

SENATE BILL No. 114

January 29, 2003, Introduced by Senators GARCIA, CROPSEY, Van WOERKOM, GOSCHKA, BISHOP and JELINEK and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1993 PA 23, entitled
"Michigan limited liability company act,"
by amending sections 207, 207a, 909, 1005, and 1101 (MCL
450.4207, 450.4207a, 450.4909, 450.5005, and 450.5101), sections
207, 909, 1005, and 1101 as amended and section 207a as added by
2002 PA 686.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

7 (b) A resident agent. The resident agent may be either an
8 individual resident in this state whose business office or

1 residence is identical with the registered office or any of the
2 following having a business office identical with the registered
3 office:

4 (i) A domestic corporation.

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

7 (iii) A domestic limited liability company.

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

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

14 (3) ~~—A~~ **Subject to subsection (4),** a domestic limited
15 liability company or foreign limited liability company authorized
16 to transact business in this state shall file with the
17 administrator an annual statement executed as provided in
18 section 103 containing the name of its resident agent and the
19 address of its registered office in this state. The statement
20 shall be filed not later than February 15 of each year, except
21 that a limited liability company formed after September 30 or a
22 foreign limited liability company authorized to transact business
23 in this state after September 30 need not file a statement on the
24 February 15 immediately succeeding its formation or
25 authorization.

26 **(4) If there are no changes in the information provided in**
27 **the last filed annual statement required under subsection (3),**

1 the limited liability company may file an annual statement that
2 certifies to the administrator that no changes in the required
3 information have occurred since the last filed annual statement.
4 An annual statement described in this subsection shall be on a
5 form approved by the administrator and filed no later than the
6 date required under subsection (3). A limited liability company
7 that files an annual statement described in this subsection is
8 not required to pay a filing fee with the annual statement.

9 (5) ~~—(4)—~~ If a limited liability company fails to appoint or
10 maintain an agent for service of process, or the agent for
11 service of process cannot be found or served through the exercise
12 of reasonable diligence, service of process may be made by
13 delivering or mailing by registered mail to the administrator a
14 summons and copy of the complaint.

15 Sec. 207a. (1) Except as provided in this section, and
16 section 909 for a professional limited liability company, from
17 the effective date of the articles of organization as provided in
18 section 104 until dissolution for a domestic limited liability
19 company, or from the effective date of the certificate of
20 authority to transact business in this state until withdrawal
21 from this state for a foreign limited liability company, a
22 limited liability company is entitled to issuance by the
23 administrator, upon request, of a certificate of good standing.
24 A certificate of good standing issued to a domestic limited
25 liability company shall state that it has been validly organized
26 as a domestic limited liability company, that it is validly in
27 existence under the laws of this state, and that it has satisfied

1 its annual filing obligations. A certificate of good standing
2 issued to a foreign limited liability company shall state that it
3 has been validly authorized to transact business in this state,
4 that it holds a valid certificate of authority to transact
5 business in this state, and that it has satisfied its annual
6 filing obligations.

7 (2) If a domestic limited liability company or a foreign
8 limited liability company authorized to transact business in this
9 state fails to file an annual statement required by section 207
10 for 2 consecutive years, the administrator shall notify the
11 company of the consequences of the failure to file under
12 subsection (3).

13 (3) If a limited liability company does not file all annual
14 statements it has failed to file, and ~~the~~ **any** applicable fees,
15 within 60 days after the administrator's notice under
16 subsection (2) is sent, the limited liability company is not in
17 good standing. A limited liability company that is not in good
18 standing is not entitled to issuance by the administrator of a
19 certificate of good standing described in subsection (1), the
20 name of the company is available for use by another entity filing
21 with the administrator, and the administrator shall not accept
22 for filing any document submitted by the limited liability
23 company other than a certificate of restoration of good standing
24 provided for in subsection (4). A limited liability company that
25 is not in good standing remains in existence and may continue to
26 transact business in this state.

27 (4) A domestic limited liability company or a foreign limited

1 liability company authorized to transact business in this state
2 that is not in good standing under subsection (3) may file a
3 certificate of restoration of good standing, accompanied by the
4 annual statements and **any applicable** fees for all of the years
5 for which they were not filed and paid, and the fee for filing
6 the certificate of restoration of good standing. The certificate
7 shall include all of the following:

8 (a) The name of the limited liability company at the time it
9 ceased to be in good standing. If that name is not available
10 when the certificate of restoration of good standing is filed,
11 the limited liability company shall select a new name that
12 complies with section 204. The new name shall be the name of the
13 domestic limited liability company or the name used in this state
14 by the foreign limited liability company from the date of filing
15 of the certificate.

16 (b) The name of the limited liability company's current
17 resident agent and the address of the current registered office
18 in this state.

19 (c) A statement that the certificate is accompanied by the
20 annual statements and **any** applicable fees for all of the years
21 for which statements were not filed and fees were not paid.

22 Sec. 909. (1) In addition to the annual statement required
23 in section ~~207(3)~~ **207, and subject to subsection (2)**, a
24 professional limited liability company shall file with the
25 administrator an annual report, together with a \$50.00 filing
26 fee, listing the names and addresses of all members and managers
27 and certifying that each member and manager is a licensed person

1 in 1 or more of the professional services rendered by the
2 company. The **annual** report shall also certify that any member or
3 manager not licensed or otherwise legally authorized to render
4 professional services in this state does not render professional
5 services in this state.

6 **(2) If there are no changes in the information provided in**
7 **the last filed annual report required under subsection (1), the**
8 **professional limited liability company may file an annual report**
9 **that certifies to the administrator that no changes in the**
10 **required information have occurred since the last filed annual**
11 **report. An annual report described in this subsection shall be**
12 **on a form approved by the administrator and filed no later than**
13 **the date required under subsection (3). A professional limited**
14 **liability company that files an annual report described in this**
15 **subsection is not required to pay a filing fee with the annual**
16 **report.**

17 **(3) ~~-(2)-~~ The professional limited liability company shall**
18 **file ~~the~~ an annual report required under this section not later**
19 **than February 15 of each year, ~~and a penalty of \$50.00 shall be~~**
20 **~~added to the fee if the annual report is not filed or the fee is~~**
21 **~~not paid by February 15,~~ except that if a professional limited**
22 **liability company is formed after September 30, it need not file**
23 **an annual report on the February 15 immediately succeeding its**
24 **formation. The administrator shall assess a penalty of \$50.00 if**
25 **an annual report is delinquent.**

26 **(4) ~~-(3)-~~ If a professional limited liability company fails**
27 **to file an annual report required by this section for 2**

1 consecutive years, the administrator shall notify the company of
2 the consequences of the failure to file under subsection ~~-(4)~~
3 (5).

4 (5) ~~-(4)~~ If a professional limited liability company does
5 not file all annual reports it has failed to file, ~~the~~ **any**
6 applicable fees, and the penalty described in subsection ~~-(2)~~
7 (3) within 60 days after the administrator's notice under
8 subsection ~~-(3)~~ (4) is sent, the professional limited liability
9 company is not in good standing. A professional limited
10 liability company that is not in good standing is not entitled to
11 issuance by the administrator of a certificate of good standing
12 described in section 207a, the name of the company is available
13 for use by another entity filing with the administrator, and the
14 administrator shall not accept for filing any document submitted
15 by the professional limited liability company other than a
16 certificate of restoration of good standing provided for in
17 subsection ~~-(5)~~ (6). A professional limited liability company
18 that is not in good standing remains in existence and may
19 continue to transact business in this state.

20 (6) ~~-(5)~~ A professional limited liability company that is
21 not in good standing under subsection ~~-(4)~~ (5) may file a
22 certificate of restoration of good standing, accompanied by the
23 annual reports and **any applicable** fees for all of the years for
24 which they were not filed and paid, the penalty described in
25 subsection ~~-(2)~~ (3), and the fee for filing the certificate of
26 restoration of good standing. The certificate shall include all
27 of the following:

1 (a) The name of the professional limited liability company at
2 the time it ceased to be in good standing. If that name is not
3 available when the certificate of restoration of good standing is
4 filed, the professional limited liability company shall select a
5 new name that complies with this act. The new name shall be the
6 name of the professional limited liability company from the date
7 of filing of the certificate.

8 (b) The name of the professional limited liability company's
9 current resident agent and the address of the current registered
10 office in this state.

11 (c) A statement that the certificate is accompanied by the
12 annual reports and **any** applicable fees for all of the years for
13 which reports were not filed and fees were not paid and the
14 penalty described in subsection ~~—(2)—~~ (3).

15 (7) ~~—(6)—~~ A professional limited liability company that fails
16 to file annual statements under section 207 as well as annual
17 reports under this section must comply with section 207a and this
18 section to maintain or restore its good standing.

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

1 (2) If a foreign limited liability company authorized to
2 transact business in this state is the survivor of a merger
3 permitted by the laws of the jurisdiction of its organization,
4 the foreign limited liability company shall file, not later than
5 30 days after the merger becomes effective, a certificate issued
6 by the proper officer of the jurisdiction of its organization
7 attesting to the occurrence of the merger. If the merger has
8 changed the name of the foreign limited liability company or has
9 otherwise affected the information set forth in the application,
10 the foreign company shall also comply with subsection (1).

11 (3) A foreign limited liability company authorized to
12 transact business in this state shall file an annual statement as
13 required by section ~~207(3)~~ **207**, and section 207a applies to the
14 good standing of the company and to failures to file.

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

18 (a) Certificate of correction, \$25.00.

19 (b) Articles of organization, \$50.00.

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

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

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

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

25 (g) Annual statement of resident agent and registered office,
26 **if required by section 207**, \$15.00.

27 (h) Certificate of restoration of good standing, \$50.00.

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

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

4 (k) Certificate of abandonment, \$10.00.

5 (l) Certificate of conversion, \$25.00.

6 (m) Certificate of dissolution, \$10.00.

7 (n) Application of a foreign limited liability company for a
8 certificate of authority to transact business in this state,
9 \$50.00.

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

13 (p) Certificate attesting to the occurrence of a merger of a
14 foreign limited liability company, as provided in section 1005,
15 \$10.00.

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

18 (2) In addition to a fee required to file a document, the
19 administrator may charge a fee of \$50.00 if the document is filed
20 by facsimile or other electronic transmission or the
21 administrator is requested to transmit a document by facsimile or
22 other electronic transmission.

23 (3) The fees prescribed in ~~subsections~~ **subsection** (1) ~~and~~
24 ~~or (2) —, no part of which shall be refunded, when collected~~
25 shall be paid into the treasury of the state and credited to the
26 administrator to be used solely by the department in carrying out
27 those duties required by law. **A fee prescribed in subsection (1)**

1 or (2) is not refundable in whole or part.

2 (4) A minimum charge of \$1.00 for each certificate and 50
3 cents per folio shall be paid to the administrator for certifying
4 a part of a file or record pertaining to a domestic or foreign
5 limited liability company if a fee is not set forth in
6 subsection (1). The administrator may furnish copies of
7 documents, reports, and papers required or permitted by law to be
8 filed with the administrator, and shall charge for those copies
9 pursuant to a schedule of fees that the administrator shall adopt
10 with the approval of the state administrative board. The
11 administrator shall retain the revenue collected under this
12 subsection to be used by the department to defray the costs of
13 its copying and certifying services.

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

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