

Businesses; limited liability; conversion of corporations and limited partnerships into limited liability companies; allow.

BUSINESSES: Limited liability; BUSINESSES: Business corporations; BUSINESSES: Partnerships

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

8 (2) ~~The certificate of assumed name is effective, unless~~
9 UNLESS terminated by filing a certificate of termination or by

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

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

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

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

23 (6) A limited liability company participating in a merger,
24 or any other entity participating in a merger under section 705a,
25 may transfer to the survivor the use of an assumed name for which
26 a certificate of assumed name is on file with the administrator
27 prior to the merger, if the transfer of the assumed name is noted

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

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

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

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

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

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

21 (a) ~~Prior to the effective date of the amendatory act that~~
22 ~~added subsection (2)~~ BEFORE JULY 1, 1997, the members of a
23 limited liability company shall vote in proportion to their
24 shares of distributions of the company, as determined in accord-
25 ance with section 303.

26 (b) On and after ~~the effective date of the amendatory act~~
27 ~~that added subsection (2)~~ JULY 1, 1997, except as otherwise

1 provided in subsection (2), each member of a limited liability
2 company shall have 1 vote.

3 (2) If a limited liability company in existence before ~~the~~
4 ~~effective date of the amendatory act that added this subsection~~
5 JULY 1, 1997 allocated votes on the basis of subsection (1)(a),
6 the company shall continue to allocate votes ~~pursuant to~~ UNDER
7 subsection (1)(a) until the allocation is changed by an operating
8 agreement.

9 (3) The following actions may be authorized only by members
10 of a limited liability company, and not by the managers:

11 (a) The dissolution of the limited liability company
12 ~~pursuant to~~ UNDER section 801(c).

13 (b) Merger of the limited liability company ~~pursuant to~~
14 UNDER sections 701 ~~through~~ TO 706.

15 (C) CONVERSION OF THE LIMITED LIABILITY COMPANY TO A CORPO-
16 RATION UNDER SECTION 745 OF THE BUSINESS CORPORATION ACT, 1972 PA
17 284, MCL 450.1745.

18 (D) ~~(c)~~ An amendment to the articles of organization.

19 (4) Unless authorized in advance by an operating agreement,
20 a transaction with the limited liability company or a transaction
21 connected with the conduct or winding up of the limited liability
22 company in which a manager of the limited liability company has a
23 direct or indirect interest or a manager's personal use of prop-
24 erty of the limited liability company may be authorized or rati-
25 fied only by a vote of the members of the limited liability
26 company. The manager shall disclose all material facts regarding
27 the transaction and the manager's interest in the transaction or

1 all material facts about the manager's personal use of the
2 limited liability company's property before the members vote on
3 that transaction or use.

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

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

12 (7) Unless a greater vote is required by this act, by the
13 articles of organization, or by an operating agreement, a vote of
14 a majority of all members entitled to vote is required to approve
15 any matter submitted for a vote by the members. A vote of a
16 majority of all disinterested members entitled to vote is
17 required to approve an action described in subsection (4).

18 Sec. 707. (1) A domestic partnership or domestic limited
19 partnership may convert to a limited liability company in accord-
20 ance with this section.

21 (2) The PARTNERS MUST APPROVE THE terms and conditions of a
22 conversion under this section ~~shall be approved by the partners~~
23 AND THE INITIAL OPERATING AGREEMENT OF THE LIMITED LIABILITY
24 COMPANY in the manner provided in the partnership agreement for
25 amendments to the partnership agreement or, if no provision for
26 amendments to the partnership agreement is made in the
27 partnership agreement, by all of the partners. IF A CONVERSION

1 IS APPROVED BY LESS THAN ALL OF THE PARTNERS PURSUANT TO THE
2 PARTNERSHIP AGREEMENT, THE CONVERSION AND THE OPERATING AGREEMENT
3 MAY NOT ADVERSELY AFFECT THE RIGHTS AND OBLIGATIONS OF A DISSENT-
4 ING PARTNER.

5 (3) If a conversion under this section is approved, the con-
6 verting partnership or limited partnership shall file both of the
7 following:

8 (a) Articles of organization that comply with section 203,
9 AND WITH SECTION 903 IF THE LIMITED LIABILITY COMPANY WILL RENDER
10 PROFESSIONAL SERVICES.

11 (b) A certificate of conversion ~~, stating the~~ THAT CON-
12 TAINS ALL OF THE FOLLOWING:

13 (i) THE name of the partnership or limited partnership and
14 the date it was formed. ~~In the case of a limited partnership,~~
15 ~~the certificate of conversion shall include a statement that the~~
16 ~~certificate of limited partnership is canceled as of the effec-~~
17 ~~tive date of the articles of organization.~~

18 (ii) A STATEMENT SPECIFYING EACH ASSUMED NAME OF THE CON-
19 VERTING PARTNERSHIP TRANSFERRED TO THE LIMITED LIABILITY COMPANY
20 UNDER SECTION 206(8). THE CERTIFICATE MAY INCLUDE A STATEMENT OF
21 THE NAME OR ASSUMED NAMES OF THE CONVERTING PARTNERSHIP THAT ARE
22 TO BE TREATED AS NEWLY FILED ASSUMED NAMES UNDER SECTION 206(9).

23 (iii) THE EFFECTIVE DATE OF THE CONVERSION IF LATER THAN THE
24 DATE THE CERTIFICATE OF CONVERSION IS FILED.

25 (4) If a PARTNERSHIP OR limited partnership converts to a
26 limited liability company under this section, the ~~certificate of~~
27 ~~limited partnership is canceled as of the effective date of the~~

1 ~~articles of organization~~ PARTNERSHIP AGREEMENT TERMINATES ON THE
2 EFFECTIVE DATE OF THE CONVERSION.

3 (5) If a conversion under this section takes effect, the
4 limited liability company is considered the same entity that
5 existed before the conversion AND THE CONVERSION IS NOT A DISSO-
6 LUTION OF THE PARTNERSHIP. All property and rights of the con-
7 verting partnership or limited partnership remain vested in the
8 converted limited liability company. All liabilities of the con-
9 verting partnership or limited partnership continue as liabili-
10 ties of the converted limited liability company. An action or
11 proceeding pending against the converting partnership or limited
12 partnership may be continued as if the conversion under this sec-
13 tion had not occurred. The liability, if any, of a general part-
14 ner of the converting partnership or limited partnership for acts
15 or omissions that occurred before ~~a~~ THE conversion ~~under this~~
16 ~~section~~ is not affected by ~~a~~ THE conversion. ~~under this~~
17 ~~section.~~

18 SEC. 708. (1) A DOMESTIC LIMITED LIABILITY COMPANY MAY CON-
19 VERT TO A CORPORATION UNDER SECTION 745 OF THE BUSINESS CORPORA-
20 TION ACT, 1972 PA 284, MCL 450.1745. A DOMESTIC CORPORATION MAY
21 CONVERT TO A LIMITED LIABILITY COMPANY UNDER THIS SECTION.

22 (2) A DOMESTIC CORPORATION CONVERTING TO A LIMITED LIABILITY
23 COMPANY SHALL PREPARE A PLAN OF CONVERSION THAT CONTAINS ALL OF
24 THE FOLLOWING:

25 (A) THE NAME OF THE CORPORATION, THE NAME OF THE LIMITED
26 LIABILITY COMPANY TO WHICH THE CORPORATION IS CONVERTING, AND THE

1 STREET ADDRESS OF THE LIMITED LIABILITY COMPANY'S PRINCIPAL PLACE
2 OF BUSINESS.

3 (B) THE DESIGNATION AND NUMBER OF THE CORPORATION'S OUT-
4 STANDING SHARES OF EACH CLASS AND SERIES, SPECIFYING THE CLASSES
5 AND SERIES ENTITLED TO VOTE, EACH CLASS AND SERIES ENTITLED TO
6 VOTE AS A CLASS, AND, IF THE NUMBER OF SHARES IS SUBJECT TO
7 CHANGE BEFORE THE EFFECTIVE DATE OF THE CONVERSION, THE MANNER IN
8 WHICH THE CHANGE MAY OCCUR.

9 (C) THE MANNER AND BASIS OF CONVERTING THE SHARES OF THE
10 CORPORATION INTO MEMBERSHIP INTERESTS OR OBLIGATIONS OF THE
11 LIMITED LIABILITY COMPANY, INTO CASH OR OTHER CONSIDERATION, OR
12 INTO ANY COMBINATION OF MEMBERSHIP INTERESTS, OBLIGATIONS, CASH,
13 OR OTHER CONSIDERATION AND ANY OTHER TERMS AND CONDITIONS OF THE
14 CONVERSION.

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

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

19 (3) FOR A CONVERSION TO OCCUR, THE BOARD OF DIRECTORS OF THE
20 CORPORATION MUST ADOPT A PLAN OF CONVERSION. IF ADOPTED, THE
21 BOARD OF DIRECTORS SHALL SUBMIT THE PLAN OF CONVERSION FOR
22 APPROVAL AT A MEETING OF THE SHAREHOLDERS UNDER THE PROCEDURES
23 APPLICABLE TO A MERGER UNDER SECTION 703A(2) OF THE BUSINESS COR-
24 PORATION ACT, 1972 PA 284, MCL 450.1703A, INCLUDING, BUT NOT
25 LIMITED TO, THE PROCEDURES PERTAINING TO DISSENTERS' RIGHTS UNDER
26 THAT ACT IF ANY SHAREHOLDERS HAVE THE RIGHT TO DISSENT UNDER
27 SECTION 762.

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

3 (A) ARTICLES OF ORGANIZATION THAT COMPLY WITH SECTION 203,
4 AND WITH SECTION 903 IF THE LIMITED LIABILITY COMPANY WILL RENDER
5 PROFESSIONAL SERVICES.

6 (B) A CERTIFICATE OF CONVERSION THAT CONTAINS ALL OF THE
7 FOLLOWING:

8 (i) THE NAME OF THE CORPORATION AND THE DATE IT WAS
9 INCORPORATED.

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

12 (iii) A STATEMENT SPECIFYING EACH ASSUMED NAME OF THE CORPO-
13 RATION TRANSFERRED TO THE LIMITED LIABILITY COMPANY UNDER SECTION
14 206(8). THE CERTIFICATE MAY INCLUDE A STATEMENT OF THE NAME OR
15 ASSUMED NAMES OF THE CORPORATION THAT ARE TO BE TREATED AS NEWLY
16 FILED ASSUMED NAMES OF THE LIMITED LIABILITY COMPANY UNDER SEC-
17 TION 206(9).

18 (iv) THE EFFECTIVE DATE OF THE CONVERSION IF LATER THAN THE
19 DATE THE CERTIFICATE OF CONVERSION IS FILED.

20 (5) IF A CONVERSION UNDER THIS SECTION TAKES EFFECT, THE
21 LIMITED LIABILITY COMPANY IS CONSIDERED THE SAME ENTITY THAT
22 EXISTED BEFORE THE CONVERSION, AND THE CONVERSION IS NOT A DISSO-
23 LUTION OF THE CORPORATION. ALL PROPERTY AND RIGHTS OF THE CORPO-
24 RATION REMAIN VESTED IN THE LIMITED LIABILITY COMPANY. ALL
25 LIABILITIES OF THE CORPORATION REMAIN AS LIABILITIES OF THE
26 LIMITED LIABILITY COMPANY. AN ACTION OR PROCEEDING PENDING

1 AGAINST THE CORPORATION MAY BE CONTINUED AS IF THE CONVERSION
2 UNDER THIS SECTION HAD NOT OCCURRED.

3 Enacting section 1. This amendatory act does not take
4 effect unless all of the following bills of the 91st Legislature
5 are enacted into law:

6 (a) Senate Bill No. ____ or House Bill No. ____ (request
7 no. 07014'02).

8 (b) Senate Bill No. ____ or House Bill No. ____ (request
9 no. 07162'02).

10 (c) Senate Bill No. ____ or House Bill No. ____ (request
11 no. 07770'02).