

MICHIGAN LIMITED LIABILITY COMPANY ACT (EXCERPT)

Act 23 of 1993

ARTICLE 5

450.4501 Members; admission; liability for acts, debts, or obligations.

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.

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.

450.4502 Members; voting rights.

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.

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.

450.4503 Members; obtaining certain financial statements and tax returns; inspecting and copying records; obtaining other information; formal accounting of company's affairs.

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.

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.

450.4504 Membership interest as personal property.

Sec. 504. (1) A membership interest is personal property and may be held in any manner in which personal property may be held. A husband and wife may hold a membership interest in joint tenancy in the same manner and subject to the same restrictions, consequences, and conditions that apply to the ownership of real estate held jointly by a husband and wife under the laws of this state, with full right of ownership by survivorship in case of the death of either.

(2) A member has no interest in specific limited liability company property.

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

450.4505 Membership interest; assignment; liability of assignee; assignor as member; liability of assignor not released.

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.

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

450.4506 Assignee of membership interest; conditions for membership; rights and powers; liability for obligations of assignor.

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.

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.

450.4507 Charging membership interest with payment of judgment; rights of judgment creditor; rights and powers of member; charging order as lien on membership interest; section as exclusive remedy.

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.

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

450.4508 Encumbrance against membership interest; effect.

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

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

450.4509 Withdrawal of member; distribution; expulsion.

Sec. 509. (1) A member may withdraw from a limited liability company only as provided in an operating

agreement. A member withdrawing pursuant to an operating agreement may become entitled to a withdrawal distribution as described in section 305.

(2) An operating agreement may provide for the expulsion of a member or for other events the occurrence of which will result in a person ceasing to be a member of the limited liability company.

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

450.4510 Commencement and maintenance of civil suit by company; conditions.

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.

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

450.4511 Investigation of allegations; stay of derivative proceeding.

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

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

450.4512 Dismissal of derivative proceeding; findings; burden of proof; determination; "disinterested" defined.

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

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

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

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

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

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

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

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

450.4513 Discontinued or settled derivative proceeding; court approval required; notice;

expense.

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

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

450.4514 Termination of derivative proceeding; court order.

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.

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

450.4515 Action in circuit court; grounds; order or grant of relief; "willfully unfair and oppressive conduct" defined.

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.

History: Add. 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.