ~~company had only one member; or] <sup>1</sup>~~[(Deleted by amendment,~~  
33 ~~P.L. , c. )] Ninety days after the date on which the limited~~  
34 ~~liability company no longer has at least one member, unless at least~~  
35 ~~one new member is admitted within that 90 day period; or~~<sup>1</sup>~~

36 e. The entry of a decree of judicial dissolution under section 49 of  
37 this act.

38 (cf: P.L.1997, c.139, s.19)

39

40 <sup>1</sup>~~12.~~ 13.<sup>1</sup> Section 69 of P.L.1993, c.210 (C.42:2B-69) is  
41 amended to read as follows:

42 69. a. For all purposes of taxation under the laws of this State, a  
43 limited liability company formed under this act or qualified to do  
44 business in this State as a foreign limited liability company with two or  
45 more members shall be classified as a partnership unless classified  
46 otherwise for federal income tax purposes, in which case the limited

1 liability company shall be classified in the same manner as it is  
2 classified for federal income tax purposes. For all purposes of taxation  
3 under the laws of this State, a member or an assignee of a member of  
4 a limited liability company formed under this act or qualified to do  
5 business in this State as a foreign limited liability company shall be  
6 treated as a partner in a partnership unless the limited liability company  
7 is classified otherwise for federal income tax purposes, in which case  
8 the member or assignee of a member shall have the same status as the  
9 member or assignee of a member has for federal income tax purposes.

10 b. For all purposes of taxation <sup>1</sup>on income<sup>1</sup> under the laws of this  
11 State and only for those purposes, a limited liability company formed  
12 under P.L. 1993, c.210 (C. 42:2B-1 et seq.) or qualified to do business  
13 in this State as a foreign limited liability company with one member is  
14 disregarded as an entity separate from its owner, unless classified other  
15 wise for federal tax purposes, in which case the limited liability  
16 company will be classified in the same manner as it is classified for  
17 federal income tax purposes. For all purposes of taxation <sup>1</sup>on income<sup>1</sup>  
18 under the laws of this State and only for those purposes, the sole  
19 member or an assignee of all of the limited liability company interest  
20 of the sole member of a limited liability company formed under  
21 P.L.1993, c.210 (C.42:2B-1 et seq.) or qualified to do business in this  
22 State as a foreign limited liability company is treated as the direct  
23 owner of the underlying assets of the limited liability company and of  
24 its operations, unless the limited liability company is classified  
25 otherwise for federal income tax purposes, in which case the member  
26 or assignee of a member will have the same status as the member or  
27 assignee of a member has for federal income tax purposes.

28 (cf: P.L.1993, c.210, s.69)

29

30 <sup>1</sup>[13.] 14.<sup>1</sup> This act shall take effect immediately <sup>1</sup>and shall apply  
31 to all existing limited liability companies whether or not formed before  
32 the effective date of this act<sup>1</sup>.

**SENATE, No. 378**

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**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

---

INTRODUCED JANUARY 20, 1998

**Sponsored by:**  
**Senator GERALD CARDINALE**  
**District 39 (Bergen)**

**SYNOPSIS**

Provides for one-member limited liability companies.

**CURRENT VERSION OF TEXT**

As introduced.



S378 CARDINALE

2

1 AN ACT concerning limited liability companies and amending  
2 P.L. 1993, c. 210.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 2 of P.L. 1993, c. 210 (C. 42:2B-2) is amended to read  
8 as follows:

9 2. As used in this act unless the context otherwise requires:

10 "Bankruptcy" means an event that causes a person to cease to be a  
11 member as provided in section 24 of this act.

12 "Certificate of formation" means the certificate referred to in  
13 section 11 of this act, and the certificate as amended.

14 "Contribution" means any cash, property, services rendered or a  
15 promissory note or other obligation to contribute cash or property or  
16 to perform services, which a person contributes to a limited liability  
17 company in his capacity as a member; provided however, that services  
18 rendered and obligations to perform services are contributions only to  
19 the extent designated as contributions in the operating agreement.

20 "Foreign limited liability company" means a limited liability  
21 company formed under the laws of any state or under the laws of any  
22 foreign country or other foreign jurisdiction and denominated as such  
23 under the laws of such state or foreign country or other foreign  
24 jurisdiction.

25 "Limited liability company" and "domestic limited liability  
26 company" means a limited liability company formed under the laws of  
27 this State and having **[two]** one or more members.

28 "Limited liability company interest" means a member's share of the  
29 profits and losses of a limited liability company and a member's right  
30 to receive distributions of the limited liability company's assets.

31 "Liquidating trustee" means a person carrying out the winding up  
32 of a limited liability company.

33 "Manager" means a person who is named as a manager of a limited  
34 liability company in, or designated as a manager of a limited liability  
35 company pursuant to, an operating agreement or similar instrument  
36 under which the limited liability company is formed.

37 "Member" means a person who has been admitted to a limited  
38 liability company as a member as provided in section 21 of this act or,  
39 in the case of a foreign limited liability company, in accordance with  
40 the laws of the state or foreign country or other foreign jurisdiction  
41 under which the foreign limited liability company is organized.

**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.**



S378 CARDINALE

1 "Operating agreement" means a written agreement of the members  
2 as to the affairs of a limited liability company and the conduct of its  
3 business.

4 "Person" means a natural person, partnership (whether general or  
5 limited and whether domestic or foreign), limited liability company,  
6 foreign limited liability company, trust, estate, association,  
7 corporation, custodian, nominee or any other individual or entity in its  
8 own or any representative capacity.

9 "State" means the District of Columbia or the Commonwealth of  
10 Puerto Rico or any state, territory, possession, or other jurisdiction of  
11 the United States other than this State.

12 (cf: P.L.1995, c.96, s.13)

13

14 2. Section 11 of P.L. 1993, c. 210 (C. 42:2B-11) is amended to  
15 read as follows:

16 11. a. In order to form a limited liability company, one or more  
17 authorized persons must execute a certificate of formation. The  
18 certificate of formation shall be filed in the office of the Secretary of  
19 State and set forth:

20 (1) The name of the limited liability company;

21 (2) The address of the registered office and the name and address  
22 of the registered agent for service of process required to be maintained  
23 by section 6 of this act;

24 (3) That the limited liability company has **[two]** one or more  
25 members;

26 (4) If the limited liability company is to have perpetual existence,  
27 regardless of whether the limited liability company is subject to any  
28 dissolution contingencies, then the word "perpetual" shall be stated; if  
29 the limited liability company is to have a specific date of dissolution,  
30 regardless of whether the limited liability company is subject to any  
31 dissolution contingencies, the latest date on which the limited liability  
32 company is to dissolve; and

33 (5) Any other matters the members determine to include therein.

34 b. A limited liability company is formed at the time of the filing of  
35 the initial certificate of formation in the office of the Secretary of State  
36 or at any later date or time specified in the certificate of formation if,  
37 in either case, there has been substantial compliance with the  
38 requirements of this section. A limited liability company formed under  
39 this act shall be a separate legal entity, the existence of which as a  
40 separate legal entity shall continue until cancellation of the limited  
41 liability company's certificate of formation.

42 (cf: P.L.1997, c.139, s.9)

43

44 3. This act shall take effect immediately.

**S378 CARDINALE**

4

1 STATEMENT

2

3 This bill provides for one-member limited liability companies.

4 Current law requires that a limited liability company have two or more

5 members.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 378**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 4, 1998

The Assembly Judiciary Committee reports favorably and with committee amendments the Senate Committee Substitute for Senate Bill No. 378.

The bill provides for single member limited liability companies. Current law requires that a limited liability company have two or more members. The bill amends various sections of the "New Jersey Limited Liability Company Act" in order to provide for single member limited liability companies. The bill also amends the law to treat single member limited liability companies as sole proprietorships for State income tax purposes unless the company is classified otherwise for federal income tax purposes.

The committee amended the bill to make the following changes:

N.J.S.A.42:2B-24 (section 4 of the bill) concerning dissociation has technical changes to account for single member companies;

N.J.S.A.42:2B-31 (section 6) clarifies when a member or manager is protected in relying in good faith on the limited liability company's records;

N.J.S.A.42:2B-39 (now section 8) has language added concerning the entitlement of a resigning member to distribution;

N.J.S.A.42:2B-46 and 42:2B-47 are added to the bill as sections 10 and 11 concerning when an assignee may become a member of a limited liability company and powers of assignees;

N.J.S.A.42:2B-48 (now section 12) concerning dissolution restates current subsection d. pertaining to at least one member being admitted to the company within the 90 days after the limited liability company no longer has at least one member;

N.J.S.A.42:2B-69 (now section 13) adds the phrase "on income" to new subsection b. concerning taxation;

Effective date: Committee amendments make the bill applicable to all limited liability companies whether or not formed before the effective date of the bill.

As amended, this bill is identical to Assembly Bill No. 1855 (1R).

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 378**

**STATE OF NEW JERSEY**

DATED: MARCH 23, 1998

The Senate Commerce Committee reports favorably a Senate Committee Substitute for Senate Bill No. 378.

This bill, a Senate Committee Substitute for Senate, No. 378, provides for single member limited liability companies. Current law requires that a limited liability company have two or more members.

The bill amends various sections of the "New Jersey Limited Liability Company Act" in order to provide for single member limited liability companies. The bill also amends the law to treat single member limited liability companies as sole proprietorships for State income tax purposes unless the company is classified otherwise for federal income tax purposes.

**ASSEMBLY, No. 1855**

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**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

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INTRODUCED MARCH 23, 1998

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**SYNOPSIS**

Provides for single member limited liability companies.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning limited liability companies and amending  
2 P.L.1993, c.210.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 2 of P.L.1993, c.210 (C.42:2B-2) is amended to read as  
8 follows:

9 2. As used in this act unless the context otherwise requires:

10 "Bankruptcy" means an event that causes a person to **[**cease to be  
11 a member**]** become disassociated from a limited liability company as  
12 provided in section 24 of this act.

13 "Certificate of formation" means the certificate referred to in  
14 section 11 of this act, and the certificate as amended.

15 "Contribution" means any cash, property, services rendered or a  
16 promissory note or other obligation to contribute cash or property or  
17 to perform services, which a person contributes to a limited liability  
18 company in his capacity as a member; provided however, that services  
19 rendered and obligations to perform services are contributions only to  
20 the extent designated as contributions in the operating agreement.

21 "Foreign limited liability company" means a limited liability  
22 company formed under the laws of any state or under the laws of any  
23 foreign country or other foreign jurisdiction and denominated as such  
24 under the laws of such state or foreign country or other foreign  
25 jurisdiction.

26 "Limited liability company" and "domestic limited liability  
27 company" means a limited liability company formed under the laws of  
28 this State and having **[two]** one or more members.

29 "Limited liability company interest" means a member's share of the  
30 profits and losses of a limited liability company and a member's right  
31 to receive distributions of the limited liability company's assets.

32 "Liquidating trustee" means a person carrying out the winding up  
33 of a limited liability company.

34 "Manager" means a person who is named as a manager of a limited  
35 liability company in, or designated as a manager of a limited liability  
36 company pursuant to, an operating agreement or similar instrument  
37 under which the limited liability company is formed.

38 "Member" means a person who has been admitted to a limited  
39 liability company as a member as provided in section 21 of this act or,  
40 in the case of a foreign limited liability company, in accordance with  
41 the laws of the state or foreign country or other foreign jurisdiction  
42 under which the foreign limited liability company is organized.

43 "Operating agreement" means a written agreement **[of]** among the

**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 members, or in the case of a limited liability company with only one  
2 member, the member and the limited liability company, as to the affairs  
3 of a limited liability company and the conduct of its business.

4 "Person" means a natural person, partnership (whether general or  
5 limited and whether domestic or foreign), limited liability company,  
6 foreign limited liability company, trust, estate, association,  
7 corporation, custodian, nominee or any other individual or entity in its  
8 own or any representative capacity.

9 "State" means the District of Columbia or the Commonwealth of  
10 Puerto Rico or any state, territory, possession, or other jurisdiction of  
11 the United States other than this State.

12 (cf: P.L.1995, c.96, s.13)

13  
14 2. Section 11 of P.L.1993, c.210 (C.42:2B-11) is amended to read  
15 as follows:

16 11. a. In order to form a limited liability company, one or more  
17 authorized persons must execute a certificate of formation. The  
18 certificate of formation shall be filed in the office of the Secretary of  
19 State and set forth:

20 (1) The name of the limited liability company;

21 (2) The address of the registered office and the name and address  
22 of the registered agent for service of process required to be maintained  
23 by section 6 of this act;

24 (3) **【That the limited liability company has two or more members;】**  
25 (Deleted by amendment, P.L. , c. .)

26 (4) If the limited liability company is to have perpetual existence,  
27 regardless of whether the limited liability company is subject to any  
28 dissolution contingencies, then the word "perpetual" shall be stated; if  
29 the limited liability company is to have a specific date of dissolution,  
30 regardless of whether the limited liability company is subject to any  
31 dissolution contingencies, the latest date on which the limited liability  
32 company is to dissolve; and

33 (5) Any other matters the members determine to include therein.

34 b. A limited liability company is formed at the time of the filing of  
35 the initial certificate of formation in the office of the Secretary of State  
36 or at any later date or time specified in the certificate of formation if,  
37 in either case, there has been substantial compliance with the  
38 requirements of this section. A limited liability company formed under  
39 this act shall be a separate legal entity, the existence of which as a  
40 separate legal entity shall continue until cancellation of the limited  
41 liability company's certificate of formation.

42 (cf: P.L.1997, c.139, s.9)

43  
44 3. Section 14 of P.L.1993, c.210 (C.42:2B-14) is amended to read  
45 as follows:

46 14. a. A certificate of formation shall be canceled upon the

1 dissolution and the completion of winding up of a limited liability  
2 company, or upon the filing of a certificate of merger or consolidation  
3 if the limited liability company is not the surviving or resulting entity  
4 in a merger or consolidation.

5 b. A certificate of cancellation shall be filed in the office of the  
6 Secretary of State to accomplish the cancellation of a certificate of  
7 formation upon the dissolution and the completion of winding up of a  
8 limited liability company and shall set forth:

9 (1) The name of the limited liability company;

10 (2) The date of filing of its certificate of formation;

11 (3) The reason for filing the certificate of cancellation;

12 (4) The future effective date or time (which shall be a date or time  
13 certain) of cancellation if it is not to be effective upon the filing of the  
14 certificate; and

15 (5) Any other information the person filing the certificate of  
16 cancellation determines.

17 c. [A certificate of formation shall not be canceled, and no  
18 certificate of cancellation shall be required to be filed, when a limited  
19 liability company has only one member, and the certificate of  
20 formation shall remain valid when a limited liability company has only  
21 one member, if within 90 days of the date on which the limited liability  
22 company first had only one member, one or more additional members  
23 are admitted. If no additional member is admitted within that 90-day  
24 period, the certificate of formation of that limited liability company  
25 shall be canceled and a certificate of cancellation shall be filed on and  
26 as of the end of that 90-day period.] (Deleted by amendment, P.L. \_\_\_\_,  
27 c. \_\_\_\_.)

28 (cf: P.L.1997, c.139, s.10)

29

30 4. Section 24 of P.L.1993, c.210 (C.42:2B-24) is amended to read  
31 as follows:

32 24. A member shall be dissociated from a limited liability company  
33 upon the occurrence of any of the following events:

34 a. Unless otherwise provided in an operating agreement, or with  
35 the written consent of all members,

36 (1) the limited liability company receives notice of the member's  
37 resignation as a member, or on a later date specified by the member;

38 (2) an event agreed to in the operating agreement as causing the  
39 member's dissociation;

40 (3) a member:

41 (a) becomes a debtor in bankruptcy;

42 (b) executes an assignment for the benefit of creditors;

43 (c) seeks, consents to or acquiesces in the appointment of a  
44 trustee, receiver or liquidator of the member or of all or substantially  
45 all of that member's properties; or

46 (d) fails, within 90 days after the appointment, without the



1 member's consent or acquiescence, of a trustee, receiver or liquidator  
2 of the member or of all or substantially all of that member's properties,  
3 to have the appointment vacated or stayed, or fails within 90 days after  
4 the expiration of a stay to have the appointment vacated; or  
5 b. (1) the member's expulsion pursuant to the operating  
6 agreement;  
7 (2) the member's expulsion by the unanimous vote of the other  
8 members if:  
9 (a) it is unlawful to carry on the limited liability company with that  
10 member;  
11 (b) there has been a transfer of all of that member's transferable  
12 interest in the limited liability company, other than a transfer for  
13 security purposes, or a court order charging the member's interest;  
14 (c) within 90 days after the limited liability company notifies a  
15 corporate member that it will be expelled because it has filed a  
16 certificate of dissolution or the equivalent, its charter has been  
17 revoked, or its right to conduct business has been suspended by the  
18 jurisdiction of its incorporation, there is no revocation of the  
19 certificate of dissolution or no reinstatement of its charter or its right  
20 to conduct business; or  
21 (d) a limited liability company or a partnership that is a member has  
22 been dissolved and its business is being wound up;  
23 (3) on application by the limited liability company or another  
24 member, the member's expulsion by judicial determination because:  
25 (a) the member engaged in wrongful conduct that adversely and  
26 materially affected the limited liability company's business;  
27 (b) the member willfully or persistently committed a material  
28 breach of the operating agreement; or  
29 (c) the member engaged in conduct relating to the limited liability  
30 company business which makes it not reasonably practicable to carry  
31 on the business with the member as a member of the limited liability  
32 company;  
33 (4) in the case of a member who is an individual:  
34 (a) the member's death;  
35 (b) the appointment of a guardian or general conservator for the  
36 member; or  
37 (c) a judicial determination that the member has otherwise become  
38 incapable of performing the member's duties under the operating  
39 agreement;  
40 (5) in the case of a member that is a trust or is acting as a member  
41 by virtue of being a trustee of a trust, distribution of the trust's entire  
42 transferable interest in the limited liability company, but not merely by  
43 reason of the substitution of a successor trustee;  
44 (6) in the case of a member that is an estate or is acting as a  
45 member by virtue of being a personal representative of an estate,  
46 distribution of the estate's entire transferable interest in the limited

1 liability company, but not merely by reason of the substitution of a  
2 successor personal representative; or

3 (7) dissolution of a member who is not an individual, partnership,  
4 limited liability company, corporation, trust or estate.

5 (cf: P.L.1997, c.139, s.13)

6

7 5. Section 27 of P.L.1993, c.210 (C.42:2B-27) is amended to read  
8 as follows:

9 27. a. (1) Unless otherwise provided in an operating agreement,  
10 the management of a limited liability company shall be vested in its  
11 members in proportion to the then current percentage or other interest  
12 of members in the profits of the limited liability company owned by all  
13 of the members, the decision of members owning more than 50 percent  
14 of the then current percentage or other interest in the profits  
15 controlling; (2) provided, however, that if an operating agreement  
16 provides for the management, in whole or in part, of a limited liability  
17 company by one or more managers, the management of the limited  
18 liability company, to the extent so provided, shall be vested in the  
19 manager or managers who shall be chosen by the member or members  
20 in the manner provided in the operating agreement. The managers  
21 shall also hold the offices and have the responsibilities accorded to  
22 them by the members and set forth in an operating agreement. Subject  
23 to section 37 of this act, a manager shall cease to be a manager as  
24 provided in an operating agreement.

25 b. (1) If a limited liability company is managed by its members,  
26 unless otherwise provided in the operating agreement, each member  
27 shall have the authority to bind the limited liability company. In  
28 addition, unless otherwise provided in the operating agreement, or to  
29 the extent that a court of competent jurisdiction determines that the  
30 operating agreement is without effect in this regard, each member in  
31 a limited liability company managed by its members shall also have the  
32 authority to file for insolvency or reorganization under appropriate  
33 State or federal law, so long as that filing has the prior approval of  
34 members then owning more than 50 percent of the interests in the  
35 profits of the limited liability company.

36 (2) If the limited liability company is managed by a manager or  
37 managers, the managers shall, in addition to all other authority  
38 accorded by the operating agreement, have the authority to file for  
39 insolvency or reorganization under appropriate State or federal law,  
40 unless otherwise provided in the operating agreement, except to the  
41 extent a court of competent jurisdiction determines that the operating  
42 agreement is without effect in this regard.

43 (cf: P.L.1997, c.139, s.15)

44

45 6. Section 31 of P.L.1993, c.210 (C.42:2B-31) is amended to read  
46 as follows:

1       31. A member or manager of a limited liability company shall be  
2 fully protected in reasonably relying in good faith upon the records of  
3 the limited liability company created by others and upon such  
4 information, opinions, reports or statements presented to the limited  
5 liability company by any of its other managers, members, officers,  
6 employees, or committees of the limited liability company, or by any  
7 other person, as to matters the member or manager reasonably believes  
8 are within such other person's professional or expert competence and  
9 who has been selected with reasonable care by or on behalf of the  
10 limited liability company, including information, opinions, reports or  
11 statements as to the value and amount of the assets, liabilities, profits  
12 or losses of the limited liability company or any other facts pertinent  
13 to the existence and amount of assets from which distributions to  
14 members might properly be paid.

15 (cf: P.L.1993, c.210, s.31)

16

17       7. Section 37 of P.L.1993, c.210 (C.42:2B-37) is amended to read  
18 as follows:

19       37. A manager may resign as a manager of a limited liability  
20 company at the time or upon the happening of events specified in an  
21 operating agreement and in accordance with the operating agreement.  
22 An operating agreement may provide that a manager shall not have the  
23 right to resign as a manager of a limited liability company.  
24 Notwithstanding that an operating agreement provides that a manager  
25 does not have the right to resign as a manager of a limited liability  
26 company, a manager may resign as a manager of a limited liability  
27 company at any time by giving written notice to the member or  
28 members, as the case may be, and other managers. If the resignation  
29 of a manager violates an operating agreement, in addition to any  
30 remedies otherwise available under applicable law, a limited liability  
31 company may recover from the resigning manager damages for breach  
32 of the operating agreement and offset the damages against the amount  
33 otherwise distributable to the resigning manager.

34 (cf: P.L.1993, c.210, s.37)

35

36       8. Section 38 of P.L.1993, c.210 (C.42:2B-38) is amended to read  
37 as follows:

38       38. **[A]** In the case of a limited liability company with two or more  
39 members, a member may resign from a limited liability company at the  
40 time or upon the happening of events specified in an operating  
41 agreement and in accordance with the operating agreement. If an  
42 operating agreement does not specify the time or the events upon the  
43 happening of which a member may resign or a definite time for the  
44 dissolution and winding up of a limited liability company, a member  
45 may resign upon not less than six months' prior written notice to the  
46 limited liability company at its registered office as set forth in the

1 certificate of formation filed in the office of the Secretary of State and  
2 to each member and manager at each member's and manager's address  
3 as set forth on the records of the limited liability company.  
4 Notwithstanding anything to the contrary set forth in this act, an  
5 operating agreement may provide that a member may not resign from  
6 a limited liability company or assign his limited liability company  
7 interest prior to the dissolution and winding up of the limited liability  
8 company.

9 (cf: P.L.1993, c.210, s.38)

10

11 9. Section 39 of P.L.1993, c.210 (C.42:2B-39) is amended to read  
12 as follows:

13 39. a. Except as provided in this act, upon resignation any  
14 resigning member from a limited liability company with at least one  
15 remaining member is entitled to receive any distribution to which he  
16 is entitled under an operating agreement and, if not otherwise provided  
17 in an operating agreement, he is entitled to receive, within a reasonable  
18 time after resignation, the fair value of his limited liability company  
19 interest as of the date of resignation based upon the net present value  
20 of his right to share in distributions from the limited liability company,  
21 less all applicable valuation discounts, unless the operating agreement  
22 provides for another distribution formula. If the resignation of a  
23 member violates an operating agreement, in addition to any remedies  
24 otherwise available under applicable law, a limited liability company  
25 may recover from the resigning member damages for breach of the  
26 operating agreement and offset the damages against the amount  
27 otherwise distributable to the resigning member.

28 b. As used in subsection a. of this section, "all applicable valuation  
29 discounts" shall include discounts for lack of liquidity, relative size of  
30 holding, absence of any trading market and comparable factors.

31 (cf: P.L.1997, c.139, s.16)

32

33 10. Section 44 of P.L.1993, c.210 (C.42:2B-44) is amended to  
34 read as follows:

35 44. a. A limited liability company interest is assignable in whole or  
36 in part except as provided in an operating agreement. The assignee of  
37 a member's limited liability company interest shall have no right to  
38 participate in the management of the business and affairs of a limited  
39 liability company except as provided in an operating agreement and  
40 upon:

41 (1) The approval of all of the non-assigning members of that  
42 interest, if any, of the limited liability company **[other than the member**  
43 **assigning his limited liability company interest]**; or

44 (2) Compliance with any procedure provided for in the operating  
45 agreement.

46

b. Unless otherwise provided in an operating agreement:

1 (1) An assignment entitles the assignee [to share in the profits and  
2 losses,] to receive the distribution or distributions, and to receive the  
3 allocation of income, gain, loss, deduction, or credit or similar item to  
4 which the assignor was entitled, to the extent assigned;

5 (2) A member ceases to be a member and to have the power to  
6 exercise any rights or powers of a member upon assignment of all of  
7 his limited liability company interest; and

8 (3) The pledge of, or granting of a security interest, lien or other  
9 encumbrance in or against, any or all of the limited liability company  
10 interest of a member shall not cause the member to cease to be a  
11 member, to become disassociated or to fail to have the power to  
12 exercise any rights or powers of a member.

13 c. An operating agreement may provide that a member's interest in  
14 a limited liability company may be evidenced by a certificate of limited  
15 liability company interest issued by the limited liability company.

16 d. Unless otherwise provided in an operating agreement and except  
17 to the extent assumed by agreement, until an assignee of a limited  
18 liability company interest becomes a member, the assignee shall have  
19 no liability as a member solely as a result of the assignment.

20 e. An assignee shall have no authority to seek or obtain a court  
21 order dissolving or liquidating a limited liability company.

22 (cf: P.L.1997, c.139, s.17)

23  
24 11. Section 48 of P.L.1993, c.210 (C.42:2B-48) is amended to  
25 read as follows:

26 48. A limited liability company is dissolved and its affairs shall be  
27 wound up upon the first to occur of the following:

28 a. Unless the certificate of formation specifies that the limited  
29 liability company is perpetual, at the time specified in an operating  
30 agreement, or 30 years from the date of the formation of the limited  
31 liability company if no specified time for dissolution and winding up,  
32 regardless of any dissolution contingencies, is set forth in the operating  
33 agreement;

34 b. Upon the happening of events specified in an operating  
35 agreement;

36 c. The written consent of all members, which includes written  
37 consent of the sole [remaining] member of a limited liability company  
38 with only one member; or

39 d. [Ninety days after the date on which the limited liability  
40 company has only one member, unless at least one additional member  
41 is admitted within 90 days after the date on which the limited liability  
42 company had only one member; or] (Deleted by amendment, P.L. \_\_\_\_\_,  
43 c. \_\_\_\_\_)

44 e. The entry of a decree of judicial dissolution under section 49 of  
45 this act.

46 (cf: P.L.1997, c.139, s.19)

1       12. Section 69 of P.L. 993, c.210 (C.42:2B-69) is amended to read  
2 as follows:

3       69. a. For all purposes of taxation under the laws of this State, a  
4 limited liability company formed under this act or qualified to do  
5 business in this State as a foreign limited liability company with two or  
6 more members shall be classified as a partnership unless classified  
7 otherwise for federal income tax purposes, in which case the limited  
8 liability company shall be classified in the same manner as it is  
9 classified for federal income tax purposes. For all purposes of taxation  
10 under the laws of this State, a member or an assignee of a member of  
11 a limited liability company formed under this act or qualified to do  
12 business in this State as a foreign limited liability company shall be  
13 treated as a partner in a partnership unless the limited liability company  
14 is classified otherwise for federal income tax purposes, in which case  
15 the member or assignee of a member shall have the same status as the  
16 member or assignee of a member has for federal income tax purposes.

17       b. For all purposes of taxation under the laws of this State and only  
18 for those purposes, a limited liability company formed under P.L.  
19 1993, c. 210 (C. 42:2B-1 et seq.), or qualified to do business in this  
20 State as a foreign limited liability company with one member is  
21 disregarded as an entity separate from its owner, unless classified other  
22 wise for federal tax purposes, in which case the limited liability  
23 company will be classified in the same manner as it is classified for  
24 federal income tax purposes. For all purposes of taxation under the  
25 laws of this State and only for those purposes, the sole member or an  
26 assignee of all of the limited liability company interest of the sole  
27 member of a limited liability company formed under P.L. 1993, c. 210  
28 (C. 42:2B-1 et seq.), or qualified to do business in this State as a  
29 foreign limited liability company is treated as the direct owner of the  
30 underlying assets of the limited liability company and of its operations,  
31 unless the limited liability company is classified otherwise for federal  
32 income tax purposes, in which case the member or assignee of a  
33 member will have the same status as the member or assignee of a  
34 member has for federal income tax purposes.

35 (cf: P.L.1993, c.210, s.69)

36

37       13. This act shall take effect immediately.

38

39

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#### STATEMENT

41

42       This bill provides for single member limited liability companies.  
43 Current law requires that a limited liability company have two or more  
44 members.

45       The bill amends various sections of the "New Jersey Limited  
46 Liability Company Act" in order to provide for single member limited

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1 liability companies. The bill also amends the law to treat single  
2 member limited liability companies as sole proprietorships for State  
3 income tax purposes unless the company is classified otherwise for  
4 federal income tax purposes.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 1855**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 4, 1998

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1855.

This bill provides for single member limited liability companies. Current law requires that a limited liability company have two or more members. The bill amends various sections of the "New Jersey Limited Liability Company Act" in order to provide for single member limited liability companies. The bill also amends the law to treat single member limited liability companies as sole proprietorships for State income tax purposes unless the company is classified otherwise for federal income tax purposes.

The committee amended the bill to make the following changes:

N.J.S.A. 42:2B-24 (section 4 of the bill) concerning dissociation has technical changes to account for single member companies;

N.J.S.A. 42:2B-31 (section 6) clarifies when a member or manager is protected in relying in good faith on the limited liability company's records;

N.J.S.A. 42:2B-39 (now section 8) has language added concerning the entitlement of a resigning member to distribution;

N.J.S.A. 42:2B-46 and 42:2B-47 are added to the bill as sections 10 and 11 concerning when an assignee may become a member of a limited liability company and powers of assignees;

N.J.S.A. 42:2B-48 (now section 12) concerning dissolution restates current subsection d. pertaining to at least one member being admitted to the company within the 90 days after the limited liability company no longer has at least one member;

N.J.S.A. 42:2B-69 (now section 13) adds the phrase "on income" to new subsection b. concerning taxation;

Effective date: Committee amendments make the bill applicable to all limited liability companies whether or not formed before the effective date of the bill.

As amended, this bill is identical to Senate Bill No. 378 SCS (1R).



*Office of the Governor*  
**NEWS RELEASE**

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RELEASE: August 14, 1998

Gov. Christie Whitman today signed the following pieces of legislation:

**S-378**, sponsored by Senator Gerald Cardinale (R-Bergen) and Assembly Members Christopher "Kip" Bateman (R-Morris/Somerset) and Neil M. Cohen (D-Union), authorizes the creation of single member limited liability companies (L.L.Cs.). Similar to corporations, L.L.Cs. are business organizations that offer owners protection from personal liability, but avoid double taxation. Previous law required that a limited liability company have two or more members.

**S-790**, sponsored by Senators John J. Matheussen (R-Camden/Gloucester), Joseph A. Palaia (R-Monmouth) and Shirley K. Turner (D-Mercer), and Assembly Member George F. Geist (R-Camden/Gloucester), clarifies the 1996 law requiring all school buses to be equipped with crossing control arms to remedy an oversight regarding reimbursement of costs for owners and operators of buses transporting non-public school children. The law requiring all school buses to be equipped with a crossing arm authorizes reimbursement of costs by the state Department of Education. However, non-public schools and other transportation agencies and organizations were not included in the section of the law which authorized reimbursement of costs.