

MICHIGAN LIMITED LIABILITY COMPANY ACT (EXCERPT)

Act 23 of 1993

ARTICLE 4

450.4401 Management vested in members.

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.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2010, Act 290, Imd. Eff. Dec. 16, 2010.

450.4402 Managers; delegation; qualifications; number; notice of delegation.

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

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

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

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

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4403 Managers; selection; vote; removal; notice.

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.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002;—Am. 2010, Act 290, Imd. Eff. Dec. 16, 2010.

450.4404 Managers; duties; action for failure to perform duties.

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.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2010, Act 290, Imd. Eff. Dec. 16, 2010.

450.4405 Managers; voting requirements.

Sec. 405. (1) Except as otherwise provided in the articles of organization or an operating agreement, voting by managers shall be as provided in this section.

(2) If management of a limited liability company is delegated to managers under section 402 and the limited liability company has more than 1 manager, each manager has 1 vote and the vote of a majority of all managers is required to decide or resolve any difference on any matter connected with carrying on the business of the limited liability company that is within the scope of the managers' authority.

(3) If management of a limited liability company remains in the members, section 502 applies to voting by the members.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4406 Manager as agent.

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.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002;—Am. 2010, Act 290, Imd. Eff. Dec. 16, 2010.

450.4407 Managers; eliminating or limiting liability; exceptions.

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

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

(b) Liability under section 308.

(c) A knowing violation of law.

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

History: 1993, Act 23, Eff. June 1, 1993.

450.4408 Repealed. 2010, Act 290, Imd. Eff. Dec. 16, 2010.

Compiler's note: The repealed section pertained to indemnification of manager against losses, expenses, claims, and demands for alleged acts or omissions.

450.4409 Manager or agent with interest in company; effect; majority vote by members with no interest in transaction; claims.

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.

History: Add. 2010, Act 290, Imd. Eff. Dec. 16, 2010.