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**STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1997**

Introduced by Rep. Profit

# **ENROLLED HOUSE BILL No. 4606**

AN ACT to amend 1993 PA 23, entitled "An act to provide for the organization and regulation of limited liability companies; to prescribe their duties, rights, powers, immunities, and liabilities; to prescribe the powers and duties of certain state departments and agencies; and to provide for penalties and remedies," by amending sections 102, 103, 201, 202, 203, 204, 206, 207, 213, 301, 302, 303, 304, 305, 307, 308, 401, 402, 403, 404, 405, 501, 502, 503, 506, 509, 603, 701, 702, 703, 704, 705, 706, 801, 901, 902, 903, 904, 909, 910, 1002, and 1101 (MCL 450.4102, 450.4103, 450.4201, 450.4202, 450.4203, 450.4204, 450.4206, 450.4207, 450.4213, 450.4301, 450.4302, 450.4303, 450.4304, 450.4305, 450.4307, 450.4308, 450.4401, 450.4402, 450.4403, 450.4404, 450.4405, 450.4501, 450.4502, 450.4503, 450.4506, 450.4509, 450.4603, 450.4701, 450.4702, 450.4703, 450.4704, 450.4705, 450.4706, 450.4801, 450.4901, 450.4902, 450.4903, 450.4904, 450.4909, 450.4910, 450.5002, and 450.5101), sections 701, 702, 703, 705, and 706 as amended by 1994 PA 410, and by adding sections 214, 515, 705a, and 707.

*The People of the State of Michigan enact:*

Sec. 102. (1) Unless the context requires otherwise, the definitions in this section control the interpretation of this act.

(2) As used in this act:

(a) "Administrator" means the director of the department of consumer and industry services or his or her designated representative.

(b) "Articles of organization" means the original documents filed to organize a limited liability company, as amended or restated by certificates of correction, amendment, or merger, by restated articles, or by other instruments filed or issued under any statute.

(c) "Constituent" means a party to a plan of merger, including the survivor.

(d) "Contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services performed, or a promissory note or other binding obligation to contribute cash or property, or to perform services.

(e) "Corporation" or "domestic corporation" means any of the following:

(i) A corporation formed under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

(ii) A corporation existing on January 1, 1973 and formed under another statute of this state for a purpose for which a corporation may be formed under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

(iii) A corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(f) "Distribution" means a direct or indirect transfer of money or other property or the incurrence of indebtedness by a limited liability company to or for the benefit of its members or assignees of its members in respect of the members' membership interests.

(g) "Foreign limited liability company" means a limited liability company formed under laws other than the laws of this state.

(h) "Foreign limited partnership" means a limited partnership formed under laws other than the laws of this state.

(i) "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated membership organization formed under this act.

(j) "Limited partnership" or "domestic limited partnership" means a limited partnership formed under the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108.

(k) "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or in an operating agreement.

(l) "Member" means a person who has been admitted to a limited liability company as provided in section 501 and who has the rights and obligations specified under this act, or, in the case of a foreign limited liability company, a person who is a member of the foreign limited liability company in accordance with the laws under which the foreign limited liability company is organized.

(m) "Membership interest" or "interest" means a member's rights in the limited liability company, including, but not limited to, the right to receive distributions of the limited liability company's assets and any right to vote or participate in management.

(n) "Operating agreement" means a valid written agreement of the members of a limited liability company having more than 1 member as to the affairs of the limited liability company and the conduct of its business and includes any provision in the articles of organization pertaining to the affairs of the limited liability company and the conduct of its business.

(o) "Person" means an individual, partnership, limited liability company, trust, custodian, estate, association, corporation, governmental entity, or any other legal entity.

(p) "Services in a learned profession" means services rendered by a certified or other public accountant, a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law.

(q) "Surviving company", "surviving entity", or "survivor" means the constituent surviving a merger, as identified in the certificate of merger.

(r) "Vote" means an affirmative vote, approval, or consent.

Sec. 103. (1) The original articles of organization shall be signed by 1 or more persons forming the limited liability company. The names of the persons signing the document shall be stated beneath or opposite their signatures.

(2) Any other document required or permitted to be filed under this act that is also required by this act to be executed on behalf of the domestic limited liability company shall be signed by a manager of the company if management is vested in 1 or more managers or by at least 1 member if management remains in the members. A document required to be executed on behalf of a foreign limited liability company shall be signed by a person with authority to do so under the laws of the jurisdiction of its organization. The name of the person signing the document and the capacity in which he or she signs shall be stated beneath or opposite his or her signature.

(3) A person executing a document under this section may sign the document by an attorney in fact. Powers of attorney relating to the signing of a document by an attorney in fact need not be sworn to, verified, acknowledged, or filed with the administrator.

Sec. 201. A limited liability company may be formed under this act for any lawful purpose for which a domestic corporation or a domestic partnership could be formed, except as otherwise provided by law. A limited liability company formed to provide services in a learned profession, or more than 1 learned profession, shall comply with article 9.

Sec. 202. (1) One or more persons who will be members may form a limited liability company by filing executed articles of organization.

(2) The existence of the limited liability company begins on the effective date of the articles of organization as provided in section 104. Filing is conclusive evidence that all conditions precedent required to be performed under this

act are fulfilled and that the company is formed under this act, except in an action or special proceeding by the attorney general. The maximum duration of the limited liability company is perpetual unless otherwise provided in the articles of organization.

Sec. 203. (1) The articles of organization shall contain all of the following:

(a) The name of the limited liability company.

(b) The purposes for which the limited liability company is formed. It is sufficient to state substantially, alone or with specifically enumerated purposes, that the limited liability company may engage in any activity for which limited liability companies may be formed under this act.

(c) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office and the name of its initial resident agent at that address.

(d) If the business of the limited liability company is to be managed by managers, a statement that it is to be managed by managers.

(e) The maximum duration of the limited liability company, if other than perpetual.

(2) The articles of organization, at the discretion of the organizers or members, may contain any provision not inconsistent with this act or another statute of this state, including any provision that is required or permitted to be in an operating agreement under this act.

(3) The articles of organization need not set out the powers of the limited liability company as described in section 210.

Sec. 204. (1) The name of a domestic limited liability company shall contain the words "limited liability company" or the abbreviation "L.L.C." or "L.C.", with or without periods or other punctuation.

(2) The name of a domestic or foreign limited liability company formed under or subject to this act shall conform to all of the following:

(a) Shall not contain a word or phrase, or abbreviation or derivative of a word or phrase, that indicates or implies that the company is formed for a purpose other than the purpose or purposes permitted by its articles of organization.

(b) Shall not contain the word "corporation" or "incorporated" or the abbreviation "corp." or "inc."

(c) Shall distinguish the name upon the records in the office of the administrator from all of the following:

(i) The name of a domestic limited liability company or a foreign limited liability company authorized to transact business in this state.

(ii) The name of a corporation subject to the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or a nonprofit corporation subject to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(iii) A name reserved, registered, or assumed under this act, under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(iv) The name of a domestic or foreign limited partnership as filed or registered, reserved, or assumed under the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108.

(d) Shall not contain a word or phrase, an abbreviation, or derivative of a word or phrase, the use of which is prohibited or restricted by any other statute of this state.

(3) If a foreign limited liability company is unable to obtain a certificate of authority to transact business in this state because its name does not comply with subsection (1) or (2), the foreign limited liability company may apply for authority to transact business in this state by adding to its name in the application a word, abbreviation, or other distinctive and distinguishing element, or alternatively, adopting for use in this state an assumed name otherwise available for use. If in the judgment of the administrator that name would comply with subsections (1) and (2), those subsections shall not bar the issuance to the foreign limited liability company of a certificate of authority to transact business in this state. The certificate of authority to transact business in this state issued to the foreign limited liability company shall be issued in the name applied for and the foreign limited liability company shall use that name in all its dealings with the administrator and in the transaction of business in this state.

Sec. 206. (1) A domestic or foreign limited liability company may transact business under an assumed name or names other than its name as set forth in its articles of organization or certificate of authority, if not precluded from use of the assumed name or names under section 204(2), by filing a certificate stating the true name of the company and the assumed name or names under which business is to be transacted.

(2) The certificate of assumed name is effective, unless terminated by filing a certificate of termination or by the dissolution or withdrawal of the company, for a period expiring on December 31 of the fifth full calendar year following the year in which the certificate of assumed name was filed. The certificate of assumed name may be extended for

additional consecutive periods of 5 full calendar years each by filing a similar certificate of assumed name not earlier than 90 days before the expiration of the initial or any subsequent 5-year period.

(3) The administrator shall notify the company of the impending expiration of the certificate of assumed name not later than 90 days before the expiration of the initial or any subsequent 5-year period.

(4) Filing a certificate of assumed name under this section does not create substantive rights to the use of a particular assumed name.

(5) The same name may be assumed by 2 or more limited liability companies or by 1 or more companies and 1 or more corporations, limited partnerships, or other enterprises participating together in a partnership or joint venture. Each participating limited liability company shall file a certificate of assumed name under this section.

(6) A limited liability company participating in a merger, or any other entity participating in a merger under section 705a, may transfer to the survivor the use of an assumed name for which a certificate of assumed name is on file with the administrator prior to the merger, if the transfer of the assumed name is noted in the certificate of merger as provided in section 703(1)(c), 705a(7)(c), or other applicable statute. The use of an assumed name transferred under this subsection may continue for the remaining effective period of the certificate of assumed name on file prior to the merger and the survivor may terminate or extend the certificate in accordance with subsection (2).

(7) A limited liability company surviving a merger may use as an assumed name the name of a merging limited liability company, or the name of any other entity participating in the merger under section 705a, by filing a certificate of assumed name under subsection (1) or by providing for the use of the assumed name in the certificate of merger. The surviving limited liability company may also file a certificate of assumed name under subsection (1) or provide in the certificate of merger for the use of an assumed name of a merging entity not transferred pursuant to subsection (6). A provision in the certificate of merger pursuant to this subsection is treated as a new certificate of assumed name.

Sec. 207. (1) Each domestic limited liability company and foreign limited liability company authorized to transact business in this state shall have and continuously maintain in this state both of the following:

(a) A registered office that may, but need not be, the same as its place of business.

(b) A resident agent, which agent may be either an individual resident in this state whose business office or residence is identical with the registered office or any of the following having a business office identical with the registered office:

(i) A domestic corporation.

(ii) A foreign corporation authorized to transact business in this state.

(iii) A domestic limited liability company.

(iv) A foreign limited liability company authorized to transact business in this state.

(2) The resident agent appointed by a limited liability company is an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served.

(3) A person, whether a resident or nonresident of this state, who is a member of a limited liability company or who accepts election, appointment, or employment as a manager of a limited liability company organized under this act, by the acceptance, is held to have appointed the resident agent of the company as his or her agent upon whom process may be served while the person is a member or manager of the limited liability company in any action commenced in a court of general jurisdiction in this state arising out of or founded upon any action of the limited liability company or of a person as a member or manager of the limited liability company. Upon accepting service of process, the resident agent shall promptly forward it to the member or manager of the limited liability company at his or her last known address.

(4) A domestic limited liability company or foreign limited liability company authorized to transact business in this state shall file with the administrator an annual statement executed as provided in section 103 containing the name of its resident agent and the address of its registered office in this state. The statement shall be filed not later than February 15 of each year, except that a limited liability company formed after September 30 or a foreign limited liability company authorized to transact business in this state after September 30 need not file a statement on the February 15 immediately succeeding its formation or authorization.

Sec. 213. A limited liability company shall keep at its registered office or principal place of business in this state all of the following:

(a) A current list of the full name and last known address of each member and manager.

(b) A copy of the articles or restated articles of organization, together with any amendments to the articles.

(c) Copies of the limited liability company's federal, state, and local tax returns and reports, if any, for the 3 most recent years.

(d) Copies of any financial statements of the limited liability company for the 3 most recent years.

(e) Copies of operating agreements.

(f) Copies of records that would enable a member to determine the members' relative shares of the limited liability company's distributions and the members' relative voting rights.

Sec. 214. If there is a conflict between the articles of organization and an operating agreement, the articles of organization shall control.

Sec. 301. (1) The contribution of a member to a limited liability company may consist of any tangible or intangible property or benefit to the company, including cash, property, services performed, promissory notes, contracts for services to be performed, or other binding obligation to contribute cash or property or to perform services.

(2) A contribution of an obligation to contribute cash or property or to perform services may be in exchange for a present membership interest or for a future membership interest, including a future profits interest, as provided in an operating agreement, or, in the case of a single-member limited liability company, in a written agreement between the member and the company.

Sec. 302. (1) A promise by a member to contribute to the limited liability company is not enforceable unless the promise is in writing and signed by the member.

(2) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he or she is unable to perform because of death, disability, or other reason. If a member does not make the required contribution of property or services, he or she is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that is not made.

(3) The rights of the limited liability company under subsection (2) are in addition to any other rights that the limited liability company may have under an operating agreement or applicable law.

(4) Unless otherwise provided in an operating agreement, a member's obligation to make a contribution or to return money or other property paid or distributed in violation of this act may be compromised only upon the unanimous vote of the members of the limited liability company entitled to vote. Notwithstanding a compromise of a member's obligation, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the member's obligation after the member signs a writing that reflects the obligation and before the amendment of the writing to reflect the compromise may enforce the member's original obligation.

Sec. 303. (1) Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members in the manner provided in an operating agreement. If an operating agreement does not provide for an allocation, distributions shall be allocated as follows:

(a) Prior to the effective date of the amendatory act that added subsection (2), on the basis of the value, as stated in the limited liability company records required to be kept pursuant to section 213 or determined by any other reasonable method, of the contributions made by each member to the extent that the contributions have been received by the limited liability company and have not been returned.

(b) On and after the effective date of the amendatory act that added subsection (2), except as otherwise provided in subsection (2), in equal shares to all members.

(2) If a limited liability company in existence before the effective date of the amendatory act that added this subsection allocated distributions on the basis of subsection (1)(a), the limited liability company shall continue to allocate distributions pursuant to subsection (1)(a) until the allocation is changed by an operating agreement.

Sec. 304. Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the withdrawal of the member from the limited liability company and before the dissolution and winding up of the limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement, or, in the case of a single-member limited liability company, as determined by the member or authorized by the managers of the limited liability company.

Sec. 305. Until the effective date of withdrawal, a withdrawing member shall share in any distribution made in accordance with section 304. An operating agreement may provide for an additional distribution to a withdrawing member. If a provision in an operating agreement permits withdrawal but is silent on an additional withdrawal distribution, a member withdrawing in accordance with the operating agreement is entitled to receive as a distribution, within a reasonable time after withdrawal, the fair value of the member's interest in the limited liability company as of the date of withdrawal based upon the member's share of distributions as determined under section 303.

Sec. 307. (1) Except as otherwise provided in subsection (5), a distribution shall not be made if, after giving the distribution effect, 1 or more of the following situations would occur:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business.

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless an operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member or members receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances, on a fair valuation, or on another method that is reasonable under the circumstances.

(3) The effect of a distribution under subsection (1) is measured at the following times:

(a) Except as provided in subsection (5), in the case of a distribution of the fair value of a withdrawing member's interest, as of the earlier of the date money or other property is transferred or debt incurred by the limited liability company, or the date the member ceases to be a member.

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization, or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date the payment is made if it occurs more than 120 days after the date of authorization.

(4) At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. A company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors except as otherwise agreed.

(5) If the limited liability company distributes an obligation to make future payments as payment of the fair value of a withdrawing member's interest, and distribution of the obligation would otherwise be prohibited under subsection (1) at the time it is made, the company may issue the obligation and the following apply:

(a) The portion of the obligation that could have been distributed without violating subsection (1) is indebtedness to the member as described in subsection (4).

(b) All of the following apply to the portion of the obligation that exceeds the amount of the obligation that is indebtedness to the member under subdivision (a):

(i) At any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(ii) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (4) to the extent that a distribution may then be made under this section.

(c) Unless otherwise provided in an agreement with the withdrawing member, the obligation is considered a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section.

(6) The enforceability of a guaranty or other undertaking by a third party relating to a distribution is not affected by the prohibition of the distribution under subsection (1).

(7) If a claim is made to recover a distribution made contrary to subsection (1) or if a violation of subsection (1) is raised as a defense to a claim based upon a distribution, this section does not prevent the person receiving the distribution from asserting a right of rescission or other legal or equitable rights.

Sec. 308. (1) A member or manager who votes for or assents to a distribution in violation of an operating agreement or section 307 is personally liable, jointly and severally, to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating the operating agreement or section 307 if it is established that the member or manager did not comply with section 404.

(2) For purposes of liability under subsection (1), a member or manager entitled to participate in a decision to make a distribution is presumed to have assented to a distribution unless he or she files a written dissent with the limited liability company either at the meeting at which the distribution decision is made if it is made at a meeting and he or she is present or within a reasonable time after he or she has knowledge of the decision.

(3) A member who accepts or receives a distribution with knowledge of facts indicating it is in violation of an operating agreement or section 307 is liable to the limited liability company for the amount the member accepts or receives that exceeds the member's share of the amount that could have been distributed without violating section 307 or the operating agreement.

(4) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution from each other member or manager who could be held liable under subsection (1) or (3). The contribution of a person

held liable under both subsections (1) and (3) shall not exceed his or her liability under either subsection (1) or (3), whichever is greater.

(5) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution is measured under section 307.

Sec. 401. Unless the articles of organization state that the business of the limited liability company is to be managed by managers, the business of the limited liability company shall be managed by the members, subject to any provision in an operating agreement restricting or enlarging the management rights and duties of any member or group of members. If management is vested in the members, both of the following apply:

(a) The members are considered managers for purposes of applying this act, including section 406 regarding the agency authority of managers, unless the context clearly requires otherwise.

(b) The members have, and are subject to, all duties and liabilities of managers and to all limitations on liability and indemnification rights of managers.

Sec. 402. (1) The articles of organization may provide that the business of the limited liability company shall be managed by or under the authority of 1 or more managers. The delegation of the management of a limited liability company to managers is subject to any provision in the articles of organization or in an operating agreement restricting or enlarging the management rights and duties of any manager or group of managers.

(2) An operating agreement may prescribe qualifications for managers, including a requirement that the managers be members.

(3) The number of managers shall be specified in or fixed in accordance with an operating agreement.

(4) If the articles of organization delegate management of a limited liability company to managers, the articles of organization constitute notice to third parties that managers, not members, have the agency authority described in section 406.

Sec. 403. (1) Unless otherwise provided in an operating agreement, selection of managers to fill initial positions or vacancies shall be by majority vote of the members entitled to vote in accordance with section 502(1).

(2) The members may remove 1 or more managers with or without cause unless an operating agreement provides that managers may be removed only for cause.

(3) Removal for cause shall be at a meeting called expressly for that purpose, and a manager to be removed for cause shall have reasonable advance notice of the allegations against him or her and an opportunity to be heard at the meeting.

Sec. 404. (1) A manager shall discharge his or her duties as a manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the limited liability company.

(2) In discharging his or her duties, a manager may rely on information, opinions, reports, or statements, including, but not limited to, financial statements or other financial data, if prepared or presented by any of the following:

(a) One or more other managers or members or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matter presented.

(b) Legal counsel, public accountants, engineers, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence.

(c) A committee of managers of which he or she is not a member if the manager reasonably believes the committee merits confidence.

(3) A manager is not entitled to rely on the information, opinions, reports, or statements described in subsection (2) if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A manager is not liable for an action taken as a manager or the failure to take an action if he or she performs the duties of his or her office in compliance with this section.

(5) Except as otherwise provided in an operating agreement or by vote of the members pursuant to section 502(4) and (7), a manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by the manager of its property.

(6) An action against a manager for failure to perform the duties imposed by this act shall be commenced within 3 years after the cause of action has accrued or within 2 years after the cause of action is discovered or should reasonably have been discovered by the complainant, whichever occurs first.

Sec. 405. Except as otherwise provided in this act or an operating agreement, voting by managers shall be as provided in this section. If the limited liability company has more than 1 manager, the vote of a majority of all managers is required to decide or resolve any difference on any matter connected with carrying on the business of the limited liability company that is within the scope of the managers' authority. If management of the limited liability company is delegated to managers pursuant to section 402, each manager has 1 vote. If management of the limited liability company remains in the members, the members shall vote in accordance with section 502.

Sec. 501. (1) A person is admitted as a member of a limited liability company in 1 or more of the following ways:

(a) Upon the formation of the limited liability company, by executing and filing the articles of organization or by signing the initial operating agreement.

(b) After the formation of the limited liability company, in 1 or more of the following ways:

(i) In the case of a person acquiring a membership interest directly from the limited liability company, by complying with the provisions of an operating agreement prescribing the requirements for admission or, in the absence of provisions prescribing the requirements for admission in an operating agreement, upon the unanimous vote of the members entitled to vote.

(ii) In the case of an assignee of a membership interest, as provided in section 506.

(2) Unless otherwise provided by law or in an operating agreement, a person who is a member or manager, or both, of a limited liability company is not liable for the acts, debts, or obligations of the limited liability company.

Sec. 502. (1) An operating agreement may establish and allocate the voting rights of members and may provide that certain members or groups of members have only limited or no voting rights. If an operating agreement does not address voting rights, votes shall be allocated as follows:

(a) Prior to the effective date of the amendatory act that added subsection (2), the members of a limited liability company shall vote in proportion to their shares of distributions of the company, as determined in accordance with section 303.

(b) On and after the effective date of the amendatory act that added subsection (2), except as otherwise provided in subsection (2), each member of a limited liability company shall have 1 vote.

(2) If a limited liability company in existence before the effective date of the amendatory act that added this subsection allocated votes on the basis of subsection (1)(a), the company shall continue to allocate votes pursuant to subsection (1)(a) until the allocation is changed by an operating agreement.

(3) The following actions may be authorized only by members of a limited liability company, and not by the managers:

(a) The dissolution of the limited liability company pursuant to section 801(c).

(b) Merger of the limited liability company pursuant to sections 701 through 706.

(c) An amendment to the articles of organization.

(4) Unless authorized in advance by an operating agreement, a transaction with the limited liability company or a transaction connected with the conduct or winding up of the limited liability company in which a manager of the limited liability company has a direct or indirect interest or a manager's personal use of property of the limited liability company may be authorized or ratified only by a vote of the members of the limited liability company. The manager shall disclose all material facts regarding the transaction and the manager's interest in the transaction or all material facts about the manager's personal use of the limited liability company's property before the members vote on that transaction or use.

(5) Unless otherwise provided in an operating agreement, the sale, exchange, lease, or other transfer of all or substantially all of the assets of a limited liability company, other than in the ordinary course of business, may be authorized only by a vote of the members of the limited liability company.

(6) The articles of organization or an operating agreement may provide for additional voting rights of members of the limited liability company.

(7) Unless a greater vote is required by this act, by the articles of organization, or by an operating agreement, a vote of a majority of all members entitled to vote is required to approve any matter submitted for a vote by the members. A vote of a majority of all disinterested members entitled to vote is required to approve an action described in subsection (4).

Sec. 503. (1) Upon written request of a member, a limited liability company shall mail to the member a copy of its most recent annual financial statement and its most recent federal, state, and local income tax returns and reports. Upon reasonable request, a member may obtain true and full information regarding the current state of the limited liability company's business and financial condition.



(2) Upon reasonable written request and during ordinary business hours, a member or his or her designated representative may inspect and copy, at the member's expense, any of the records required to be maintained under section 213, at the location where the records are kept.

(3) Upon reasonable written request, a member may obtain other information regarding the limited liability company's affairs or may inspect, personally or through a representative and during ordinary business hours, other books and records of the limited liability company, as is just and reasonable.

(4) A member may have a formal accounting of the limited liability company's affairs as provided in an operating agreement or whenever circumstances render it just and reasonable.

Sec. 506. (1) Unless otherwise provided in an operating agreement, an assignee of a membership interest in a limited liability company having more than 1 member may become a member only upon the unanimous consent of the members entitled to vote. An assignee of a membership interest in a limited liability company having 1 member may become a member in accordance with the terms of the agreement between the member and the assignee.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement, and this act. An assignee who becomes a member also is liable for any obligations of his or her assignor to make contributions and to return distributions under sections 302 and 308(3). An assignee is not obligated for liabilities unknown to the assignee when he or she became a member unless the liabilities are shown on the financial records of the limited liability company.

Sec. 509. (1) A member may withdraw from a limited liability company only as provided in an operating agreement. A member withdrawing pursuant to an operating agreement may become entitled to a withdrawal distribution as described in section 305.

(2) An operating agreement may provide for the expulsion of a member or for other events the occurrence of which will result in a person ceasing to be a member of the limited liability company.

Sec. 515. A member of a limited liability company may bring an action in the circuit court of the county in which the limited liability company's principal place of business or registered office is located to establish that acts of the managers or members in control of the limited liability company are illegal, fraudulent, or willfully unfair and oppressive to the limited liability company or to the member. If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following:

- (a) The dissolution and liquidation of the assets and business of the limited liability company.
- (b) The cancellation or alteration of a provision in the articles of organization or in an operating agreement.
- (c) The direction, alteration, or prohibition of an act of the limited liability company, or of members, managers, or other persons party to the action.
- (d) The purchase at fair value of the member's interest in the limited liability company, either by the company or by the managers or other members responsible for the wrongful acts.
- (e) An award of damages to the limited liability company or to the member.

Sec. 603. The articles of organization are amended by filing a certificate of amendment executed as provided in section 103 and setting forth all of the following:

- (a) The name of the limited liability company.
- (b) The date of filing of its original articles of organization.
- (c) The entire article or articles being amended, or the section or sections being amended if the article being amended is divided into identified sections.
- (d) A statement that the amendment or amendments were approved by the unanimous vote of all of the members entitled to vote or by a majority of the members entitled to vote if an operating agreement authorizes amendment of the articles of organization by majority vote.

Sec. 701. (1) Two or more domestic limited liability companies may merge pursuant to a plan of merger approved as provided in section 702.

- (2) The plan of merger shall set forth all of the following:
  - (a) The name of each constituent company and the name of the surviving company.
  - (b) The terms and conditions of the proposed merger, including the manner and basis of converting the membership interests in each limited liability company into membership interests in the surviving company, or into cash or other property, or into a combination thereof.

(c) A statement of any amendment to the articles of organization of the surviving company to be effected by the merger or any restatement of the articles of organization, or a statement that no changes are to be made in the articles of organization of the surviving company.

(d) Other provisions with respect to the proposed merger that the constituent companies consider necessary or desirable.

Sec. 702. (1) A plan of merger shall be submitted to the members of each constituent company for approval, and approval shall be by unanimous vote of the members entitled to vote in each constituent company, unless an operating agreement of a constituent company provides otherwise.

(2) If an operating agreement of a constituent company provides for approval by less than unanimous vote of members entitled to vote and the merger is approved, a member who voted against the merger may withdraw from the limited liability company and receive, within a reasonable time, the fair value of the member's interest in the limited liability company, based upon the member's share of distributions as determined under section 303.

Sec. 703. (1) After a plan of merger is approved, a certificate of merger shall be executed as provided in section 103 and filed on behalf of each constituent company. The certificate shall set forth all of the following:

(a) The statements required by section 701(2)(a) and (c).

(b) A statement that the plan of merger has been approved by the members of the constituent company in accordance with section 702(1).

(c) A statement of any assumed names of merging limited liability companies transferred to the surviving company as authorized by section 206(6), specifying each transferred assumed name and the name of the limited liability company from which it is transferred. The certificate may include a statement of limited liability company names or assumed names of merging limited liability companies that are to be treated as newly filed assumed names of the survivor pursuant to section 206(7).

(d) The effective date of the merger if later than the date the certificate of merger is filed.

(2) The certificate of merger is effective in accordance with section 104.

Sec. 704. When a merger takes effect, all of the following apply:

(a) Every other constituent company merges into the surviving company and the separate existence of every constituent company except the surviving company ceases.

(b) All property, real, personal, and mixed, all debts due on whatever account, including promises to make contributions, all other choses in action, and any other interest of or belonging to or due to each constituent company are vested in the surviving company without further act or deed and without reversion or impairment.

(c) The surviving company may use the name and the assumed names of any constituent company, if the filings required under section 206(6) and (7) are made.

(d) The surviving company has all of the liabilities of each constituent company.

(e) A proceeding pending against any constituent company may be continued as if the merger had not occurred or the surviving company may be substituted in the proceeding for the limited liability company whose existence ceased.

(f) The articles of organization of the surviving company are amended to the extent provided in the certificate of merger.

(g) The membership interests in each constituent company are converted into membership interests in the surviving company, cash, or other property as provided in the plan of merger.

Sec. 705. (1) One or more foreign limited liability companies may merge with 1 or more domestic limited liability companies if both of the following are satisfied:

(a) The merger is permitted by the law of the jurisdiction under whose law each foreign constituent company is organized and each foreign constituent company complies with that law in effecting the merger.

(b) Each domestic constituent company complies with the provisions of sections 701 through 703.

(2) If the surviving company is to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of this act with respect to foreign limited liability companies if it is to transact business in this state.

(3) The surviving company is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a domestic constituent company, including any obligation to a member of the domestic constituent company who has dissented from the merger and withdrawn pursuant to section 702(2).

Sec. 705a. (1) As used in this section:

(a) “Business organization” means a domestic or foreign corporation, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic limited liability company.

(b) “Entity” means a business organization or a domestic limited liability company.

(c) “Obligated person” means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise who, under applicable law, is generally liable for the obligations of the business enterprise.

(2) If all of the business organizations in a merger with 1 or more domestic limited liability companies are foreign limited liability companies, the merger shall comply with section 705 and not this section.

(3) Except as otherwise provided in subsection (2), 1 or more domestic limited liability companies may merge with 1 or more business organizations if all of the following requirements are satisfied:

(a) The merger is permitted under the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger.

(b) Each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(c) Each domestic limited liability company complies with this section.

(4) If 1 or more domestic limited liability companies propose to merge with 1 or more business organizations, each domestic limited liability company shall prepare a plan of merger setting forth all of the following:

(a) The name of each constituent entity, the name of the surviving entity, the street address of the surviving entity’s principal place of business, and the type of organization of the surviving entity.

(b) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests or obligations of the surviving entity, or into cash or other consideration, which may include ownership interests or obligations of an entity not a party to the merger, or into a combination thereof.

(c) If the surviving entity is to be a domestic limited liability company, a statement of any amendment to the articles of organization of the surviving company to be effected by the merger or any restatement of the articles of organization, or a statement that no changes are to be made in the articles of organization of the surviving domestic limited liability company.

(d) Any other provision that the domestic limited liability considers necessary or desirable.

(5) The plan of merger shall be submitted to the members of the constituent domestic limited liability company for approval. A unanimous vote by the members entitled to vote in the constituent domestic limited liability company is required to approve a plan of merger unless an operating agreement of the constituent domestic limited liability company provides otherwise.

(6) If an operating agreement of a constituent domestic limited liability company provides for approval by less than unanimous vote of members entitled to vote and the merger is approved, a member who voted against the merger may withdraw from the domestic limited liability company and receive, within a reasonable time, the fair value of the member’s interest in the domestic limited liability company, based upon the member’s share of distributions as determined under section 303.

(7) If a plan of merger is approved, a certificate of merger shall be executed as provided in section 103 and filed on behalf of each constituent domestic limited liability company. The certificate of merger shall set forth all of the following:

(a) The information required under subsection (4)(a) and the statement required under subsection (4)(c).

(b) A statement that the plan of merger was approved by the members of each constituent domestic limited liability company in accordance with subsection (5).

(c) A statement of any assumed names of merging entities transferred to the surviving entity in accordance with section 206(6), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic limited liability company or a foreign limited liability company authorized to transact business in this state, the certificate may include a statement of the names or assumed names of merging entities that are to be treated as newly filed assumed names of the surviving company pursuant to section 206(7).

(d) The effective date of the merger if later than the date the certificate of merger is filed.

(8) A certificate of merger is effective in accordance with section 104.

(9) When a merger is effective under this section, all of the following apply:

(a) Every other constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases.

(b) The title to all property, real, personal, and mixed, and rights owned by each constituent entity are vested in the surviving entity without reversion or impairment.

(c) A surviving company may use the name and the assumed names of any merging entity if a filing required under section 206(6) or (7) or other applicable statute is made.

(d) The surviving entity has all of the liabilities of each constituent entity. This section does not affect liability, if any, of a person who was an obligated person with respect to a merging entity for acts or omissions that occurred before the merger.

(e) A proceeding pending against any constituent entity may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of organization of a surviving domestic limited liability company are amended to the extent provided in the plan of merger.

(g) The ownership interests of each constituent entity that are to be converted into ownership interests or obligations of the surviving entity or into cash or other property are converted.

(10) If the surviving entity is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state by a foreign business organization if it transacts business in this state. The surviving entity is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a constituent domestic limited liability company, including an obligation to a member of the constituent domestic limited liability company who has dissented from the merger and withdrawn in accordance with subsection (6).

Sec. 706. (1) Unless a plan of merger provides otherwise, at any time before the effective date of a certificate of merger, the merger may be abandoned in accordance with the procedure set forth in the plan of merger or, if no procedure to abandon the merger is set forth in the plan of merger, by the unanimous vote of the members entitled to vote in each domestic limited liability company that is a constituent entity, unless an operating agreement of a domestic limited liability company provides otherwise.

(2) If a certificate of merger has been filed by a constituent domestic limited liability company, it shall file a certificate of abandonment within 10 days after the abandonment but not later than the effective date of the certificate of merger.

Sec. 707. (1) A domestic partnership or domestic limited partnership may convert to a limited liability company in accordance with this section.

(2) The terms and conditions of a conversion under this section shall be approved by the partners in the manner provided in the partnership agreement for amendments to the partnership agreement or, if no provision for amendments to the partnership agreement is made in the partnership agreement, by all of the partners.

(3) If a conversion under this section is approved, the converting partnership or limited partnership shall file both of the following:

(a) Articles of organization that comply with section 203.

(b) A certificate of conversion, stating the name of the partnership or limited partnership and the date it was formed. In the case of a limited partnership, the certificate of conversion shall include a statement that the certificate of limited partnership is canceled as of the effective date of the articles of organization.

(4) If a limited partnership converts to a limited liability company under this section, the certificate of limited partnership is canceled as of the effective date of the articles of organization.

(5) If a conversion under this section takes effect, the limited liability company is considered the same entity that existed before the conversion. All property and rights of the converting partnership or limited partnership remain vested in the converted limited liability company. All liabilities of the converting partnership or limited partnership continue as liabilities of the converted limited liability company. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion under this section had not occurred. The liability, if any, of a general partner of the converting partnership or limited partnership for acts or omissions that occurred before a conversion under this section is not affected by a conversion under this section.

Sec. 801. A limited liability company is dissolved and its affairs shall be wound up when the first of the following occurs:

(a) At the time specified in the articles of organization.

(b) Upon the happening of an event specified in the articles of organization or in an operating agreement, including a vote of members.

(c) Upon the unanimous vote of all members entitled to vote.

(d) Upon the entry of a decree of judicial dissolution.

Sec. 901. (1) A limited liability company formed to render 1 or more professional services, as defined in section 902 may be organized under this article as a professional limited liability company.

(2) A limited liability company formed as a professional limited liability company and its members and managers are subject to this article and this act. This article takes precedence over any other provision of this act in the event of conflict.

Sec. 902. As used in this article:

(a) "Licensed person" means an individual who is licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or an agency of this state or another jurisdiction, any corporation or professional services corporation all of whose shareholders are licensed persons, any partnership all of whose partners are licensed persons, or any limited liability company all of whose members and managers are licensed persons.

(b) "Professional service" means a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. Professional service includes, but is not limited to, services rendered by a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiropodist, architect, professional engineer, land surveyor, and attorney-at-law.

(c) "Professional services corporation" means a corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

Sec. 903. (1) One or more licensed persons may organize and become members of a professional limited liability company.

(2) The articles of organization of a professional limited liability company shall state, as its purposes, that the company is formed to render specified professional services.

(3) The name of the limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or "P.L.C." with or without periods or other punctuation.

Sec. 904. (1) Except as otherwise provided in this section or otherwise prohibited, a professional limited liability company may render 1 or more professional services, and each member and manager shall be a licensed person in 1 or more of the professional services rendered by the company.

(2) If the professional limited liability company renders a professional service that is included within the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, then all members and managers of the company shall be licensed or legally authorized in this state to render the same professional service.

(3) A licensed person of another jurisdiction may become a member, manager, employee, or agent of the professional limited liability company, but shall not render any professional services in this state until the person is licensed or otherwise legally authorized to render the professional service in this state.

Sec. 909. (1) A professional limited liability company shall file with the administrator an annual report, together with a \$50.00 filing fee, listing the names and addresses of all members and managers and certifying that each member and manager is a licensed person in 1 or more of the professional services rendered by the company. The report shall also certify that any member or manager not licensed or otherwise legally authorized to render professional services in this state does not render professional services in this state.

(2) The professional limited liability company shall file the annual report not later than February 15 of each year, and a penalty of \$50.00 shall be added to the fee if the annual report is not filed or the fee is not paid by February 15, except that if a professional limited liability company is formed after September 30, it need not file an annual report on the February 15 immediately succeeding its formation.

Sec. 910. A professional limited liability company may merge only with other limited liability companies whose members and managers are licensed persons permitted to be members or managers under this article or other entities that are licensed persons or whose shareholders, partners, or other owners, members, or managers are licensed persons permitted to be members or managers under this article.

Sec. 1002. Before transacting business in this state, a foreign limited liability company shall obtain a certificate of authority from the administrator. To obtain a certificate of authority, a foreign limited liability company shall file with the administrator an application, executed as provided in section 103, setting forth all of the following:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state.

(b) The jurisdiction and date of its organization.

(c) The address of its registered office in this state and the name of its resident agent at that address in accordance with section 207.

(d) A statement that includes both of the following:

(i) That the department is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed under subdivision (c), or, if appointed, the agent's authority has been revoked, the agent has resigned, or the agent cannot be found or served through the exercise of reasonable diligence.

(ii) The name and address of a member, manager, or other person to whom the administrator is to send copies of any process served on the administrator.

(e) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that state or, if not required to maintain an office by the laws of that state, of the principal office of the foreign limited liability company.

(f) Other additional information as may be necessary or appropriate in order to enable the department to determine whether the limited liability company is entitled to transact business in this state.

Sec. 1101. (1) The fees to be paid to the administrator when the documents described in this subsection are delivered to him or her for filing are as follows:

(a) Certificate of correction, \$25.00.

(b) Articles of organization, \$50.00.

(c) Amendment to the articles of organization, \$25.00.

(d) Restated articles of organization, \$50.00.

(e) Application for reservation of name, \$25.00.

(f) Certificate of assumed name or a certificate of termination of assumed name, \$25.00.

(g) Annual statement of resident agent and registered office, \$5.00.

(h) Notice of resignation of resident agent, or statement of change of registered office or resident agent, \$5.00.

(i) Certificate of merger as provided in article 7, \$100.00.

(j) Certificate of abandonment, \$10.00.

(k) Certificate of conversion, \$25.00.

(l) Certificate of dissolution, \$10.00.

(m) Application of a foreign limited liability company for a certificate of authority to transact business in this state, \$50.00.

(n) Certificate correcting statement contained in an application for a certificate of authority to transact business in this state, \$25.00.

(o) Certificate attesting to the occurrence of a merger of a foreign limited liability company, as provided in section 1005, \$10.00.

(p) Application for withdrawal and issuance of a certificate of withdrawal of a foreign limited liability company, \$10.00.

(q) In addition to the fee required to file a document, the administrator may charge a fee of \$50.00 if the document is filed by facsimile transmission or the administrator is requested to transmit a document by a facsimile machine.

(2) The fees prescribed in subsection (1), no part of which shall be refunded, when collected shall be paid into the treasury of the state and credited to the administrator to be used solely by the corporation and securities bureau in carrying out those duties required by law.

(3) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a domestic or foreign limited liability company for which provision for payment is not set forth in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies pursuant to a schedule of fees that the administrator shall adopt with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection to be used by the corporation and securities bureau to defray the costs of its copying and certifying services.

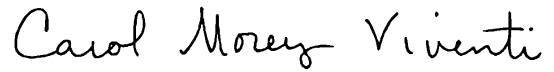
(4) If a domestic or foreign limited liability company pays fees or penalties by check and the check is dishonored, the fee is considered unpaid and the filing of all related documents will be rescinded.

(5) The administrator may accept a credit card, instead of cash or check, as payment of a fee under this act. The administrator shall determine which credit cards may be accepted for payment.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved .....

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Governor.