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STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010

Introduced by Senator Hunter

ENROLLED SENATE BILL No. 1455

AN ACT to amend 1993 PA 23, entitled "An act to provide for the organization and regulation of limited liability companies; to prescribe their duties, rights, powers, immunities, and liabilities; to prescribe the powers and duties of certain state departments and agencies; and to provide for penalties and remedies," by amending sections 102, 103, 206, 211, 302, 304, 308, 401, 403, 404, 406, 501, 502, 503, 505, 506, 507, 510, 514, 515, 604, 702, 801, 804, and 805 (MCL 450.4102, 450.4103, 450.4206, 450.4211, 450.4302, 450.4304, 450.4308, 450.4401, 450.4403, 450.4404, 450.4406, 450.4501, 450.4502, 450.4503, 450.4505, 450.4506, 450.4507, 450.4510, 450.4514, 450.4515, 450.4604, 450.4702, 450.4801, 450.4804, and 450.4805), section 102 as amended by 2008 PA 566, sections 103, 304, 403, 406, 501, 502, 503, 506, 515, 801, and 804 as amended by 2002 PA 686, section 206 as amended by 2008 PA 567, and sections 302, 308, 401, 404, and 702 as amended by 1997 PA 52, and by adding sections 216, 409, 708, and 709; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

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

(2) As used in this act:

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

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

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

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

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

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

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

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

(f) "Department" means the department of energy, labor, and economic growth.

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

(h) "Electronic transmission" or "electronically transmitted" means any form of communication that meets all of the following:

(*i*) It does not directly involve the physical transmission of paper.

(*ii*) It creates a record that may be retained and retrieved by the recipient.

(*iii*) It may be directly reproduced in paper form by the recipient through an automated process.

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

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

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

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

(m) "Low-profit limited liability company" means a limited liability company that has included in its articles of organization a purpose that meets, and that at all times conducts its activities to meet, all of the following requirements:

(*i*) The limited liability company significantly furthers the accomplishment of 1 or more charitable or educational purposes described in section 170(c)(2)(B) of the internal revenue code, 26 USC 170, and would not have been formed except to accomplish those charitable or educational purposes.

(*ii*) The production of income or appreciation of property is not a significant purpose of the limited liability company. However, in the absence of other factors, the fact that a limited liability company produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

(*iii*) The purposes of the limited liability company do not include accomplishing 1 or more political or legislative purposes described in section 170(c)(2)(D) of the internal revenue code, 26 USC 170.

(n) "Majority in interest" means a majority of votes as allocated by an operating agreement, or by the statute in the absence of an allocation by operating agreement, and held by members entitled to vote on a matter submitted for a vote by members.

(o) "Manager" or "managers" means a person or persons designated to manage the limited liability company pursuant to a provision in the articles of organization stating that the business is to be managed by or under the authority of managers.

(p) "Member" means a person who has been admitted to a limited liability company as provided in section 501, or, in the case of a foreign limited liability company, a person that is a member of the foreign limited liability company in accordance with the laws under which the foreign limited liability company is organized.

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

(r) "Operating agreement" means a written agreement by the member of a limited liability company that has 1 member, or between all of the members of a limited liability company that has more than 1 member, pertaining to the affairs of the limited liability company and the conduct of its business. The term includes any provision in the articles of organization pertaining to the affairs of the limited liability company and the conduct of its business.

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

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

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

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

Sec. 103. (1) One or more persons organizing a limited liability company shall sign the original articles of organization as organizers. The articles shall state the names of the organizers beneath or opposite their signatures.

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

(3) A person may sign a document under this section as an authorized agent of a limited liability company. If the authorization is pursuant to a power of attorney, the power of attorney authorizing the signing of the document by the person need not be sworn to, verified, acknowledged, or filed with the administrator. A document signed by a person under this subsection as an authorized agent of a limited liability company shall state the capacity of the person signing the document.

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

(2) A certificate of assumed name is effective, unless terminated by filing a certificate of termination or by the dissolution or withdrawal of the company, for a period expiring on December 31 of the fifth full calendar year following the year in which the certificate of assumed name was filed. The certificate of assumed name may be extended for additional consecutive periods of 5 full calendar years each by filing a similar certificate of assumed name not earlier than 90 days before the expiration of the initial or any subsequent 5-year period.

(3) The administrator shall notify a domestic or foreign limited liability company of the impending expiration of a certificate of assumed name not later than 90 days before the expiration of the initial or any subsequent 5-year period described in subsection (2).

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

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

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

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

(8) A business organization into which a domestic limited liability company has converted under section 708 may use an assumed name of the converting company, if the company has a certificate of assumed name for that assumed name on file with the administrator before the conversion, by providing for the use of the name as an assumed name in the certificate of conversion. The use of an assumed name under this subsection may continue for the remaining effective period of the certificate of assumed name on file before the conversion, and the surviving business organization may terminate or extend the certificate of assumed name in the manner described in subsection (2).

(9) A domestic limited liability company into which a business organization has converted under section 709 may use as an assumed name the name of the business organization converting into that company, or use as an assumed name an assumed name of that business organization, by filing a certificate of assumed name under subsection (2) or by providing for the use of that name or assumed name as an assumed name of the company in the certificate of conversion. A provision in the certificate of conversion under this subsection shall be treated as a new certificate of assumed name.

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 an unauthorized act of that member or manager.

(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. 216. Except as otherwise provided in an operating agreement, a limited liability company may do any of the following:

(a) Indemnify, hold harmless, and defend a member, manager, or other person from and against any and all losses, expenses, claims, and demands sustained by that person, except that the company may not indemnify a person for conduct described in section 407(a), (b), or (c).

(b) Purchase and maintain insurance on behalf of a member, manager, or other person against any liability or expense asserted against or incurred by that person, whether or not the company may indemnify that person under subdivision (a).

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

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

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

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

Sec. 304. (1) Except as otherwise provided in this act and subject to subsection (2), a member is entitled to receive a distribution from a limited liability company before the withdrawal of the member from the limited liability company or 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.

(2) If an operating agreement does not address a member's right to receive a distribution before the withdrawal of the member from the limited liability company or before the dissolution and winding up of the limited liability company, the unanimous approval of the members is required for any distribution to that member.

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

(2) For purposes of liability under subsection (1), a member or manager entitled to participate in a decision to make a distribution is presumed to have assented to a distribution unless the member or manager does 1 of the following:

(a) Votes against the distribution.

(b) Files a written dissent with the limited liability company within a reasonable time after the member or manager has knowledge of the decision.

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

(4) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution from each other member or manager who could be held liable under subsection (1) or (3). The contribution of a person held liable under both subsections (1) and (3) shall not exceed the person's liability under either subsection (1) or (3), whichever is greater.

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

Sec. 401. Unless the articles of organization state that the business of the limited liability company is to be managed by 1 or more managers, the business of the limited liability company shall be managed by the members, subject to any provision in an operating agreement restricting or enlarging the management rights and duties of any member or group of members. If management is vested in the members, both of the following apply:

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

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

Sec. 403. (1) A vote of a majority in interest of the members entitled to vote in accordance with section 502(1) is required to select 1 or more managers to fill initial positions or vacancies.

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

(3) The members may remove a manager for cause only at a meeting called expressly for that purpose, and the manager shall have reasonable advance notice of the allegations against that manager and an opportunity to be heard at the meeting.

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

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

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

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

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

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

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

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

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

Sec. 406. A manager is an agent of the limited liability company for the purpose of its business, and the act of a manager, including the execution in the limited liability company name of any instrument, that apparently carries on in the usual way the business of the limited liability company of which the manager is a manager binds the limited liability company, unless both of the following apply:

(a) The manager does not have the authority to act for the limited liability company in that particular matter.

(b) The person with whom the manager is dealing has actual knowledge that the manager lacks authority to act or the articles of organization or this act establishes that the manager lacks authority to act.

Sec. 409. (1) Except as otherwise provided in an operating agreement, a transaction in which a manager or agent of a limited liability company is determined to have an interest shall not, because of the interest, be enjoined, be set aside, or give rise to an award of damages or other sanctions, in a proceeding by a member or by or in the right of the company, if the manager or agent interested in the transaction establishes any of the following:

(a) The transaction was fair to the company at the time entered into.

(b) The material facts of the transaction and the manager's or agent's interest were disclosed or known to the managers and the managers authorized, approved, or ratified the transaction.

(c) The material facts of the transaction and the manager's or agent's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.

(2) Except as otherwise provided in the articles of organization or an operating agreement, a transaction is authorized, approved, or ratified for purposes of subsection (1)(b) if it receives the affirmative vote of a majority of the managers that have no interest in the transaction. The presence of, or a vote cast by, a manager with an interest in the transaction does not affect the validity of an action taken under subsection (1)(b).

(3) Except as otherwise provided in the articles of organization or an operating agreement, a transaction is authorized, approved, or ratified for purposes of subsection (1)(c) if it receives a majority of votes cast by the members entitled to vote that do not have an interest in the transaction.

(4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a manager or agent is determined to have an interest. Those claims shall be evaluated under principles of law applicable to a transaction in which a similarly situated person does not have an interest.

Sec. 501. (1) A person may be admitted as a member of a limited liability company in connection with the formation of the limited liability company in any of the following ways:

(a) If an operating agreement includes requirements for admission, by complying with those requirements.

(b) If an operating agreement does not include requirements for admission, if either of the following are met:

(*i*) The person signs the initial operating agreement.

(*ii*) The person's status as a member is reflected in the records, tax filings, or other written statements of the limited liability company.

(c) In any manner established in a written agreement of the members.

(2) A person may be admitted as a member of a limited liability company after the formation of the limited liability company in any of the following ways:

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

(b) If the person is an assignee of a membership interest, as provided in section 506.

(c) If the person is becoming a member of a surviving limited liability company as the result of a merger or conversion approved under this act, as provided in the plan of merger or plan of conversion.

(3) A limited liability company may admit a person as a member that does not make a contribution or incur an obligation to make a contribution to the limited liability company.

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

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

(a) Before July 1, 1997, the members of a limited liability company shall vote in proportion to their shares of distributions of the company, as determined under section 303.

(b) On and after July 1, 1997, except as otherwise provided in subsection (2), each member of a limited liability company has 1 vote. For purposes of this subdivision, a membership interest held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is considered held by 1 member.

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

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

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

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

(c) If an operating agreement does not apply to the voting of the membership interest and 2 or more of the persons that hold the membership interest vote, the vote of a majority determines the voting of the membership interest, and if there is no majority, the voting of the membership interest is divided among those voting.

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

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

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

(c) An amendment to the articles of organization.

(d) Conversion of the limited liability company under section 708.

(5) Except as otherwise provided in the articles of organization or an operating agreement, members have the voting rights provided in section 409 regarding transactions in which a manager or agent has an interest.

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

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

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

Sec. 503. (1) Upon written request of a member, a limited liability company shall send a copy of its most recent annual financial statement and its most recent federal, state, and local income tax returns, and any other returns or filings the limited liability company has submitted or is required to submit to any federal, state, local, or other governmental taxing authority, to the member by mail or electronic transmission.

(2) Upon reasonable request, a member may obtain true and full information regarding the current state of a limited liability company's financial condition.

(3) Upon reasonable written request and during ordinary business hours, a member or the member's designated representative may inspect and copy, at the member's expense, any of the records a limited liability company is required to maintain under section 213, at the location where the records are kept.

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

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

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 a limited liability 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 when the member's entire membership interest is assigned. The assignor is not released from any liability to the company under sections 302 and 308 even if the assignee becomes a member.

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

(2) An assignee that becomes a member of a limited liability company 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, an operating agreement, and this act. An assignee that becomes a member also is liable for any obligations the assignor has to make contributions and to return distributions under sections 302 and 308(3). An assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member unless the liabilities are shown on the financial records of the limited liability company.

Sec. 507. (1) If a court of competent jurisdiction receives an application from any judgment creditor of a member of a limited liability company, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment with interest.

(2) If a limited liability company is served with a charging order and notified of the terms of that order, then to the extent described in the order, the member's judgment creditor described in the order is entitled to receive only any distribution or distributions to which the judgment creditor is entitled with respect to the member's membership interest.

(3) This act does not deprive any member of the benefit of any exemption laws applicable to the member's membership interest.

(4) Unless otherwise provided in an operating agreement or admitted as a member under section 501, a judgment creditor of a member that obtains a charging order does not become a member of the limited liability company, and the member that is the subject of the charging order remains a member of the limited liability company and retains all rights and powers of membership except the right to receive distributions to the extent charged.

(5) A charging order is a lien on the membership interest of the member that is the subject of the charging order. However, a person may not foreclose on that lien or on the membership interest under this act or any other law, and the charging order is not an assignment of the member's membership interest for purposes of section 505(4).

(6) This section provides the exclusive remedy by which a judgment creditor of a member may satisfy a judgment out of the member's membership interest in a limited liability company. A court order to which a member may have been entitled that requires a limited liability company to take an action, provide an accounting, or answer an inquiry is not available to a judgment creditor of that member attempting to satisfy a judgment out of the member's membership interest, and a court may not issue an order to a judgment creditor.

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 that 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 the member complains, or the member's status as a member devolved upon the member by operation of law or pursuant to this act or the terms of an operating agreement from a person that 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 demand was made before the termination of the former member's status as a member.

Sec. 514. If a derivative proceeding is terminated, 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 that member.

Sec. 515. (1) A member of a limited liability company may bring an action in the circuit court of the county in which the limited liability company's principal place of business or registered office is located to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member. If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following:

(a) The dissolution and liquidation of the assets and business of the limited liability company.

(b) The cancellation or alteration of a provision in the articles of organization or in an operating agreement.

(c) The direction, alteration, or prohibition of an act of the limited liability company or its members or managers.

(d) The purchase at fair value of the member's interest in the limited liability company, either by the company or by any members responsible for the wrongful acts.

(e) An award of damages to the limited liability company or to the member. An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued or within 2 years after the member discovers or reasonably should have discovered the cause of action under this section, whichever occurs first.

(2) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other member interests disproportionately as to the affected member. The term does not include conduct or actions that are permitted by the articles of organization, an operating agreement, another agreement to which the member is a party, or a consistently applied written company policy or procedure.

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 include amendments to its articles of organization in restated articles of organization filed under subsection (1). An amendment to the articles of organization of a limited liability company in connection with the integration and restatement of the articles under this section is subject to any other provision of this act that would apply if a certificate of amendment were filed to effect the amendment, including the requirement of member approval.

(3) A limited liability company shall specifically designate restated articles of organization filed under this section 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, all of the former names of the limited liability company if the name has changed, and the date of filing of its original articles of organization. If the restated articles include a further amendment under subsection (2), the articles shall state that the amendment was approved by 1 of the following:

(a) If an operating agreement establishes a vote requirement for amending the articles of organization, by the vote required under the operating agreement.

(b) If subdivision (a) does not apply, by a unanimous vote of all of the members entitled to vote on the amendment.

(4) When its restated articles of organization become effective under 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.

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

(2) If an operating agreement of a constituent company provides for approval of a merger by less than unanimous vote of members entitled to vote and the merger is approved, a member that did not vote in favor of the merger may withdraw from the limited liability company and receive, within a reasonable time, the fair value of the member's interest in the limited liability company, based upon the member's share of distributions as determined under section 303.

Sec. 708. (1) A domestic limited liability company may convert into a business organization if all of the following requirements are satisfied:

(a) The conversion is permitted by the law that will govern the internal affairs of the business organization after conversion and the surviving business organization complies with that law in converting.

(b) Unless subdivision (d) applies, the domestic limited liability company proposing to convert adopts a plan of conversion that includes all of the following:

(*i*) The name of the domestic limited liability company, the name of the business organization into which the domestic limited liability company is converting, the type of business organization into which the domestic limited liability company is converting, identification of the statute that will govern the internal affairs of the surviving business organization, the street address of the surviving business organization, the street address of the domestic limited liability company if different from the street address of the surviving business organization, and the principal place of business of the surviving business organization.

(*ii*) The terms and conditions of the proposed conversion, including the manner and basis of converting the membership interests of the domestic limited liability company into ownership interests or obligations of the surviving business organization, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(*iii*) The terms and conditions of the organizational documents that are to govern the surviving business organization.

(*iv*) Any other provisions with respect to the proposed conversion that the domestic limited liability company considers necessary or desirable.

(c) A vote of the members of a domestic limited liability company is required to adopt a plan of conversion under subdivision (b). A unanimous vote of the members entitled to vote is required to approve a plan of conversion unless the articles of organization or an operating agreement provide otherwise. If the articles of organization or an operating agreement of the domestic limited liability company provide for approval by less than a unanimous vote of members entitled to vote and the conversion is approved, a member that did not vote in favor of the conversion may withdraw from the domestic limited liability company before the conversion and receive, within a reasonable time, the fair value of the member's interest in the domestic limited liability company.

(d) If the domestic limited liability company has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests, subdivisions (b) and (c) do not apply and the organizers of the domestic limited liability company may approve of the conversion of the domestic limited liability company into a business organization by unanimous consent. To effect the conversion, a majority of the organizers must execute and file a certificate of conversion under subdivision (e).

(e) If the plan of conversion is approved under subdivision (c) or the conversion is approved under subdivision (d), the domestic limited liability company files any formation documents required to be filed under the laws governing the internal affairs of the surviving business organization, in the manner prescribed by those laws, and files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(*i*) Unless subdivision (d) applies, all of the information described in subdivision (b)(*i*).

(*ii*) A statement that the members of the domestic limited liability company have adopted the plan of conversion under subdivision (c), or that the organizers of the domestic limited liability company have approved of the conversion under subdivision (d), as applicable.

(*iii*) A statement that the surviving business organization will furnish a copy of the plan of conversion, on request and without cost, to any member of the domestic limited liability company.

(*iv*) A statement specifying each assumed name of the domestic limited liability company that the surviving business organization is authorized to continue to use under section 206(8).

(2) Section 104 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The domestic limited liability company converts into the surviving business organization, and the articles of organization of the domestic limited liability company are canceled. Except as otherwise provided in this section, the surviving business organization is organized under and subject to the organizational laws of the jurisdiction of the surviving business organization as stated in the certificate of conversion.

(b) The surviving business organization has all of the liabilities of the domestic limited liability company. The conversion of the domestic limited liability company into a business organization under this section shall not be considered to affect any obligations or liabilities of the domestic limited liability company incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the domestic limited liability company with respect to matters arising before the conversion.

(c) The title to all real estate and other property and rights owned by the domestic limited liability company remain vested in the surviving business organization without reversion or impairment. The rights, privileges, powers, and interests in property of the domestic limited liability company, as well as the debts, liabilities, and duties of the domestic limited liability company, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving business organization to which the domestic limited liability company has converted for any purpose of the laws of this state.

(d) The surviving business organization may use the name and the assumed names of the domestic limited liability company if the filings required under section 206(8) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A proceeding pending against the domestic limited liability company may be continued as if the conversion had not occurred, or the surviving business organization may be substituted in the proceeding for the domestic limited liability company.

(f) The surviving business organization is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the domestic limited liability company was originally organized.

(g) The membership interests of the domestic limited liability company that were to be converted into ownership interests or obligations of the surviving business organization or into cash or other property are converted.

(h) Unless otherwise provided in a plan of conversion adopted in accordance with this section, the domestic limited liability company is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the domestic limited liability company.

(4) If the surviving business organization of a conversion under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state if it transacts business in this state. The surviving business organization is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, an obligation of the domestic limited liability company, and in a proceeding for the enforcement of a right of a member of the domestic limited liability company that has withdrawn under subsection (1)(c).

(5) As used in this section and section 709, "business organization" and "entity" mean those terms as defined in section 705a.

Sec. 709. (1) A business organization may convert into a domestic limited liability company if all of the following requirements are satisfied:

(a) The conversion is permitted by the law that governs the internal affairs of the business organization, and the business organization complies with that law in converting.

(b) The business organization proposing to convert into a domestic limited liability company adopts a plan of conversion that includes all of the following:

(*i*) The name of the business organization, the type of business organization that is converting, identification of the statute that governs the internal affairs of the business organization, the name of the surviving domestic limited liability company into which the business organization is converting, the street address of the surviving domestic limited liability company, the street address of the business organization if different from the street address of the surviving domestic limited liability company, and the principal place of business of the surviving domestic limited liability company.

(*ii*) The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the business organization into membership interests of the surviving domestic limited liability company, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(*iii*) The terms and conditions of the articles of organization that are to govern the surviving domestic limited liability company.

(*iv*) Any other provisions with respect to the proposed conversion that the business organization considers necessary or desirable.

(c) If a plan of conversion is adopted by the business organization under subdivision (b), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that business organization.

(d) If the plan of conversion is approved under subdivisions (b) and (c), the business organization executes as provided in section 103 and files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(*i*) All of the information described in subdivision (b)(*i*) and (*ii*).

(*ii*) A statement that the business organization has obtained approval of the plan of conversion under subdivision (c).

(*iii*) A statement that the surviving domestic limited liability company will furnish a copy of the plan of conversion, on request and without cost, to any owner of the business organization.

(*iv*) A statement specifying each assumed name of the business organization that the surviving domestic limited liability company is authorized to continue to use under section 206(9).

(*v*) Articles of organization for the surviving domestic limited liability company that meet all of the requirements of this act applicable to articles of organization.

(2) Section 104 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The business organization converts into the surviving domestic limited liability company. Except as otherwise provided in this section, the surviving domestic limited liability company is organized under and subject to this act.

(b) The surviving domestic limited liability company has all of the liabilities of the business organization. The conversion of the business organization into a domestic limited liability company under this section shall not be considered to affect any obligations or liabilities of the business organization incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the business organization with respect to matters arising before the conversion.

(c) The title to all real estate and other property and rights owned by the business organization remains vested in the surviving domestic limited liability company without reversion or impairment. The rights, privileges, powers, and

interests in property of the business organization, as well as the debts, liabilities, and duties of the business organization, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving domestic limited liability company to which the business organization has converted for any purpose of the laws of this state.

(d) The surviving domestic limited liability company may use the name and the assumed names of the business organization if the filings required under section 206(9) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A proceeding pending against the business organization may be continued as if the conversion had not occurred, or the surviving domestic limited liability company may be substituted in the proceeding for the business organization.

(f) The surviving domestic limited liability company is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the business organization was originally organized.

(g) The ownership interests of the business organization that were to be converted into membership interests or obligations of the surviving domestic limited liability company or into cash or other property are converted.

(h) Unless otherwise provided in a plan of conversion adopted in accordance with this section, the business organization is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the business organization.

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

(a) Automatically, if a time specified in the articles of organization is reached.

(b) If a vote of the members or other event specified in the articles of organization or in an operating agreement takes place.

(c) The members entitled to vote unanimously vote for dissolution.

(d) Automatically, if a decree of judicial dissolution is entered.

(e) A majority of the organizers of the limited liability company vote for dissolution, if the limited liability company has not commenced business; has not issued any membership interests; has no debts or other liabilities; and has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests.

Sec. 804. (1) When it begins winding up its affairs, a limited liability company that dissolves under section 801(b) or (c) shall execute a certificate of dissolution as provided in section 103 and file the certificate with the administrator. The certificate of dissolution shall contain 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.

(2) When it begins winding up its affairs, a limited liability company that dissolves under section 801(e) shall execute a certificate of dissolution as provided in section 103 and file the certificate with the administrator. The certificate of dissolution shall contain all of the following:

(a) The name of the limited liability company.

(b) A statement that includes all of the following:

(*i*) That the limited liability company has not commenced business, has not issued any membership interests, and has no debts or other liabilities.

(*ii*) That the limited liability company has not received any payments, or has returned any payments it has received after deducting any amount disbursed for payment of expenses, for subscriptions for its membership interests.

(*iii*) That a majority of the organizers of the limited liability company have approved the dissolution.

Sec. 805. (1) Except as otherwise provided in the articles of organization, an operating agreement, or this section, the members or managers that 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 or legal representative or assignee of a member.

(2) The members or managers that are winding up a 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 not be held to a greater standard of conduct than that described in section 404, and are not subject to any greater liabilities than would apply in the absence of dissolution.

(3) A dissolved 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 a limited liability company before its dissolution does not abate because of the dissolution.

Enacting section 1. Section 408 of the Michigan limited liability company act, 1993 PA 23, MCL 450.4408, is repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved .....

.....

Governor