

# SENATE BILL No. 115

February 1, 2005, Introduced by Senator CLARKE and referred to the Committee on  
Commerce and Labor.

A bill to amend 1993 PA 23, entitled  
"Michigan limited liability company act,"  
by amending sections 206, 502, and 707 (MCL 450.4206, 450.4502, and  
450.4707), section 206 as amended and section 707 as added by 1997  
PA 52 and section 502 as amended by 2002 PA 686, and by adding  
section 708.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

1 is to be transacted.

2 (2) ~~The certificate of assumed name is effective, unless~~  
3 **UNLESS** terminated by filing a certificate of termination or by the  
4 dissolution or withdrawal of the company, **A CERTIFICATE OF ASSUMED**  
5 **NAME IS EFFECTIVE** for a period expiring on December 31 of the fifth  
6 full calendar year following the year in which the certificate of  
7 assumed name ~~was~~ **IS** filed. The **COMPANY MAY EXTEND THE** certificate  
8 of assumed name ~~may be extended~~ for additional consecutive  
9 periods of 5 full calendar years each by filing a similar  
10 certificate of assumed name not earlier than 90 days before the  
11 expiration of the initial or any subsequent 5-year period.

12 (3) The administrator shall notify the company of the  
13 impending expiration of the certificate of assumed name not later  
14 than 90 days before the expiration of the initial or any subsequent  
15 5-year period.

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

19 (5) ~~The same name may be assumed by 2~~ **TWO** or more limited  
20 liability companies or ~~by~~ 1 or more companies and 1 or more  
21 corporations, limited partnerships, or other enterprises  
22 participating together in a partnership or joint venture **MAY USE**  
23 **THE SAME ASSUMED NAME**. Each participating limited liability company  
24 shall file a certificate of assumed name under this section.

25 (6) A limited liability company participating in a merger, or  
26 any other entity participating in a merger under section 705a, may  
27 transfer to the survivor the use of an assumed name for which a

1 certificate of assumed name is on file with the administrator prior  
2 to the merger, if the transfer of the assumed name is noted in the  
3 certificate of merger as provided in section 703(1)(c) ~~—~~ OR  
4 705a(7)(c) ~~—~~ or other applicable statute. The use of an assumed  
5 name transferred under this subsection may continue for the  
6 remaining effective period of the certificate of assumed name on  
7 file ~~prior to~~ **BEFORE** the merger and the survivor may terminate or  
8 extend the certificate ~~in accordance with~~ **UNDER** subsection (2).

9 (7) A limited liability company surviving a merger may use as  
10 an assumed name the name of a merging limited liability company, or  
11 the name of any other entity participating in the merger under  
12 section 705a, by filing a certificate of assumed name under  
13 subsection (1) or by providing for the use of the assumed name in  
14 the certificate of merger. The surviving limited liability company  
15 may also file a certificate of assumed name under subsection (1) or  
16 provide in the certificate of merger for the use of an assumed name  
17 of a merging entity not transferred ~~pursuant to~~ **UNDER** subsection  
18 (6). A provision in the certificate of merger pursuant to this  
19 subsection is treated as a new certificate of assumed name.

20 (8) **A LIMITED PARTNERSHIP CONVERTING TO A LIMITED LIABILITY**  
21 **COMPANY UNDER SECTION 707 OR A CORPORATION CONVERTING TO A LIMITED**  
22 **LIABILITY COMPANY UNDER SECTION 708 MAY TRANSFER TO THAT LIMITED**  
23 **LIABILITY COMPANY ANY UNEXPIRED CERTIFICATE OF ASSUMED NAME THAT**  
24 **THE LIMITED PARTNERSHIP OR CORPORATION HAD FILED WITH THE**  
25 **ADMINISTRATOR BEFORE THE CONVERSION BY PROVIDING FOR THE TRANSFER**  
26 **OF THE ASSUMED NAME IN THE CERTIFICATE OF CONVERSION UNDER SECTION**  
27 **707 OR 708. A CERTIFICATE OF ASSUMED NAME TRANSFERRED UNDER THIS**

1 SUBSECTION CONTINUES FOR THE REMAINDER OF THE ORIGINAL EFFECTIVE  
2 PERIOD OF THE CERTIFICATE OF ASSUMED NAME. AFTER CONVERSION, THE  
3 LIMITED LIABILITY COMPANY MAY TERMINATE OR EXTEND THE CERTIFICATE  
4 UNDER SUBSECTION (2).

5 (9) IF A LIMITED PARTNERSHIP CONVERTS TO A LIMITED LIABILITY  
6 COMPANY UNDER SECTION 707 OR A CORPORATION CONVERTS TO A LIMITED  
7 LIABILITY COMPANY UNDER SECTION 708, THE LIMITED LIABILITY COMPANY  
8 MAY TRANSACT BUSINESS IN THE NAME OF THE LIMITED PARTNERSHIP OR  
9 CORPORATION AS AN ASSUMED NAME, OR UNDER ANY ASSUMED NAME OF THE  
10 LIMITED PARTNERSHIP OR CORPORATION NOT TRANSFERRED UNDER SUBSECTION  
11 (8), EITHER BY FILING A NEW CERTIFICATE OF ASSUMED NAME UNDER  
12 SUBSECTION (1) OR BY PROVIDING FOR THE USE OF THE ASSUMED NAME IN  
13 THE CERTIFICATE OF CONVERSION. A PROVISION IN A CERTIFICATE OF  
14 CONVERSION FOR USE OF AN ASSUMED NAME DESCRIBED IN THIS SUBSECTION  
15 IS TREATED AS A NEW CERTIFICATE OF ASSUMED NAME.

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

21 (a) ~~Prior to~~ **BEFORE** July 1, 1997, the members of a limited  
22 liability company shall vote in proportion to their shares of  
23 distributions of the company, as determined in accordance with  
24 section 303.

25 (b) On and after July 1, 1997, except as otherwise provided in  
26 subsection (2), each member of a limited liability company has 1  
27 vote. For purposes of this subdivision, a membership interest held

1 by 2 or more persons, whether as fiduciaries, members of a  
2 partnership, tenants in common, joint tenants, tenants by the  
3 entirety, or otherwise, is treated as held by 1 member.

4 (2) If a limited liability company in existence before July 1,  
5 1997 allocated votes on the basis of subsection (1)(a), the company  
6 shall continue to allocate votes pursuant to subsection (1)(a)  
7 until the allocation is changed by an operating agreement.

8 (3) If a membership interest that has voting rights is held by  
9 2 or more persons, whether as fiduciaries, members of a  
10 partnership, tenants in common, joint tenants, tenants by the  
11 entirety, or otherwise, the voting of the interest shall be in  
12 accordance with the instrument or order appointing them or creating  
13 the relationship if a copy of that instrument or order is furnished  
14 to the limited liability company. If an instrument or order is not  
15 furnished to the limited liability company, 1 of the following  
16 applies to the voting of that membership interest:

17 (a) If an operating agreement applies to the voting of the  
18 membership interest, the vote shall be in accordance with that  
19 operating agreement.

20 (b) If an operating agreement does not apply to the voting of  
21 the membership interest and only 1 of the persons who hold the  
22 membership interest votes, that person's vote determines the voting  
23 of the membership interest.

24 (c) If an operating agreement does not apply to the voting of  
25 the membership interest and 2 or more of the persons who hold the  
26 membership interest vote, the vote of a majority determines the  
27 voting of the membership interest, and if there is no majority, the

1 voting of the membership interest is divided among those voting.

2 (4) Only members of a limited liability company, and not its  
3 managers, may authorize the following actions:

4 (a) The dissolution of the limited liability company ~~pursuant~~  
5 ~~to~~ **UNDER** section 801(c).

6 (b) Merger of the limited liability company ~~pursuant to~~  
7 **UNDER** sections 701 ~~through~~ **TO** 706.

8 **(C) CONVERSION OF A LIMITED LIABILITY COMPANY TO A CORPORATION**  
9 **UNDER SECTION 745 OF THE BUSINESS CORPORATION ACT, 1972 PA 284, MCL**  
10 **450.1745.**

11 **(D)** ~~—(e)—~~ An amendment to the articles of organization.

12 (5) Unless authorized in advance by an operating agreement, a  
13 transaction with the limited liability company or a transaction  
14 connected with the conduct or winding up of the limited liability  
15 company in which a manager of the limited liability company has a  
16 direct or indirect interest or a manager's personal use of property  
17 of the limited liability company may be authorized or ratified only  
18 by a vote of the disinterested members entitled to vote. The  
19 manager shall disclose all material facts regarding the transaction  
20 and the manager's interest in the transaction or all material facts  
21 about the manager's personal use of the limited liability company's  
22 property before the members vote on that transaction or use.

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

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

4 (8) Unless the vote of a greater percentage of the voting  
5 interest of members is required by this act, the articles of  
6 organization, or an operating agreement, a vote of a majority in  
7 interest of the members entitled to vote is required to approve any  
8 matter submitted for a vote by the members.

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

12 (2) The **PARTNERS MUST APPROVE THE** terms and conditions of a  
13 conversion under this section ~~shall be approved by the partners~~  
14 **AND THE INITIAL OPERATING AGREEMENT OF THE LIMITED LIABILITY**  
15 **COMPANY** in the manner provided in the partnership agreement for  
16 amendments to the partnership agreement or, if no provision for  
17 amendments to the partnership agreement is made in the partnership  
18 agreement, by all of the partners. **IF A CONVERSION IS APPROVED BY**  
19 **LESS THAN ALL OF THE PARTNERS PURSUANT TO THE PARTNERSHIP**  
20 **AGREEMENT, THE CONVERSION AND THE OPERATING AGREEMENT MAY NOT**  
21 **ADVERSELY AFFECT THE RIGHTS AND OBLIGATIONS OF A DISSENTING**  
22 **PARTNER.**

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

26 (a) Articles of organization that comply with section 203 **AND**  
27 **WITH SECTION 903 IF THE LIMITED LIABILITY COMPANY WILL RENDER**

1 **PROFESSIONAL SERVICES.**

2 (b) A certificate of conversion ~~—, stating the~~ **THAT CONTAINS**  
3 **ALL OF THE FOLLOWING:**

4 (i) **THE** name of the partnership or limited partnership and the  
5 date it was formed. ~~In the case of a limited partnership, the~~  
6 ~~certificate of conversion shall include a statement that the~~  
7 ~~certificate of limited partnership is canceled as of the effective~~  
8 ~~date of the articles of organization.~~

9 (ii) **A STATEMENT SPECIFYING EACH ASSUMED NAME OF THE CONVERTING**  
10 **PARTNERSHIP TRANSFERRED TO THE LIMITED LIABILITY COMPANY UNDER**  
11 **SECTION 206(8). THE CERTIFICATE MAY INCLUDE A STATEMENT OF THE NAME**  
12 **OR ASSUMED NAMES OF THE CONVERTING PARTNERSHIP THAT ARE TO BE**  
13 **TREATED AS NEWLY FILED ASSUMED NAMES UNDER SECTION 206(9).**

14 (iii) **THE EFFECTIVE DATE OF THE CONVERSION IF LATER THAN THE**  
15 **DATE THE CERTIFICATE OF CONVERSION IS FILED.**

16 (4) If a **PARTNERSHIP OR** limited partnership converts to a  
17 limited liability company under this section, the ~~certificate of~~  
18 ~~limited partnership is canceled as of the effective date of the~~  
19 ~~articles of organization~~ **PARTNERSHIP AGREEMENT TERMINATES ON THE**  
20 **EFFECTIVE DATE OF THE CONVERSION.**

21 (5) If a conversion under this section takes effect, the  
22 limited liability company is considered the same entity that  
23 existed before the conversion **AND THE CONVERSION IS NOT A**  
24 **DISSOLUTION OF THE PARTNERSHIP.** All property and rights of the  
25 converting partnership or limited partnership remain vested in the  
26 converted limited liability company. All liabilities of the  
27 converting partnership or limited partnership continue as

1 liabilities of the converted limited liability company. An action  
2 or proceeding pending against the converting partnership or limited  
3 partnership may be continued as if the conversion under this  
4 section had not occurred. The liability, if any, of a general  
5 partner of the converting partnership or limited partnership for  
6 acts or omissions that occurred before ~~a~~ **THE** conversion ~~under~~  
7 ~~this section~~ is not affected by ~~a~~ **THE** conversion. ~~under this~~  
8 ~~section.~~

9           **SEC. 708. (1) A DOMESTIC LIMITED LIABILITY COMPANY MAY CONVERT**  
10 **TO A CORPORATION UNDER SECTION 745 OF THE BUSINESS CORPORATION ACT,**  
11 **1972 PA 284, MCL 450.1745. A DOMESTIC CORPORATION MAY CONVERT TO A**  
12 **LIMITED LIABILITY COMPANY UNDER THIS SECTION.**

13           **(2) A DOMESTIC CORPORATION CONVERTING TO A LIMITED LIABILITY**  
14 **COMPANY SHALL PREPARE A PLAN OF CONVERSION THAT CONTAINS ALL OF THE**  
15 **FOLLOWING:**

16           **(A) THE NAME OF THE CORPORATION, THE NAME OF THE LIMITED**  
17 **LIABILITY COMPANY TO WHICH THE CORPORATION IS CONVERTING, AND THE**  
18 **STREET ADDRESS OF THE LIMITED LIABILITY COMPANY'S PRINCIPAL PLACE**  
19 **OF BUSINESS.**

20           **(B) THE DESIGNATION AND NUMBER OF THE CORPORATION'S**  
21 **OUTSTANDING SHARES OF EACH CLASS AND SERIES, SPECIFYING THE CLASSES**  
22 **AND SERIES ENTITLED TO VOTE, EACH CLASS AND SERIES ENTITLED TO VOTE**  
23 **AS A CLASS, AND, IF THE NUMBER OF SHARES IS SUBJECT TO CHANGE**  
24 **BEFORE THE EFFECTIVE DATE OF THE CONVERSION, THE MANNER IN WHICH**  
25 **THE CHANGE MAY OCCUR.**

26           **(C) THE MANNER AND BASIS OF CONVERTING THE SHARES OF THE**  
27 **CORPORATION INTO MEMBERSHIP INTERESTS OR OBLIGATIONS OF THE LIMITED**

1 LIABILITY COMPANY, INTO CASH OR OTHER CONSIDERATION, OR INTO ANY  
2 COMBINATION OF MEMBERSHIP INTERESTS, OBLIGATIONS, CASH, OR OTHER  
3 CONSIDERATION AND ANY OTHER TERMS AND CONDITIONS OF THE CONVERSION.

4 (D) A STATEMENT OF WHETHER MANAGERS OR MEMBERS WILL MANAGE THE  
5 LIMITED LIABILITY COMPANY.

6 (E) ANY OTHER PROVISION THAT THE BOARD OF DIRECTORS OF THE  
7 CORPORATION CONSIDERS NECESSARY OR DESIRABLE.

8 (3) FOR A CONVERSION TO OCCUR, THE BOARD OF DIRECTORS OF THE  
9 CORPORATION MUST ADOPT A PLAN OF CONVERSION. IF ADOPTED, THE BOARD  
10 OF DIRECTORS SHALL SUBMIT THE PLAN OF CONVERSION FOR APPROVAL AT A  
11 MEETING OF THE SHAREHOLDERS UNDER THE PROCEDURES APPLICABLE TO A  
12 MERGER UNDER SECTION 703A(2) OF THE BUSINESS CORPORATION ACT, 1972  
13 PA 284, MCL 450.1703A, INCLUDING, BUT NOT LIMITED TO, THE  
14 PROCEDURES PERTAINING TO DISSENTERS' RIGHTS UNDER THAT ACT IF ANY  
15 SHAREHOLDERS HAVE THE RIGHT TO DISSENT UNDER SECTION 762.

16 (4) IF THE CONVERSION IS APPROVED, THE CORPORATION SHALL FILE  
17 BOTH OF THE FOLLOWING:

18 (A) ARTICLES OF ORGANIZATION THAT COMPLY WITH SECTION 203 AND  
19 WITH SECTION 903 IF THE LIMITED LIABILITY COMPANY WILL RENDER  
20 PROFESSIONAL SERVICES.

21 (B) A CERTIFICATE OF CONVERSION THAT CONTAINS ALL OF THE  
22 FOLLOWING:

23 (i) THE NAME OF THE CORPORATION AND THE DATE IT WAS  
24 INCORPORATED.

25 (ii) A STATEMENT THAT THE PLAN OF CONVERSION WAS APPROVED IN  
26 ACCORDANCE WITH SUBSECTION (3).

27 (iii) A STATEMENT SPECIFYING EACH ASSUMED NAME OF THE

1 CORPORATION TRANSFERRED TO THE LIMITED LIABILITY COMPANY UNDER  
2 SECTION 206(8). THE CERTIFICATE MAY INCLUDE A STATEMENT OF THE NAME  
3 OR ASSUMED NAMES OF THE CORPORATION THAT ARE TO BE TREATED AS NEWLY  
4 FILED ASSUMED NAMES OF THE LIMITED LIABILITY COMPANY UNDER SECTION  
5 206(9).

6 (iv) THE EFFECTIVE DATE OF THE CONVERSION IF LATER THAN THE  
7 DATE THE CERTIFICATE OF CONVERSION IS FILED.

8 (5) IF A CONVERSION UNDER THIS SECTION TAKES EFFECT, THE  
9 LIMITED LIABILITY COMPANY IS CONSIDERED THE SAME ENTITY THAT  
10 EXISTED BEFORE THE CONVERSION AND THE CONVERSION IS NOT A  
11 DISSOLUTION OF THE CORPORATION. ALL PROPERTY AND RIGHTS OF THE  
12 CORPORATION REMAIN VESTED IN THE LIMITED LIABILITY COMPANY. ALL  
13 LIABILITIES OF THE CORPORATION REMAIN AS LIABILITIES OF THE LIMITED  
14 LIABILITY COMPANY. AN ACTION OR PROCEEDING PENDING AGAINST THE  
15 CORPORATION MAY BE CONTINUED AS IF THE CONVERSION UNDER THIS  
16 SECTION HAD NOT OCCURRED.

17 Enacting section 1. This amendatory act does not take effect  
18 unless Senate Bill No. 114

19 of the 93rd Legislature is enacted into law.