

Act No. 686
Public Acts of 2002
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Senator Bullard

ENROLLED SENATE BILL No. 1418

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, 104, 105, 106, 202, 203, 204, 207, 210, 214, 301, 303, 304, 307, 403, 405, 406, 501, 502, 503, 504, 506, 515, 603, 705a, 801, 804, 909, 1005, and 1101 (MCL 450.4102, 450.4103, 450.4104, 450.4105, 450.4106, 450.4202, 450.4203, 450.4204, 450.4207, 450.4210, 450.4214, 450.4301, 450.4303, 450.4304, 450.4307, 450.4403, 450.4405, 450.4406, 450.4501, 450.4502, 450.4503, 450.4504, 450.4506, 450.4515, 450.4603, 450.4705a, 450.4801, 450.4804, 450.4909, 450.5005, and 450.5101), section 102 as amended by 2000 PA 336 and sections 103, 202, 203, 204, 207, 301, 303, 304, 307, 403, 405, 501, 502, 503, 506, 603, 801, 909, and 1101 as amended and sections 214, 515, and 705a as added by 1997 PA 52, and by adding sections 207a and 215.

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 consumer and industry services.

(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) "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.

(n) "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.

(o) "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 who is a member of the foreign limited liability company in accordance with the laws under which the foreign limited liability company is organized.

(p) "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.

(q) "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 having 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.

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

(s) "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.

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

(u) "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 an 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 executing a document under this section may sign the document by an attorney in fact. Powers of attorney relating to the signing of a document by an attorney in fact need not be sworn to, verified, acknowledged, or filed with the administrator. A document signed by a person by an attorney in fact shall state the capacity of the person signing the document by the attorney in fact.

Sec. 104. (1) A document required or permitted to be filed under this act shall be filed by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish procedures for accepting delivery by means of facsimile or other electronic transmission.

(2) If the document substantially conforms to the requirements of this act, the administrator shall indorse upon it the word "filed" with his or her official title and the date of receipt and of filing, and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If so

requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in his or her indorsement.

(3) The administrator shall prepare and return a true copy of the document, or at his or her discretion the original, to the person who submitted it for filing showing the filing date.

(4) The records and files of the administrator relating to domestic and foreign limited liability companies shall be open to reasonable inspection by the public. The records or files may be maintained either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(5) The administrator may make copies of all documents filed under this act or any predecessor act by a photostatic, micrographic, photographic, optical disc media, or other process, and may destroy the originals of the documents so copied. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, which may be sent by facsimile or other electronic transmission, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(6) The document is effective at the time it is indorsed unless a subsequent effective time is set forth in the document that is not later than 90 days after the date of delivery.

(7) The administrator may require that a document required or permitted to be filed under this act be on a form prescribed by the administrator.

Sec. 105. (1) If the administrator fails promptly to file a document submitted for filing under this act, the administrator, within 10 days after receipt from the person submitting the document for filing of a written request for the filing of the document, shall give to that person written notice of the refusal to file that states the reasons for the failure to file the document. If the document was originally submitted by electronic transmission, the administrator may give the written notice by electronic transmission.

(2) A person may seek judicial review of the administrator's decision under sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.305.

(3) If the administrator refuses or revokes the authorization of a foreign limited liability company to transact business in this state pursuant to this act, the foreign limited liability company may seek judicial review under sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.305.

Sec. 106. (1) If a document relating to a domestic or foreign limited liability company filed with the administrator under this act was at the time of filing an inaccurate record of the action referred to in the document, or was defectively or erroneously executed, or was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the administrator a certificate of correction on behalf of the company.

(2) The certificate shall be signed as provided by this act in the same manner as required for the document being corrected.

(3) The certificate shall set forth the name of the company, the date the document to be corrected was filed by the administrator, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution.

(4) The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was as a result of the inaccurate portion of the document adversely affected by the correction.

Sec. 202. (1) One or more persons, who may or may not become members, may be the organizers of a limited liability company by filing executed articles of organization.

(2) The existence of the limited liability company begins on the effective date of the articles of organization as provided in section 104. Filing is conclusive evidence that all conditions precedent required to be performed under this act are fulfilled and that the company is formed under this act, except in an action or special proceeding by the attorney general. The maximum duration of the limited liability company is perpetual unless otherwise provided in the articles of organization.

Sec. 203. (1) The articles of organization shall contain all of the following:

(a) The name of the limited liability company.

(b) The purposes for which the limited liability company is formed. It is sufficient to state substantially, alone or with specifically enumerated purposes, that the limited liability company may engage in any activity for which limited liability companies may be formed under this act.

(c) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office and the name of its initial resident agent at that address.

(d) If the business of the limited liability company is to be managed by managers, a statement that the business is to be managed by or under the authority of managers.

(e) The maximum duration of the limited liability company, if other than perpetual.

(2) The articles of organization may contain any provision not inconsistent with this act or another statute of this state, including any provision that is required or permitted to be in an operating agreement under this act.

(3) The articles of organization need not set out the powers of the limited liability company as described in section 210.

Sec. 204. (1) The name of a domestic limited liability company shall contain the words "limited liability company" or the abbreviation "L.L.C." or "L.C.", with or without periods or other punctuation.

(2) The name of a domestic or foreign limited liability company formed under or subject to this act shall conform to all of the following:

(a) Shall not contain a word or phrase, or abbreviation or derivative of a word or phrase, that indicates or implies that the company is formed for a purpose other than the purpose or purposes permitted by its articles of organization.

(b) Shall not contain the word "corporation" or "incorporated" or the abbreviation "corp." or "inc."

(c) Shall distinguish the name upon the records in the office of the administrator from all of the following:

(i) The name of a domestic limited liability company, or a foreign limited liability company authorized to transact business in this state, that is in good standing.

(ii) The name of a corporation subject to the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or a nonprofit corporation subject to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(iii) A name reserved, registered, or assumed under this act, under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(iv) The name of a domestic or foreign limited partnership as filed or registered, reserved, or assumed under the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108.

(d) Shall not contain a word or phrase, an abbreviation, or derivative of a word or phrase, the use of which is prohibited or restricted by any other statute of this state.

(3) If a foreign limited liability company is unable to obtain a certificate of authority to transact business in this state because its name does not comply with subsection (1) or (2), the foreign limited liability company may apply for authority to transact business in this state by adding to its name in the application a word, abbreviation, or other distinctive and distinguishing element, or alternatively, adopting for use in this state an assumed name otherwise available for use. If in the judgment of the administrator that name would comply with subsections (1) and (2), those subsections shall not bar the issuance to the foreign limited liability company of a certificate of authority to transact business in this state. The certificate of authority to transact business in this state issued to the foreign limited liability company shall be issued in the name applied for and the foreign limited liability company shall use that name in all its dealings with the administrator and in the transaction of business in this state.

(4) The fact that a limited liability company name complies with this section does not create substantive rights to the use of the name.

Sec. 207. (1) Each domestic limited liability company and foreign limited liability company authorized to transact business in this state shall have and continuously maintain in this state both of the following:

(a) A registered office that may, but need not be, the same as its place of business.

(b) A resident agent. The resident agent may be either an individual resident in this state whose business office or residence is identical with the registered office or any of the following having a business office identical with the registered office:

(i) A domestic corporation.

(ii) A foreign corporation authorized to transact business in this state.

(iii) A domestic limited liability company.

(iv) A foreign limited liability company authorized to transact business in this state.

(2) The resident agent appointed by a limited liability company is an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served.

(3) A domestic limited liability company or foreign limited liability company authorized to transact business in this state shall file with the administrator an annual statement executed as provided in section 103 containing the name of its resident agent and the address of its registered office in this state. The statement shall be filed not later than February 15 of each year, except that a limited liability company formed after September 30 or a foreign limited liability company authorized to transact business in this state after September 30 need not file a statement on the February 15 immediately succeeding its formation or authorization.

(4) If a limited liability company fails to appoint or maintain an agent for service of process, or the agent for service of process cannot be found or served through the exercise of reasonable diligence, service of process may be made by delivering or mailing by registered mail to the administrator a summons and copy of the complaint.

Sec. 207a. (1) Except as provided in this section, and section 909 for a professional limited liability company, from the effective date of the articles of organization as provided in section 104 until dissolution for a domestic limited liability company, or from the effective date of the certificate of authority to transact business in this state until withdrawal from this state for a foreign limited liability company, a limited liability company is entitled to issuance by the administrator, upon request, of a certificate of good standing. A certificate of good standing issued to a domestic limited liability company shall state that it has been validly organized as a domestic limited liability company, that it is validly in existence under the laws of this state, and that it has satisfied its annual filing obligations. A certificate of good standing issued to a foreign limited liability company shall state that it has been validly authorized to transact business in this state, that it holds a valid certificate of authority to transact business in this state, and that it has satisfied its annual filing obligations.

(2) If a domestic limited liability company or a foreign limited liability company authorized to transact business in this state fails to file an annual statement required by section 207 for 2 consecutive years, the administrator shall notify the company of the consequences of the failure to file under subsection (3).

(3) If a limited liability company does not file all annual statements it has failed to file, and the applicable fees, within 60 days after the administrator's notice under subsection (2) is sent, the limited liability company is not in good standing. A limited liability company that is not in good standing is not entitled to issuance by the administrator of a certificate of good standing described in subsection (1), the name of the company is available for use by another entity filing with the administrator, and the administrator shall not accept for filing any document submitted by the limited liability company other than a certificate of restoration of good standing provided for in subsection (4). A limited liability company that is not in good standing remains in existence and may continue to transact business in this state.

(4) A domestic limited liability company or a foreign limited liability company authorized to transact business in this state that is not in good standing under subsection (3) may file a certificate of restoration of good standing, accompanied by the annual statements and fees for all of the years for which they were not filed and paid, and the fee for filing the certificate of restoration of good standing. The certificate shall include all of the following:

(a) The name of the limited liability company at the time it ceased to be in good standing. If that name is not available when the certificate of restoration of good standing is filed, the limited liability company shall select a new name that complies with section 204. The new name shall be the name of the domestic limited liability company or the name used in this state by the foreign limited liability company from the date of filing of the certificate.

(b) The name of the limited liability company's current resident agent and the address of the current registered office in this state.

(c) A statement that the certificate is accompanied by the annual statements and applicable fees for all of the years for which statements were not filed and fees were not paid.

Sec. 210. Subject to the limitations provided in this act, any other statute of this state, or its articles of organization, a limited liability company has all powers necessary or convenient to effect any purpose for which the company is formed, including all powers granted to corporations in the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

Sec. 214. If there is a conflict between the articles of organization and an operating agreement of a limited liability company, the articles of organization shall control.

Sec. 215. An operating agreement of a limited liability company that has 1 member is not unenforceable because only 1 person is a party to the operating agreement.

Sec. 301. (1) A contribution of a member to a limited liability company may consist of any tangible or intangible property or benefit to the company, including cash, property, services performed, promissory notes, contracts for services to be performed, or other binding obligation to contribute cash or property or to perform services.

(2) A contribution of an obligation to contribute cash or property or to perform services may be in exchange for a present membership interest or for a future membership interest, including a future profits interest, as provided in an operating agreement.

Sec. 303. (1) Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members in the manner provided in an operating agreement. If an operating agreement does not provide for an allocation, distributions shall be allocated as follows:

(a) Prior to July 1, 1997, on the basis of the value, as stated in the records the limited liability company is required to keep under section 213 or as determined by any other reasonable method, of the contributions made by each member to the extent that the contributions have been received by the limited liability company and have not been returned.

(b) On and after July 1, 1997, except as otherwise provided in subsection (2), in equal shares to all members. 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 as held by 1 member for an allocation under this subdivision.

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

Sec. 304. Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the withdrawal of the member from the limited liability company and 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.

Sec. 307. (1) Except as otherwise provided in subsection (5), a distribution shall not be made if, after giving the distribution effect, 1 or more of the following situations would occur:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business.

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless an operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member or members receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances, on a fair valuation, or on another method that is reasonable under the circumstances.

(3) The effect of a distribution under subsection (1) is measured at the following times:

(a) Except as provided in subsection (5), in the case of a distribution to a withdrawing member, as of the earlier of the date money or other property is transferred or debt incurred by the limited liability company, or the date the member ceases to be a member.

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization, or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date the payment is made if it occurs more than 120 days after the date of authorization.

(4) At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. A company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors except as otherwise agreed.

(5) If the limited liability company distributes an obligation to make future payments to a withdrawing member, and distribution of the obligation would otherwise be prohibited under subsection (1) at the time it is made, the company may issue the obligation and the following apply:

(a) The portion of the obligation that could have been distributed without violating subsection (1) is indebtedness to the withdrawing member under subsection (4).

(b) All of the following apply to the portion of the obligation that exceeds the amount of the obligation that is indebtedness to the withdrawing member under subdivision (a):

(i) At any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(ii) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (4) to the extent that a distribution may then be made under this section.

(c) Unless otherwise provided in an agreement with the withdrawing member, the obligation is considered a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made to members having preferential rights superior to the rights of the withdrawing member.

(6) The enforceability of a guaranty or other undertaking by a third party relating to a distribution is not affected by the prohibition of the distribution under subsection (1).

(7) If a claim is made to recover a distribution made contrary to subsection (1) or if a violation of subsection (1) is raised as a defense to a claim based upon a distribution, this section does not prevent the person receiving the distribution from asserting a right of rescission or other legal or equitable rights.

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 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 that manager shall have reasonable advance notice of the allegations against him or her and an opportunity to be heard at the meeting.

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.

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 he or she 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. 501. (1) A person may be admitted as a member of a limited liability company in 1 or more of the following ways:

(a) In connection with the formation of the limited liability company, by signing the initial operating agreement.

(b) After the formation of the limited liability company, in 1 or more of the following ways:

(i) In the case of a person 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.

(ii) In the case of an assignee of a membership interest, as provided in section 506.

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

(3) Unless otherwise provided by law or in an operating agreement, a person who 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) Prior to July 1, 1997, the members of a limited liability company shall vote in proportion to their shares of distributions of the company, as determined in accordance with 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 treated as 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 who 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 who 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 pursuant to section 801(c).

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

(c) An amendment to the articles of organization.

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

(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 by 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 reports to the member by mail or electronic transmission. Upon reasonable request, a member may obtain true and full information regarding the current state of the limited liability company's financial condition.

(2) Upon reasonable written request and during ordinary business hours, a member or his or her designated representative may inspect and copy, at the member's expense, any of the records required to be maintained under section 213, at the location where the records are kept.

(3) Upon reasonable written request, a member may obtain other information regarding the 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.

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

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.

Sec. 506. (1) Unless otherwise provided in an operating agreement, an assignee of a membership interest in a limited liability company having 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 having 1 member may become a member in accordance with the terms of the agreement between the member and the assignee.

(2) An assignee who becomes a member 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 who becomes a member also is liable for any obligations of his or her assignor to make contributions and to return distributions under sections 302 and 308(3). An assignee is not obligated for liabilities unknown to the assignee when he or she became a member unless the liabilities are shown on the financial records of the limited liability company.

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 of members, managers, or other persons party to the action.
 - (d) The purchase at fair value of the member's interest in the limited liability company, either by the company or by the managers or other 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. 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. 603. The articles of organization are amended by filing a certificate of amendment signed as provided in section 103 that contains all of the following:

- (a) The name of the limited liability company.
- (b) The date of filing of its original articles of organization.
- (c) The entire article or articles being amended, or the section or sections being amended if the article being amended is divided into identified sections.
- (d) A statement that the amendment or amendments were approved by the unanimous vote of all of the members entitled to vote or by a majority in interest if an operating agreement authorizes amendment of the articles of organization by majority vote.

Sec. 705a. (1) As used in this section:

(a) "Business organization" means a domestic or foreign corporation, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic limited liability company.

(b) "Entity" means a business organization or a domestic limited liability company.

(c) "Obligated person" means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise who, under applicable law, is generally liable for the obligations of the business enterprise.

(2) If all of the business organizations in a merger with 1 or more domestic limited liability companies are foreign limited liability companies, the merger shall comply with section 705 and not this section.

(3) Except as otherwise provided in subsection (2), 1 or more domestic limited liability companies may merge with 1 or more business organizations if all of the following requirements are satisfied:

(a) The merger is permitted under the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger.

(b) Each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(c) Each domestic limited liability company complies with this section.

(4) If 1 or more domestic limited liability companies propose to merge with 1 or more business organizations, each domestic limited liability company shall prepare a plan of merger that contains all of the following:

(a) The name of each constituent entity, the name of the surviving entity, the street address of the surviving entity's principal place of business, and the type of organization of the surviving entity.

(b) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests or obligations of the surviving entity, or into cash or other consideration, which may include ownership interests or obligations of an entity not a party to the merger, or into a combination thereof.

(c) If the surviving entity is to be a domestic limited liability company, a statement of the amendments to the articles of organization of the surviving company if the articles are changed by the merger, a restatement of the articles of organization, or a statement that the articles of organization of the surviving domestic limited liability company are unchanged.

(d) Any other provision that the domestic limited liability company considers necessary or desirable.

(5) A constituent domestic limited liability company shall submit a plan of merger to the members for approval. A unanimous vote by the members entitled to vote in the constituent domestic limited liability company is required to approve a plan of merger unless an operating agreement of the constituent domestic limited liability company provides otherwise.

(6) If an operating agreement of a constituent domestic limited liability company provides for approval by less than unanimous vote of members entitled to vote and the merger is approved, a member who voted against the merger may withdraw from the domestic limited liability company and receive, within a reasonable time, the fair value of the member's interest in the domestic limited liability company, based upon the member's share of distributions as determined under section 303.

(7) If a plan of merger is approved, a certificate of merger shall be executed as provided in section 103 and filed on behalf of each constituent domestic limited liability company. The certificate of merger shall contain all of the following:

(a) The information required under subsection (4)(a) and the statement required under subsection (4)(c).

(b) A statement that the plan of merger was approved by the members of each constituent domestic limited liability company in accordance with subsection (5).

(c) A statement of any assumed names of merging entities transferred to the surviving entity in accordance with section 206(6), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic limited liability company or a foreign limited liability company authorized to transact business in this state, the certificate may include a statement of 1 or more names or assumed names of merging entities that are to be treated as new certificates of assumed names of the surviving company under section 206(7).

(d) The effective date of the merger if later than the date the certificate of merger is filed.

(8) A certificate of merger is effective in accordance with section 104.

(9) When a merger is effective under this section, all of the following apply:

(a) Every other constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases.

(b) The title to all property, real, personal, and mixed, and rights owned by each constituent entity are vested in the surviving entity without reversion or impairment.

(c) A surviving company may use the name and the assumed names of any merging entity if a filing required under section 206(6) or (7) or other applicable statute is made.

(d) The surviving entity has all of the liabilities of each constituent entity. This section does not affect liability, if any, of a person who was an obligated person with respect to a merging entity for acts or omissions that occurred before the merger.

(e) A proceeding pending against any constituent entity may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of organization of a surviving domestic limited liability company are amended to the extent provided in the plan of merger.

(g) The ownership interests of each constituent entity that are to be converted into ownership interests or obligations of the surviving entity or into cash or other property are converted.

(10) If the surviving entity is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state by a foreign business organization if it transacts business in this state. The surviving entity is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a constituent domestic limited liability company, including an obligation to a member of the constituent domestic limited liability company who has dissented from the merger and withdrawn in accordance with subsection (6).

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

(a) Automatically at the time specified in the articles of organization.

(b) Upon the happening of an event specified in the articles of organization or in an operating agreement, including a vote of members.

(c) Upon the unanimous vote of all members entitled to vote.

(d) Automatically upon the entry of a decree of judicial dissolution.

Sec. 804. Upon the dissolution and commencement of winding up of the limited liability company under section 801(b) or (c), a certificate of dissolution shall be signed as provided in section 103 and filed with the administrator. The certificate shall set forth 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.

Sec. 909. (1) In addition to the annual statement required in section 207(3), a professional limited liability company shall file with the administrator an annual report, together with a \$50.00 filing fee, listing the names and addresses of all members and managers and certifying that each member and manager is a licensed person in 1 or more of the professional services rendered by the company. The report shall also certify that any member or manager not licensed or otherwise legally authorized to render professional services in this state does not render professional services in this state.

(2) The professional limited liability company shall file the annual report not later than February 15 of each year, and a penalty of \$50.00 shall be added to the fee if the annual report is not filed or the fee is not paid by February 15, except that if a professional limited liability company is formed after September 30, it need not file an annual report on the February 15 immediately succeeding its formation.

(3) If a professional limited liability company fails to file an annual report required by this section for 2 consecutive years, the administrator shall notify the company of the consequences of the failure to file under subsection (4).

(4) If a professional limited liability company does not file all annual reports it has failed to file, the applicable fees, and the penalty described in subsection (2) within 60 days after the administrator's notice under subsection (3) is sent, the professional limited liability company is not in good standing. A professional limited liability company that is not in good standing is not entitled to issuance by the administrator of a certificate of good standing described in section 207a, the name of the company is available for use by another entity filing with the administrator, and the administrator shall not accept for filing any document submitted by the professional limited liability company other than a certificate of restoration of good standing provided for in subsection (5). A professional limited liability company that is not in good standing remains in existence and may continue to transact business in this state.

(5) A professional limited liability company that is not in good standing under subsection (4) may file a certificate of restoration of good standing, accompanied by the annual reports and fees for all of the years for which they were not filed and paid, the penalty described in subsection (2), and the fee for filing the certificate of restoration of good standing. The certificate shall include all of the following:

(a) The name of the professional limited liability company at the time it ceased to be in good standing. If that name is not available when the certificate of restoration of good standing is filed, the professional limited liability company shall select a new name that complies with this act. The new name shall be the name of the professional limited liability company from the date of filing of the certificate.

(b) The name of the professional limited liability company's current resident agent and the address of the current registered office in this state.

(c) A statement that the certificate is accompanied by the annual reports and applicable fees for all of the years for which reports were not filed and fees were not paid and the penalty described in subsection (2).

(6) A professional limited liability company that fails to file annual statements under section 207 as well as annual reports under this section must comply with section 207a and this section to maintain or restore its good standing.

Sec. 1005. (1) If any statement in the application for certificate of authority of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the administrator a certificate, signed as provided in section 103, correcting the statement, except that a change in the resident agent or registered office may be made under section 209.

(2) If a foreign limited liability company authorized to transact business in this state is the survivor of a merger permitted by the laws of the jurisdiction of its organization, the foreign limited liability company shall file, not later than 30 days after the merger becomes effective, a certificate issued by the proper officer of the jurisdiction of its organization attesting to the occurrence of the merger. If the merger has changed the name of the foreign limited liability company or has otherwise affected the information set forth in the application, the foreign company shall also comply with subsection (1).

(3) A foreign limited liability company authorized to transact business in this state shall file an annual statement as required by section 207(3), and section 207a applies to the good standing of the company and to failures to file.

Sec. 1101. (1) The fees to be paid to the administrator when the documents described in this subsection are delivered to him or her for filing are as follows:

- (a) Certificate of correction, \$25.00.
- (b) Articles of organization, \$50.00.
- (c) Amendment to the articles of organization, \$25.00.
- (d) Restated articles of organization, \$50.00.

- (e) Application for reservation of name, \$25.00.
 - (f) Certificate of assumed name or a certificate of termination of assumed name, \$25.00.
 - (g) Annual statement of resident agent and registered office, \$15.00.
 - (h) Certificate of restoration of good standing, \$50.00.
 - (i) Notice of resignation of resident agent, or statement of change of registered office or resident agent, \$5.00.
 - (j) Certificate of merger as provided in article 7, \$100.00.
 - (k) Certificate of abandonment, \$10.00.
 - (l) Certificate of conversion, \$25.00.
 - (m) Certificate of dissolution, \$10.00.
 - (n) Application of a foreign limited liability company for a certificate of authority to transact business in this state, \$50.00.
 - (o) Certificate correcting statement contained in an application for a certificate of authority to transact business in this state, \$25.00.
 - (p) Certificate attesting to the occurrence of a merger of a foreign limited liability company, as provided in section 1005, \$10.00.
 - (q) Application for withdrawal and issuance of a certificate of withdrawal of a foreign limited liability company, \$10.00.
- (2) In addition to a fee required to file a document, the administrator may charge a fee of \$50.00 if the document is filed by facsimile or other electronic transmission or the administrator is requested to transmit a document by facsimile or other electronic transmission.
- (3) The fees prescribed in subsections (1) and (2), no part of which shall be refunded, when collected shall be paid into the treasury of the state and credited to the administrator to be used solely by the department in carrying out those duties required by law.
- (4) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a domestic or foreign limited liability company if a fee is not set forth in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies pursuant to a schedule of fees that the administrator shall adopt with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection to be used by the department to defray the costs of its copying and certifying services.
- (5) If a domestic or foreign limited liability company pays fees or penalties by check and the check is dishonored, the fee is considered unpaid and the filing of all related documents will be rescinded.
- (6) The administrator may accept a credit card, instead of cash or check, as payment of a fee under this act. The administrator shall determine which credit cards may be accepted for payment.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.