
Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4606 (Substitute H-1 as passed by the House)

Sponsor: Representative Kirk Profit

House Committee: Commerce

Senate Committee: Financial Services

Date Completed: 5-22-97

CONTENT

The bill would amend the Michigan Limited Liability Company (LLC) Act to eliminate the requirements that an LLC be organized and operated by two or more members, and that an LLC limit its corporate characteristics to one of the following: centralized membership, continuity of life, and free transferability of interests. (Reportedly, a 1988 Internal Revenue Service letter ruling on Wyoming's LLC law established that a company may be organized as an LLC if it has at least two members and lacks at least two of the four characteristics that distinguish corporations from partnerships: limited liability, centralized management, continuity of life, and free transferability of interests.)

The bill would make a number of other changes to the LLC Act, some of which are described below.

Duration

The bill would make the maximum duration of an LLC perpetual unless otherwise provided in the articles of organization.

Mergers

The bill would add new language regarding mergers between domestic LLCs and other business entities (domestic or foreign corporations, limited partnerships, general partnerships, or other businesses). It would allow mergers between these types of businesses as long as the merger was permitted under the law of the jurisdiction in which each business was located, each foreign constituent business organization complied with applicable Michigan laws, and each domestic LLC complied with the provisions of the bill.

The bill would require the adoption of a plan of merger describing the merging businesses, the surviving business entity, and the terms and conditions of the proposed merger. The bill also would require that the plan be approved by each constituent domestic LLC affected, and would allow dissenting members to withdraw. The bill also provides for the continued use of an assumed name by a company resulting from a merger.

Conflicts

The bill would make the articles of organization controlling if there were a conflict between the articles and an operating agreement.

Conversions

The bill would allow a domestic partnership or domestic limited liability partnership to convert to an LLC. Terms and conditions of a conversion would have to be approved by the partners in the same

manner as amendments to the partnership agreement and a \$25 fee would have to be paid to the “administrator” (the Department of Consumer and Industry Services) to obtain a required certificate of conversion.

Distributions and Voting

Under the Act, voting on business matters and distributions of an LLC’s assets are based upon the proportionate amount of contributions (cash, property, services, etc.) made by each member to the company. Under the bill, each member of an LLC would have one vote, and distributions would be made in equal shares (although a company in existence on the bill’s effective date could choose to continue to distribute assets proportionately).

Withdrawals

The bill would allow LLCs to provide in their articles of organization or operating agreements, for additional distributions to members who withdrew from an LLC.

Management

The bill would provide additional detail regarding the delegation of management responsibilities of an LLC to managers, including provisions regarding voting by managers, conflicts of interest, and illegal or fraudulent acts by managers.

Cause of Action

The bill would allow a member of an LLC to bring an action in circuit court to establish that acts of a manager or member in control of the company were illegal, fraudulent, or willfully unfair and oppressive.

MCL 450.4102 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill would create a new filing to allow conversion from a partnership to an LLC. A \$25 fee would be required to obtain the certificate of conversion from the Department of Consumer and Industry Services. According to the Department, this new fee would generate additional revenue for the Department, but would be used to offset the additional administrative costs incurred by the Department for the establishment of this new filing system.

Fiscal Analyst: M. Tyszkiewicz

S9798\S4606SA

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.