Act No. 23
Public Acts of 1993
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STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993

Introduced by Reps. Profit, Randall and Pitoniak
Reps. Bandstra, Bodem, Brackenridge, Clack, Curtis, Dobronski, Dolan, Freeman, Galloway, Gilmer, Gnodtke, Griffin, Gubow, Jaye, Jersevic, Johnson, Kaza, Kukuk, Llewellyn, Martin, Middaugh, Murphy, Oxender, Porreca, Rivers, Shugars, Wetters and Joe Young, Jr. named co-sponsors

ENROLLED HOUSE BILL No. 4023

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.

The People of the State of Michigan enact:

ARTICLE 1

Sec. 101. This act shall be known and may be cited as the "Michigan limited liability company act".

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

(2) As used in this act:

(a) "Administrator" means the chief officer of the department of commerce 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, restated articles, or other instruments filed or issued under any statute.

(c) "Constituent company" means each limited liability company that is a party to a plan of merger.

(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 perform services.

(e) "Corporation" or "domestic corporation" means a corporation formed under the business corporation act, Act No. 284 of the Public Acts of 1972, being sections 450.1101 to 450.2098 of the Michigan Compiled Laws, or 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.

(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 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 association having 2 or more members and is formed under this act.

(j) "Limited partnership" or "domestic limited partnership" means a limited partnership formed under the Michigan revised uniform limited partnership act, Act No. 213 of the Public Acts of 1982, being sections 449.1101 to 449.2108 of the Michigan Compiled Laws.

(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 an operating agreement.

(*l*) "Member" means a person with an ownership interest in a limited liability company with the rights and obligations specified under this act.

(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 as to the affairs of a limited liability company and the conduct of its business and includes any provision in the articles of organization pertaining to the affairs of a limited liability company and the conduct of its business.

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

(p) "Surviving company" means the constituent company surviving a merger, as identified in the certificate of merger.

Sec. 103. (1) The original articles of organization shall be signed in ink by at least 2 of the 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 in ink by a manager of the company if management is vested in 1 or more managers or by at least 1 member if management is reserved to the members. A document required to be executed on behalf of a foreign limited liability company shall be signed in ink 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, or acknowledged, and need not be filed with the administrator.

Sec. 104. (1) A document required or permitted to be filed under this act shall be filed by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish procedures for accepting delivery by means of facsimile transmission.

(2) If the document substantially conforms to the requirements of this act, the administrator shall indorse upon it the word "filed" with his or her official title and the date of receipt and of filing, and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If so requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in his or her indorsement.

(3) The administrator shall prepare and return a true copy of the document, or at his or her discretion the original, to the person who submitted it for filing showing the filing date.

(4) The records and files of the administrator relating to domestic and foreign limited liability companies shall be open to reasonable inspection by the public. The records or files may be maintained either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(5) The administrator may make copies of all documents filed under this act or any predecessor act by a photostatic, micrographic, photographic, optical disc media, or other process, and may destroy the originals of the documents so copied. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, which may be sent by facsimile transmission, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(6) The document is effective at the time it is indorsed unless a subsequent effective time is set forth in the document that is not later than 90 days after the date of delivery.

(7) The administrator may require that a document required or permitted to be filed under this act be on a form prescribed by the administrator.

Sec. 105. (1) If the administrator fails promptly to file a document submitted for filing under this act, the administrator, within 10 days after receipt from the person submitting the document for filing of a written request for the filing of the document, shall give to that person written notice of the refusal to file that states the reasons for the failure to file the document.

(2) A person may seek judicial review of the administrator's decision pursuant to sections 103, 104, and 106 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.303, 24.304, and 24.306 of the Michigan Compiled Laws.

(3) If the administrator refuses or revokes the authorization of a foreign limited liability company to transact business in this state pursuant to this act, the foreign limited liability company may seek judicial review pursuant to sections 103, 104, and 106 of Act No. 306 of the Public Acts of 1969.

Sec. 106. (1) If a document relating to a domestic or foreign limited liability company filed with the administrator under this act was at the time of filing an inaccurate record of the action referred to in the document, or was defectively or erroneously executed, the document may be corrected by filing with the administrator a certificate of correction on behalf of the company.

(2) The certificate shall be signed as provided by this act in the same manner as required for the document being corrected.

(3) The certificate shall set forth the name of the company, the date the document to be corrected was filed by the administrator, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution.

(4) The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was as a result of the inaccurate portion of the document adversely affected by the correction.

ARTICLE 2

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 in article 9 or other law.

Sec. 202. (1) Two or more of the 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 shall begin 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 have been fulfilled and that the company has been formed under this act, except in an action or special proceeding by the attorney general.

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 a sufficient compliance with this subdivision 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 so managed.

(e) The maximum duration of the limited liability company.

(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 under this act is required or permitted to be in an operating agreement.

(3) The articles or 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 contain the abbreviation "L.L.C." or "L.C."

(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, Act No. 284 of the Public Acts of 1972, being sections 450.1101 to 450.2098 of the Michigan Compiled Laws, or a nonprofit corporation subject to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws.

(*iii*) A name reserved, registered, or assumed under this act, under Act No. 284 of the Public Acts of 1972, or under Act No. 162 of the Public Acts of 1982.

(*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, Act No. 213 of the Public Acts of 1982, being sections 449.1101 to 449.2108 of the Michigan Compiled Laws.

(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 be a bar to the issuance to the foreign limited liability company of a certificate of authority to transact business in this state. The certificate 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. 205. (1) A person may reserve the right to use of a limited liability company name by executing and filing with the administrator an application to reserve the name. If the administrator finds that the name is available for use, the administrator shall reserve it for exclusive use of the applicant for a period expiring at the end of the sixth full calendar month following the month in which the application was filed.

(2) The right to exclusive use of a reserved name may be transferred to another person by filing a notice of the transfer, executed by the applicant for whom the name was reserved, and stating the name and address of the transferee.

Sec. 206. (1) A domestic or foreign limited liability company may transact its 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 under section 204(2), by filing a certificate stating the true name of the company and the assumed name under which the business is to be transacted.

(2) The certificate shall be effective, unless sooner terminated by the filing of 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 it was filed. It may be extended for additional consecutive periods of 5 full calendar years each by filing similar certificates not earlier than 90 days preceding the expiration of any 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 subsequent 5-year period.

(4) 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 in the case of companies and other enterprises participating together in a partnership or joint venture. Each participating limited liability company shall file a certificate under this section.

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, a domestic corporation, or a foreign corporation authorized to transact business in this state and having a business office identical with the registered office.

(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 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 in any action commenced in a court of general jurisdiction in this state arising out of or founded upon any action of the company or of a person as a member or manager of the company. Upon accepting service of process, the resident agent shall promptly forward it to the member or manager at his or her last known address.

(4) Each 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.

Sec. 208. (1) A resident agent of a limited liability company may resign as agent upon filing a written notice of resignation with the administrator and with a member or manager of the limited liability company.

(2) The company shall promptly appoint a successor resident agent.

(3) The appointment of the resigning agent terminates 30 days after the date the notice is filed with the administrator or upon the appointment of a successor, whichever occurs first.

Sec. 209. (1) A domestic limited liability company or foreign limited liability company authorized to transact business in this state may change its registered office or resident agent, or both, upon filing with the administrator a statement executed as provided in section 103 and setting forth all of the following:

(a) The name of the limited liability company.

(b) The address of its then registered office and the new address if the registered office is to be changed.

(c) The name of its then resident agent and the name of the successor if the resident agent is to be changed.

(d) A statement that the address of the registered office and the address of the resident agent are identical.

(e) A statement that the change was authorized in accordance with an operating agreement, or, if not provided for in an operating agreement, by affirmative vote of a majority of the members voting in accordance with section 502(1) or managers voting in accordance with section 405.

(2) If a resident agent changes its business or residence address to another place within this state, the resident agent may change the address of the registered office of the domestic or foreign limited liability company of which the person is a resident agent by filing a statement as required in subsection (1) and mailing a copy of the statement to the limited liability company. The statement need only to be signed by the resident agent and need not contain the statement required by subsection (1)(e).

Sec. 210. Subject to the limitations provided in this act, any other statute of this state, or its articles of organization, a limited liability company has all powers necessary or convenient to effect any purpose for which the company is formed, including all powers granted to corporations in section 261 of the business corporation act, Act No. 284 of the Public Acts of 1972, being section 450.1261 of the Michigan Compiled Laws.

Sec. 211. An act of a limited liability company and a transfer of real or personal property to or by a limited liability company, otherwise lawful, is not invalid because the company was without capacity or power to do the act or make or receive the transfer, except that the lack of capacity or power may be asserted in any of the following:

(a) In an action by a member against the company to enjoin the doing of an act or the transfer of real or personal property by or to the company.

(b) In an action by or in the right of the company to procure a judgment in its favor against an incumbent or former member or manager of the company for loss or damage due to his or her unauthorized act.

(c) In an action or special proceeding by the attorney general to dissolve the company or to enjoin it from the transaction of unauthorized business.

Sec. 212. A domestic or foreign limited liability company, whether or not formed at the request of a lender, may agree in writing to pay any rate of interest as long as that rate of interest is not in excess of the rate set forth in Act No. 259 of the Public Acts of 1968, being sections 438.41 to 438.42 of the Michigan Compiled Laws.

Sec. 213. A limited liability company shall keep at its registered office 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 their relative voting rights.

ARTICLE 3

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 services to be performed 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.

Sec. 302. (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing 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 has not been made.

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

(4) Unless otherwise provided in an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only with the unanimous consent of the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on that 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 original obligation.

Sec. 303. 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 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 they have been received by the limited liability company and have not been returned.

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.

Sec. 305. Except as otherwise provided in this act, on withdrawal a withdrawing member is entitled to receive any distribution to which the member is entitled under an operating agreement. Except as otherwise provided in this act or in an operating agreement, a withdrawing member also 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 right to share in distributions from the limited liability company.

Sec. 306. Except as provided in an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive a distribution from a limited liability company in any form other than

cash, and a member may not be compelled to accept from a limited liability company a distribution of an asset in kind to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

Sec. 307. (1) A distribution shall not be made if, after giving it effect, the limited liability company would not be able to pay its debts as they become due in the usual course of business or the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the 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) either on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances or on a fair valuation or other 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) 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.

(b) 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) The obligation is not considered a liability or debt for purposes of determinations under subsection (1) except to the extent that it is considered distributed and treated as indebtedness under this subsection.

(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 any 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) Members or managers who vote for or assent to a distribution in violation of an operating agreement or section 307 are 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 section 307 or the operating agreement if it is established that the member or manager did not act in compliance 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.

(4) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution from both of the following:

(a) From each other member or manager who could be held liable under subsection (1) for the unlawful distribution.

(b) From each member who could be held liable under subsection (3) for the amount the member accepted or received.

(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.

ARTICLE 4

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 provisions 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 shall be considered to be managers for purposes of applying this act 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 who may, but need not be, members.

(2) An operating agreement may prescribe qualifications for managers.

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

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 voting in proportion to their shares of distributions of the limited liability company, as determined in accordance with section 303.

(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. Removal shall be by majority vote of the members voting in accordance with section 502(1), except that an operating agreement may require a higher vote for removal without cause.

(3) Removal for cause shall be at a meeting called expressly for that purpose, and the manager or managers to be removed for cause shall have reasonable advance notice of the allegations against them 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 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 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 any action taken as a manager or any failure to take any 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, a manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived without the informed consent of the members by the manager from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by him or her 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 time when 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 an operating agreement, if the limited liability company has more than 1 manager, all decisions of the managers shall be made by majority vote of the managers.

Sec. 406. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument, for apparently carrying on in the usual way the business of the limited liability company of which he or she is a manager binds the limited liability company, unless the manager so acting does not have the authority to act for the limited liability company in the particular matter and the person with whom he or she is dealing has knowledge of the fact that he or she has no authority.

Sec. 407. A provision in the articles of organization or an operating agreement may eliminate or limit the monetary liability of a manager to the limited liability company or its members for breach of any duty established in section 404, except that the provision does not eliminate or limit the liability of a manager for any of the following:

(a) The receipt of a financial benefit to which the manager is not entitled.

(b) Liability under section 308.

(c) A knowing violation of law.

(d) An act or omission occurring before the date when the provision becomes effective.

Sec. 408. (1) A limited liability company may indemnify and hold harmless a manager from and against any and all losses, expenses, claims, and demands sustained by reason of any acts or omissions or alleged acts or omissions as a manager, including judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which the person is a party or threatened to be made a party because he or she is or was a manager, to the extent provided for in an operating agreement or in a contract with the person, or to the fullest extent permitted by agency law subject to any restriction in an operating agreement or contract, except that the company may not indemnify any person for conduct described in section 407(a), (b), or (c).

(2) A limited liability company may purchase and maintain insurance on behalf of a manager against any liability or expense asserted against or incurred by him or her in any such capacity or arising out of his or her status as a manager, whether or not the company could indemnify him or her against liability.

ARTICLE 5

Sec. 501. (1) A person may become a member of a limited liability company by making a contribution accepted by the company or pursuant to section 506. Additional qualifications or procedures may be prescribed by an operating agreement. A limited liability company shall have at least 2 members.

(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 company.

Sec. 502. (1) Unless otherwise provided in an operating agreement, 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.

(2) The members have the right to vote on all of the following:

(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) A transaction involving an actual or potential conflict of interest between a manager and the limited liability company.

(d) An amendment to the articles of organization.

(3) Unless otherwise provided in an operating agreement, the members have the right to vote on the sale, exchange, lease, or other transfer of all or substantially all of the assets of the limited liability company other than in the ordinary course of business.

(4) The articles of organization or an operating agreement may provide for any other voting rights of members.

(5) Unless a greater vote is required by this act, by the articles of organization, or by an operating agreement, a majority vote is required to approve any matter other than the selection of managers submitted for a vote by the members.

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 of 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 business and financial condition of the company.

(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.

(3) Upon reasonable written request, a member may obtain such other information regarding the affairs of the limited liability company or inspect, personally or through a representative and during ordinary business hours, such other books and records of the 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. 504. A membership interest is personal property. A member has no interest in specific limited liability company property.

Sec. 505. (1) Except as provided in an operating agreement, a membership interest is assignable in whole or in part.

(2) An assignment of a membership interest does not of itself entitle the assignee to participate in the management and affairs of the company or to become or exercise any rights of a member. An assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled.

(3) Unless otherwise provided in an operating agreement and except to the extent assumed by agreement, an assignee has no liability as a member solely as a result of the assignment.

(4) Except as provided in an operating agreement, a member ceases to be a member upon assignment of all of his or her membership interest. The assignor is not released from his or her liability to the company under sections 302 and 308, even if the assignee becomes a member.

Sec. 506. (1) Except as provided in an operating agreement pursuant to subsection (2), an assignee of a membership interest in a limited liability company may become a member only if the other members unanimously consent.

(2) If management of the limited liability company has not been delegated to managers and the operating agreement does not provide for continuation of the business other than by majority consent pursuant to section 801(d), an assignee of a membership interest may become a member in any manner provided for in the operating agreement.

(3) 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). The assignee is not obligated for liabilities unknown to the assignee at the time he or she became a member unless the liabilities are shown on the financial records of the limited liability company.

Sec. 507. (1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment with interest. To the extent the membership interest is so charged, the judgment creditor has only the rights of an assignee of the membership interest. This act does not deprive any member of the benefit of any exemption laws applicable to his or her membership interest.

(2) Unless otherwise provided in an operating agreement, the member remains a member and retains all rights and powers of membership except the right to receive distributions to the extent charged.

Sec. 508. Unless otherwise provided in an operating agreement, the pledge or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member does not cause the member to cease to be a member or to lose the power to exercise any rights or powers of a member.

Sec. 509. A member may withdraw from a limited liability company as provided in an operating agreement or by giving written notice to the company and to the other members at least 90 days in advance of the date of withdrawal, but if the withdrawal violates an operating agreement, the withdrawing member is not entitled to the distributions provided for in section 305 and the company may recover from the withdrawing member damages for breach of the agreement in excess of the amount that would otherwise be distributable to the withdrawing member under section 305.

Sec. 510. A member may commence and maintain a civil suit in the right of a limited liability company if all of the following conditions are met:

(a) Either management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right or management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of an operating agreement.

(b) The plaintiff has made written demand on the managers or the members with the authority requesting that the managers or members cause the limited liability company to take suitable action.

(c) Ninety days have expired from the date the demand was made unless the member has earlier been notified that the demand has been rejected or unless irreparable injury to the limited liability company would result by waiting for the expiration of the 90-day period.

(d) The plaintiff was a member of the limited liability company at the time of the act or omission of which he or she complains, or his or her status as a member devolved upon him or her by operation of law or pursuant to the terms of an operating agreement from a person who was a member at that time.

(e) The plaintiff fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

(f) The plaintiff continues to be a member until the time of judgment, unless the failure to continue to be a member is the result of action by the limited liability company in which the former member did not acquiesce and the derivative proceeding was commenced prior to the termination of the former member's status as a member.

Sec. 511. If the limited liability company commences an investigation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period as the court considers appropriate.

Sec. 512. (1) The court shall dismiss a derivative proceeding if, on motion by the limited liability company, the court finds that 1 of the groups specified in subsection (3) has made a determination in good faith after conducting a reasonable investigation upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the company.

(2) If the determination is made pursuant to subsection (3)(a) or (b), the company has the burden of proving the good faith of the group making the determination and the reasonableness of the investigation. If the determination is made pursuant to subsection (3)(c), the plaintiff has the burden of proving that the determination was not made in good faith or that the investigation was not reasonable.

(3) A determination under subsection (1) may be made by any 1 of the following:

(a) By a majority vote of the disinterested managers or members having the authority to cause the company to sue in its own right, if the disinterested managers or members constitute a majority of those having the authority to cause the company to sue in its own right.

(b) By a majority vote of a committee consisting of 2 or more disinterested managers or members appointed by a majority vote of disinterested managers or members, whether or not the disinterested managers or members constitute a majority of those having the authority to cause the company to sue in its own right.

(c) By a panel of 1 or more disinterested persons appointed by the court upon motion by the company.

(4) For purposes of this section, "disinterested" means a person who is not a party to a derivative proceeding or a person who is a party if the limited liability company demonstrates that the claim asserted against the person is frivolous or insubstantial.

Sec. 513. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of members of the limited liability company, the court shall direct that notice be given to the members affected. If notice is directed to be given to the affected members, the court may determine whether 1 or more of the parties to the action shall bear the expense of giving the notice, in the amount as the court determines and finds to be reasonable under the circumstances. The amount of expense shall be awarded as special costs of the action and is recoverable in the same manner as statutory taxable costs.

Sec. 514. Upon termination of the derivative proceeding, the court may order 1 of the following:

(a) The plaintiff to pay any of the defendants' reasonable expenses, including reasonable attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained in bad faith or without reasonable cause.

(b) The limited liability company to pay the plaintiff's reasonable expenses, including reasonable attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the company. The court shall direct the plaintiff to account to the company for any proceeds received by the plaintiff in excess of expenses awarded by the court, except that this provision does not apply to a judgment rendered for the benefit of an injured member only and limited to a recovery of the loss or damage sustained by him or her.

ARTICLE 6

Sec. 601. A limited liability company may amend its articles of organization if the amendment contains only provisions that might lawfully be contained in original articles of organization filed at the time the amendment is made.

Sec. 602. A limited liability company shall amend its articles of organization if any of the following occur:

(a) A change in the name of the limited liability company.

(b) A change in the purposes of the limited liability company.

(c) A change to or from the management of the limited liability company by managers.

(d) A change in the maximum duration of the limited liability company.

(e) A statement in the articles of organization has become false or erroneous, except that a change in registered office or resident agent may be made as provided for in section 209.

Sec. 603. The articles of organization shall be 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 majority vote of the members as required by section 502 or by such other vote as may be required by the articles of organization or an operating agreement.

Sec. 604. (1) A limited liability company may integrate into a single instrument the provisions of its articles of organization that are then in effect and operative by filing restated articles of organization executed as provided in section 103.

(2) A limited liability company may at the same time amend its articles of organization and include the amendment in the restated articles. An amendment effected in connection with the integration and restatement of the articles is subject to any other provision of this act that would apply if a certificate of amendment were to be filed to effect the amendment, including the requirement of member approval.

(3) Restated articles of organization shall be specifically designated as such in the heading and shall state, either in the heading or in an introductory paragraph, the present name of the limited liability company and, if the name has changed, all of its former names, and the date of filing of its original articles of organization. If the restated articles include a further amendment pursuant to subsection (2), the articles shall state that the amendment was approved by the members.

(4) When the restated articles of organization become effective in accordance with section 104, the limited liability company's original articles of organization are superseded and the restated articles are the articles of organization of the company.

ARTICLE 7

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, or a statement that no changes are to be made in the articles of the surviving company.

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

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

(2) If an operating agreement of a constituent company provides for approval by less than unanimous consent and the merger is approved, a dissenting member may withdraw from the limited liability company and receive the distributions provided for in section 305.

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 each constituent company in accordance with section 702(1).

(c) The effective date of the merger if later than the date of filing of the certificate of merger.

(2) The certificate of merger shall become 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 all and every 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) Upon complying with section 206, the surviving company may use the name and the assumed names of any constituent company.

(d) The surviving company has all 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 and into 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. 706. Unless the 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 none is set forth, by the unanimous consent of the members of each limited liability company that is a constituent entity, unless the operating agreement of the limited liability company provides otherwise. If a certificate of merger has been filed by a constituent 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.

ARTICLE 8

Sec. 801. A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) At the time specified in the articles of organization or an operating agreement.

(b) Upon the happening of events specified in the articles of organization or an operating agreement.

(c) By the unanimous consent of all members.

(d) Upon the death, withdrawal, expulsion, bankruptcy, or dissolution of a member, or the occurrence of any other event that terminates the continued membership of a member in the limited liability company, unless either of the following applies:

(*i*) Within 90 days after the termination of membership, a majority of the remaining members voting in accordance with section 502(1) consent to continue the business of the limited liability company and to the admission of 1 or more members as necessary.

(*ii*) Management of the limited liability company has not been delegated to managers, an operating agreement does not allow an assignee to become a member other than by unanimous consent of the other members pursuant to section 506, and the business of the company is continued as provided for in an operating agreement.

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

Sec. 802. Upon application by or for a member, the circuit court for the county in which the registered office of a limited liability company is located may decree dissolution of the company whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements.

Sec. 803. (1) The attorney general may bring an action in the circuit court for the county in which the registered office of a limited liability company is located for dissolution of the company upon the ground that the company has committed any of the following acts:

(a) Procured its organization through fraud.

(b) Repeatedly and willfully exceeded the authority conferred upon it by law.

(c) Repeatedly and willfully conducted its business in an unlawful manner.

(2) This section does not exclude any other statutory or common law action by the attorney general for dissolution of a limited liability company.

Sec. 804. Upon the dissolution and commencement of winding up of the limited liability company, a certificate of dissolution shall be executed as provided in section 103 and filed with the administrator. The certificate shall set forth all of the following:

(a) The name of the limited liability company.

(b) The reason for the dissolution.

(c) The effective date of the dissolution if later than the date of filing of the certificate of dissolution.

Sec. 805. (1) Except as otherwise provided in the articles of organization, an operating agreement, or this section, the members or managers who have not wrongfully dissolved a limited liability company may wind up the company's affairs, but the circuit court for the county in which the registered office is located may wind up the limited liability company's affairs on application of, and for good cause shown by, any member, his or her legal representative, or assignee.

(2) The members or managers who are winding up the limited liability company's affairs shall continue to function, for the purpose of winding up, in accordance with the procedures established by this act, the articles of organization, and operating agreements, shall be held to no greater standard of conduct than that described by section 404, and shall be subject to no greater liabilities than would apply in the absence of dissolution.

(3) The limited liability company may sue and be sued in its name and process may issue by and against the company in the same manner as if dissolution had not occurred. An action brought by or against the company before its dissolution does not abate because of the dissolution.

Sec. 806. (1) The dissolved limited liability company may notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

(a) A description of the information that must be included in a claim. The limited liability company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

(b) A mailing address where a claim may be sent.

(c) The deadline, which may not be less than 6 months after the effective date of the written notice, by which the dissolved limited liability company must receive the claim.

(d) A statement that the claim will be barred if not received by the deadline.

(2) The giving of notice provided for in subsection (1) does not constitute recognition that a person to whom the notice is directed has a valid claim against the limited liability company.

(3) A claim against the dissolved limited liability company is barred if either of the following applies:

(a) If a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved limited liability company by the deadline.

(b) If a claimant whose claim was rejected by a written notice of rejection by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days after the effective date of the written notice of rejection.

(4) For purposes of this section and section 807, "existing claim" means any claim or right against the limited liability company, liquidated or unliquidated. "Existing claim" does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(5) For purposes of this section, the effective date of the written notice is the earliest of the following:

(a) The date it is received.

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and correctly addressed.

(c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

Sec. 807. (1) A dissolved limited liability company may also publish notice of dissolution and request that persons with claims against the company present them in accordance with the notice.

(2) The notice shall be in accord with all the following:

(a) Be published 1 time in a newspaper of general circulation in the county in which the dissolved limited liability company's principal place of business, or if none in this state, its registered office, is or was located.

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent. The limited liability company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

(c) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within 1 year after the publication date of the newspaper notice.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within 1 year after the publication date of the newspaper:

(a) A claimant who did not receive written notice under section 806.

(b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) Notwithstanding subsection (3), a claimant having an existing claim known to the limited liability company at the time of publication in accordance with subsection (2) and who did not receive written notice under section 806 is not barred from suit until 6 months after the claimant has actual notice of the dissolution.

Sec. 808. (1) Upon the winding up of a limited liability company, the assets shall be distributed in the following order:

(a) To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members under section 304 or 305. Reasonable provision shall be made for debts, liabilities, and obligations that are not liquidated but will not be barred under section 806 or 807.

(b) Except as provided in an operating agreement, to members and former members in satisfaction of liabilities for distributions under sections 304 and 305.

(c) Except as provided in an operating agreement, all remaining assets to members and former members in accordance with their shares of distributions as determined under section 303.

(2) Before the assets of a limited liability company are distributed pursuant to subsection (1), the limited liability company shall file tax returns and pay tax obligations as required by Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws.

ARTICLE 9

Sec. 901. (1) A limited liability company may be formed under this act for the purpose of rendering 1 or more professional services, as defined in section 902.

(2) A limited liability company formed for the purpose of rendering professional services, and its members and managers, are subject to the provisions of this article in addition to the other provisions of this act, and the provisions of this article shall take 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 all of whose shareholders 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 certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, professional engineers, land surveyors, and attorneys-at-law.

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

(2) The articles of organization of the 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."

Sec. 904. (1) Except as otherwise provided in subsection (2) or otherwise prohibited by law, a professional limited liability company may render 1 or more professional services, and each member and manager must 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, Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, 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. 905. (1) A professional limited liability company shall not render professional services within this state except through its members, managers, employees, and agents who are licensed or otherwise legally authorized to render the professional services within this state. The term employee does not include secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

(2) This act shall not be construed to abolish, repeal, modify, restrict, or limit the law now in effect applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services and to the standards for professional conduct. A member, manager, employee, or agent of a professional limited liability company shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or her, or by any person under his or her direct supervision and control, while rendering professional services on behalf of the company to the person for whom the professional services were being rendered.

(3) The limited liability company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its members, managers, employees, or agents while they are engaged on behalf of the company in the rendering of professional services.

Sec. 906. If a member, manager, employee, or agent of a professional limited liability company becomes legally disqualified to render the professional services rendered by the company or accepts employment that, pursuant to existing law, places restrictions or limitations on his or her continued rendering of the professional services, he or she shall sever within a reasonable period all employment with and financial interests in the company. A company's failure to require compliance with this section constitutes a ground for the forfeiture of its articles of organization and its dissolution. If a company's failure to comply with this section is brought to the attention of the administrator, he or she shall certify that fact to the attorney general for appropriate action to dissolve the company.

Sec. 907. (1) A professional limited liability company shall not engage in any business other than the rendering of the professional services for which it was specifically organized.

(2) This act does not prohibit the company from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments, owning real or personal property necessary for the rendering of professional services, becoming a partner in a partnership formed under Act No. 72 of the Public Acts of 1917, being sections 449.1 to 449.43 of the Michigan Compiled Laws, if the partnership performs the same professional services as the professional limited liability company, or forming or becoming a member or manager of another professional limited liability company organized under this act if both professional limited liability companies perform the same professional services.

Sec. 908. (1) A membership interest in a professional limited liability company shall not be sold or transferred except to a person who is eligible to be a member of the company or to the personal representative or estate of a deceased or

legally incompetent member. The personal representative or estate of the member may continue to hold a membership interest for a reasonable period but shall not be authorized to participate in any decisions concerning the rendering of professional service.

(2) The articles of organization or an operating agreement may provide specifically for additional restrictions on the transfer of membership interests.

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 all members and managers are licensed or otherwise legally authorized to render within this state the same professional services that the company was formed to render.

(2) The report shall be filed not later than February 15 of each year, and a penalty of $50.00 shall be added to the fee if the report is not filed or the fee is not paid by February 15.

Sec. 910. A professional limited liability company may merge only with another limited liability company whose members and managers are licensed persons permitted to be members or managers under this article.

ARTICLE 10

Sec. 1001. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs, and a foreign limited liability company shall not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

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 name and address of a resident agent in this state, which agent shall be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business and authorized to do business in this state. The address of the resident agent shall be the foreign limited liability company's registered office in this state.

(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 or 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 so required, 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. 1003. (1) If the administrator finds that an application for a certificate of authority substantially conforms to the requirements of this act and all requisite fees have been paid, the administrator shall file the application and issue to the foreign limited liability company a certificate of authority to transact business in this state, in accordance with section 104.

(2) Upon the issuance of a certificate of authority, the foreign limited liability company may transact in this state any business that a domestic limited liability company formed under this act may lawfully transact, except as limited by statements in its application for a certificate of authority or under the law of its jurisdiction of organization. The authority continues so long as the foreign limited liability company retains its authority to transact such business in the jurisdiction of its organization and its authority to transact business in this state has not been surrendered, suspended, or revoked.

(3) A foreign limited liability company holding a valid certificate of authority in this state has no greater rights or privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

Sec. 1004. A certificate of authority shall not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of section 204. If the name of a foreign limited liability company does not satisfy the requirements of section 204, the company may take the action authorized by section 204(3).

Sec. 1005. (1) If any statement in the application for certificate of authority of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the administrator a certificate, executed as provided in section 103, correcting the statement, except that a change in the resident agent or registered office may be made pursuant to section 209.

(2) If a foreign limited liability company authorized to transact business in this state is the survivor of a merger permitted by the laws of the jurisdiction of its organization, the foreign limited liability company shall file, not later than 30 days after the merger becomes effective, a certificate issued by the proper officer of the jurisdiction of its organization attesting to the occurrence of the merger. If the merger has changed the name of the foreign limited liability company or has otherwise affected the information set forth in the application, the foreign company shall also comply with subsection (1).

(3) A foreign limited liability company authorized to transact business in this state shall file an annual statement as required by section 207(4).

Sec. 1006. (1) A foreign limited liability company authorized to transact business in this state may withdraw from this state upon receiving from the administrator a certificate of withdrawal. In order to obtain the certificate, the foreign limited liability company shall file an application for withdrawal setting forth all of the following:

(a) The name of the foreign limited liability company and the jurisdiction under the laws of which it is organized.

(b) That the foreign limited liability company is not transacting business in this state.

(c) That the foreign limited liability company surrenders its authority to transact business in this state.

(d) That the foreign limited liability company revokes the authority of its resident agent to receive service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on the company by service upon the administrator.

(e) An address to which the administrator is to mail a copy of any process against the foreign limited liability company.

(f) Other additional information as is necessary or appropriate in order to enable the administrator to determine and assess any unpaid fees payable by the foreign limited liability company.

(2) The application for withdrawal shall be in the form and manner designated by the administrator and shall be executed for the foreign limited liability company as provided in section 103, or, if the foreign limited liability company is in the hands of a receiver or trustee, by the receiver or trustee on behalf of the company.

Sec. 1007. (1) A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain an action, suit, or proceeding in a court of this state until it has obtained a certificate of authority. This prohibition applies to both of the following in addition to the foreign limited liability company:

(a) A successor in interest of the foreign limited liability company, except a receiver, trustee in bankruptcy, or other representative of creditors of the foreign company.

(b) An assignee of the foreign limited liability company, except an assignee for value who accepts an assignment without knowledge that the foreign company should have but has not obtained a certificate of authority in this state.

(2) An action commenced by a foreign limited liability company having no certificate of authority shall not be dismissed if a certificate of authority is obtained before the order of dismissal. Any order of dismissal shall be without prejudice to the recommencement of the action, suit, or proceeding by the foreign limited liability company after it obtains a certificate of authority.

(3) The failure of a foreign limited liability company to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in a court of this state.

(4) A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the administrator as its agent for service of process with respect to a cause of action arising out of the transaction of business in this state.

(5) A foreign limited liability company that transacts business in this state without a certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without a certificate in an amount equal to all fees that would have been imposed under this act upon the foreign limited liability company had it

obtained the certificate, filed all documents required by this act, and paid all penalties imposed by this act. The attorney general may bring proceedings to recover all amounts due the state under this section.

(6) A foreign limited liability company that transacts business in this state without a certificate of authority is subject to a civil penalty, payable to the state, of not less than $100.00 nor more than $1,000.00 for each calendar month, not more than 5 years prior to the imposition of the penalty, in which it has transacted business without the certificate. The penalty shall not exceed $10,000.00. Each manager, member, or authorized person who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed $10,000.00.

(7) The civil penalties set forth in subsection (6) may be recovered in an action brought by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, managers, or authorized persons have transacted business in this state in violation of this act, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of business by the foreign limited liability company and the further exercise of any rights and privileges in this state. The foreign limited liability company shall be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has obtained a certificate of authority to transact business.

(8) A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

Sec. 1008. (1) Without excluding other activities that may not constitute transacting business in this state, a foreign limited liability company is not considered to be transacting business in this state, for the purposes of this act, because it is carrying on in this state any 1 or more of the following activities:

(a) Maintaining, defending, or settling any proceeding.

(b) Holding meetings of its members or carrying on any other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositaries with respect to those securities.

(e) Selling through independent contractors.

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(i) Owning, without more, real or personal property.

(j) Conducting an isolated transaction that is completed within 30 days and that is not 1 in the course of repeated transactions of a like nature.

(k) Transacting business in interstate commerce.

(2) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

Sec. 1009. (1) A foreign limited liability company may acquire or, through another person entitled to transact business in this state, may make loans, or participations or interests in loans, insured or guaranteed in whole or in part by the federal housing administration or the veterans' administration or a successor or similar agency of the federal government, which are secured in whole or in part by mortgages of real property located in this state, and a foreign limited liability company may purchase a loan, or participation or interest in a loan, secured in whole or in part by a mortgage of real property located in this state, without maintaining authority to transact business in this state under this act or any other law of this state relating to the qualification or authority and without paying fees as required by law.

(2) Neither the failure of a foreign limited liability company to qualify or maintain authority to transact business in this state under this act or any other law of this state nor its failure to pay fees as required by law affects or impairs its ownership of the loans or participation or interests in the loans, whether made or acquired, or its right to collect and service the loans through another person entitled to transact business in this state, or its right to enforce the loans or to acquire, hold, protect, convey, lease, and otherwise contract and deal with respect to the property mortgaged as security.

Sec. 1010. The attorney general may maintain an action to restrain a foreign limited liability company transacting business in this state, with or without a certificate of authority, from any violation of this act.

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 dissolution, $10.00.

(*l*) Application of a foreign limited liability company for an issuance of a certificate of authority to transact business in this state, $50.00.

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

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

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

(p) 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 which 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 shall be 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.

Sec. 1102. This act may be supplemented, altered, amended, or repealed by the legislature, and every limited liability company subject to this act is bound by the changes.

Sec. 1103. An interest in a limited liability company to which this act applies is a security to the same extent as an interest in a corporation, partnership, or limited partnership is a security.

Sec. 1200. This act shall take effect June 1, 1993.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved ---

Governor.