PARTNERSHIP ASSOCIATIONS

Act 191 of 1877

AN ACT authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances.

History: 1877, Act 191, Eff. Aug. 21, 1877

The People of the State of Michigan enact:

449.301 Partnership associations; formation; capital stock; articles of association, contents, recording, certification.

Sec. 1.

When any 3 or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere, whose principal office or place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take acknowledgment of deeds, a statement in writing, or articles of association, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed for by each; the total amount of capital, and when and how to be paid: Provided, however, That the amount of capital stock subscribed shall not be less than 50 per cent of the authorized capital stock and the amount of capital stock paid in at the time of executing the articles of association shall not be less than 10 per cent of the authorized capital. Said articles of association shall also state the character of the business to be conducted, and the location of the same whether or not the capital subscribed shall be subject to the restrictive provisions of section 4 of this act, and unless the articles of association expressly declare that the capital subscribed shall not be subject to the provisions of said section 4 such capital shall be subject to the provisions of said section 4 so far as the same prohibits the members from transferring their interests and the transferee from becoming a member without the consent of the other members; the name of the association, with the word “limited” added thereto as part of the same; the contemplated duration of said association, which shall not in any case exceed 20 years, and the names of the officers of said association selected in conformity with the provisions of this act. Contributions to the capital stock may be in real or personal estate, at a valuation to be approved by all the members subscribing to the capital of such association; but where property has been contributed as part of the capital, a schedule containing the names of the parties so contributing, with a description and valuation of the property so contributed, shall be inserted in such statement or articles; and any amendment of said statement or articles shall be made only in like manner; which said statement and amendment shall be recorded in the office of the secretary of state of this state and in the office of clerk of the county in which such association has its principal office, at the expense of the association; and until said statement or articles are so recorded the same shall not be deemed valid or operative nor authorize the association to commence or conduct business thereunder. The secretary of state and the county clerk, in whose office such articles of association shall be recorded, shall each certify upon every such article of association recorded by him, the time when it was received with a reference to the book and

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page where the same was recorded, and the record or transcript of the record, certified by the secretary of state, of this state, and under the seal thereof, shall be received in all the courts of this state as prima facie evidence of the due formation, existence and capacity of such association in any suit or proceedings brought by or against the same.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2365 ;-- CL 1897, 6079 ;-- Am. 1903, Act 244, Imd. Eff. June 18, 1903 ;-- CL 1915, 7950 ;-- CL 1929, 9909 ;-- CL 1948, 449.301
Compiler's Notes: This act was held not repealed by Act 327 of 1921 in Attorney General v. Hill-Davis Co., 261 Mich. 89, 245 N.W. 579 (1932).

449.302 Partnership associations; liability of members; labor debts.

Sec. 2.

The members of any such partnership association shall not be liable under any judgment, decree, or order which shall be obtained against such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided, that is to say: if any execution or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereof whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the members to the extent of the portions of their subscriptions respectively, in the capital of the association not then paid up: Provided always, That no such execution shall issue against any member, except upon an order of court or of a judge of the court in which the action, suit, or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof, and the amount of capital remaining to be paid upon their respective subscriptions, and from them or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription list book for that purpose and the same shall be open to inspection by the creditors and members of the association, at all reasonable times: Provided, That nothing herein contained shall be construed to exempt the members of such partnership association from individual liability for all labor performed for the association.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2366 ;-- CL 1897, 6080 ;-- CL 1915, 7951 ;-- CL 1929, 9910 ;-- CL 1948, 449.302

449.303 Partnership associations; limited as last word in name; effect of omission.

Sec. 3.

The word “limited” shall be the last word of the name of every partnership association formed under the provisions of this act; and every such association shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the association is carried on, in a conspicuous position, in letters easily legible, and shall have its full name mentioned in legible characters in all notices, advertisements, and other official publications of such association, and in all bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters, and other writings used in the transaction of the business of the partnership association: Provided, That the omission of the word “limited” in the use of the name of the partnership association shall render each and

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every member of such partnership liable for any indebtedness, damage, or liability arising therefrom.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2367 ;-- CL 1897, 6081 ;-- CL 1915, 7952 ;-- CL 1929, 9911 ;-- CL 1948, 449.303

449.304 Partnership associations; interest, transfer; death of member, effect; scope, limitation.

Sec. 4.

Interest in said association shall be personal estate, and may be transferred under such rules and regulations as the association may prescribe, but no transferee of any interest, or the representatives of any decedent, or of any insolvent shall be entitled thereafter to any participation in the subsequent business of said association, unless he or she be elected thereto by a vote of a majority of the members in number and value of their interests, and any change of ownership, whether by sale, death, bankruptcy, or otherwise, which shall not be followed by election to the association, shall entitle the owner only to his interest in the association at a price and upon terms to be mutually agreed upon, and in default of such agreement the price and terms shall be fixed by an appraiser appointed by the circuit court of the county where such association has its principal office, subject to the approval of said court: Provided, That it may be stipulated and agreed in the statement in writing by which said association is organized, or by amendment filed thereafter, that on the death of any member his interest, if the representatives of his estate so elect, shall continue in the association during the continuance thereof and that the representatives of his estate may select some person who shall thereupon become a member of such association in place of such deceased member, with all his rights, privileges and responsibilities: Provided, however, That nothing herein contained shall affect the right of members to transfer their interest in associations heretofore organized under the provisions of Act 192 of the Public Acts of 1877, as amended.

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History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- Am. 1881, Act 216, Imd. Eff. June 3, 1881 ;-- How. 2368 ;-- Am. 1885, Act 21, Imd. Eff. Mar. 17, 1885 ;-- CL 1897, 6082 ;-- Am. 1903, Act 244, Imd. Eff. June 18, 1903 ;-- CL 1915, 7953 ;-- CL 1929, 9912 ;-- CL 1948, 449.304
Compiler's Notes: The reference at the end of this section to "Act 192 of the Public Acts of 1877" should evidently be to "Act 191 of the Public Acts of 1877."

449.305 Partnership associations; meetings, notice; managers; debts and liabilities; rules.

Sec. 5.

There shall be at least 1 meeting of the members of the association in each year, written notice of which shall be duly served on each member of the association 10 days prior to said meeting, at 1 of which there shall be elected not less than 3 nor more than 7 managers of said association, 1 of whom shall be the chairman, 1 the treasurer and 1 the secretary, who shall hold their respective offices for 1 year and until their successors are duly installed; and no debt shall be contracted nor liability incurred for said association except by 1 or more of said managers, and no liability for an amount exceeding $500.00, except against the person incurring it, shall bind the said association unless reduced to writing and signed by at least 2 managers, except in case of associations for the purpose of buying and selling merchandise, a majority of the interest in such association may select 1 of the managers each year to purchase merchandise required in the business of the association, make contracts and sign notes for the

same: Provided, Such power given in writing fully setting forth the extent to which such manager may make purchases and contract debt for the association, which shall be signed by a majority of the members in number and value of their interest, and such power of purchasing and contracting debts shall be strictly limited to the ordinary business of the association: And also provided, That at the time of the formation of such association, rules, not inconsistent with the provisions of this act, may be adopted for the management thereof, which shall only be amended by the consent in writing of 3/4 in number and value of interest.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- Am. 1881, Act 216, Imd. Eff. June 3, 1881 ;-- How. 2369 ;-- CL 1897, 6083 ;-- CL 1915, 7954 ;-- CL 1929, 9913 ;-- CL 1948, 449.305 ;-- Am. 1955, Act 146, Eff. Oct. 14, 1955

449.306 Partnership associations; division of profits, impairment of capital.

Sec. 6.

The association may, from time to time, divide the profits of its business in such manner and in such an amount as a majority of its managers may determine, which profits so divided shall not at the time diminish or impair the capital of the said association; and any one consenting to a dividend, which shall diminish or impair the capital, shall be liable to any person or persons interested or injured thereby to the amount of such diminution or impairment.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2370 ;-- CL 1897, 6084 ;-- CL 1915, 7954 ;-- CL 1929, 9914 ;-- CL 1948, 449.306

449.307 Partnership associations; loan of credit, name or capital, interest.

Sec. 7.

It shall not be lawful for such association to loan its credit, its name, or its capital to any member of said association, and for such loan to any other person or association, the consent in writing of a majority in number and value of interest shall be requisite, and in no case shall the credit of the association be loaned except the regular business of the association is to be directly benefitted thereby.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2371 ;-- CL 1897, 6085 ;-- CL 1915, 7956 ;-- CL 1929, 9915 ;-- CL 1948, 449.307

449.308 Partnership associations; dissolution, conditions.

Sec. 8.

Such association may be dissolved:

First, Whenever the period fixed for the duration of the association expires.

Second, Whenever, by vote of a majority in number and value of interest it shall be so determined, and notice of such winding up shall be given by publication in 2 newspapers published in the proper city or county, at least 4 consecutive weeks; and immediately upon the commencement of said advertising, said association shall cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2372 ;-- CL 1897, 6086 ;-- CL 1915, 7957 ;-- CL 1929, 9916 ;-- CL 1948, 449.308

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449.309 Partnership associations; dissolution, distribution of property.

Sec. 9.

When any such partnership association shall be dissolved by the voluntary action thereof, its property shall be applied and distributed as follows:

First, To the payment of all debts for wages of labor;

Second, To the satisfaction of its other liabilities and indebtedness;

Third, After payment thereof, the same shall be distributed to and among the members thereof, in proportion to their respective interests, in the following manner:

Fourth, 3 liquidating trustees shall be elected by the members of the association, who shall have full power and authority to wind up the concern, and distribute the net assets thereof among the members, under the direction of the circuit court of the proper county.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2373 ;-- CL 1897, 6087 ;-- CL 1915, 7958 ;-- CL 1929, 9917 ;-- CL 1948, 449.309

449.310 Partnership associations; real estate, ownership and conveyance; service of process.

Sec. 10.

All real estate owned or purchased by any association, created under and by virtue of this act, shall be held and owned and conveyance thereof shall be made in the association name; said association shall sue and be sued in their association name; and when suit is brought against any such association, service of process and other papers in such suit prior to appearance therein by defendant, shall be made upon the chairman, secretary or treasurer thereof: Provided, If no such officer reside in the county where the principal office or place or [of] business of such association is located, or no such officer be found in such county within 5 days after the commencement of such suit, service of such process and papers may be made upon such association by service thereof upon any clerk, agent or attorney thereof in its office or place of business named in its articles of incorporation, which service shall be as complete and effective as if made upon each and every member of such association.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2374 ;-- CL 1897, 6088 ;-- Am. 1905, Act 188, Imd. Eff. June 7, 1905 ;-- CL 1915, 7959 ;-- CL 1929, 9918 ;-- CL 1948, 449.310

449.311 Saving clause.

Sec. 11.

That no amendment, modification, or repeal of this act shall affect anything duly done, right acquired, liability incurred or penalty, forfeiture or other punishment incurred or to be incurred, in respect of any offense against the provisions of this act before such amendment, modification, or repeal comes into operation.

History: 1877, Act 191, Eff. Aug. 21, 1877 ;-- How. 2375 ;-- CL 1897, 6089 ;-- CL 1915, 7960 ;-- CL 1929, 9919 ;-- CL 1948, 449.311

449.312 Partnership associations; franchise fee to accompany articles of association; void contracts; specific tax.

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Sec. 12.

Every such partnership association organized after this act takes effect, shall at the time of recording its statement in writing, or articles of association, pay to the secretary of state a franchise fee of 1/2 of 1 mill upon each dollar of its total authorized capital stock, and a proportionate fee upon every subsequent increase thereof; no statement in writing, or articles of association, shall be received by the secretary of state for recording unless accompanied by the fee provided for in this act, and every partnership association heretofore organized which shall hereafter increase its authorized capital, shall pay a franchise fee of 1/2 of 1 mill upon each dollar of such increase of authorized capital, and a proportionate fee upon each subsequent increase thereof: Provided, The fee herein provided shall in no case be less than 5 dollars. All contracts made in this state after the first day of January, 1904 by any partnership association organized after this act becomes operative, which has not first paid the franchise fee required to be paid by this act shall be wholly void. The franchise fee provided by this act shall be deemed and held to be specific taxes and shall be paid into the state treasury, and shall be applied to the objects and purposes prescribed in section 1, article 14 of the constitution of this state.

History: Add. 1903, Act 244, Imd. Eff. June 18, 1903 ;-- CL 1915, 7961 ;-- CL 1929, 9920 ;-- CL 1948, 449.312

Compiler's Notes: In this section, "section 1, article 14 of the constitution" refers to the Constitution of 1850. See now Const. 1963, Art. IX, § 1.This section and MCL 449.313 were impliedly repealed by Act 233 of 1923. See Whitney Realty Co. v. Secretary of State, 228 Mich. 96, 199 N.W. 669 (1924).

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449.313 Partnership associations; annual report; time, contents, blanks, examination, filing; failure, duties of attorney general; dissolution notice; penalties, collection.

Sec. 13.

Every partnership association heretofore or hereafter organized under this act shall annually, in the month of January or February, make duplicate reports for the fiscal year last ending, of such association, on suitable blanks to be furnished by the secretary of state, as hereinafter provided. Such report shall state the amount of capital subscribed, and the amount thereof actually paid in, in cash, and the amount thereof paid in property, if any; the amount of capital invested in real and personal estate, and the present actual value of the same as near as may be estimated; the amount of debts of the association, and the amount of credits, and the present estimated value of the credits; the name and postoffice address of each member and the amount of capital held by each at the date of such report; the name and postoffice address of each officer and manager of the association and such other information as the secretary of state may require. It shall be the duty of the secretary of state in the month of December, in each year, to mail to each such association suitable blanks on which shall be printed a copy of this section. Such reports shall be signed by a majority of the managers and verified by the oath of the secretary of the association, and deposited in the office of the secretary of state within the said month of January or February. The secretary of state shall carefully examine such reports, and if upon such examination they shall be found to comply with all the requirements of this section, he shall file 1 of them in his office and shall forward the other by mail or express to the county clerk of the county in which the principal office, in this state, for the transaction of the business of said association is situated. And it shall be the duty of such county clerk, upon receipt of such report to immediately cause the same to be filed in his office. If any of the managers of any such association shall wilfully neglect or refuse to make and deposit the report required by this section, within the time herein specified, they shall each

be liable for all the debts of such association contracted during the period of such neglect or refusal, and subject to a penalty of 25 dollars, and in addition thereto the sum of 5 dollars for each and every secular day after the first of March in each year during the pendency of such neglect or refusal, which penalty shall be for the use and benefit of the general fund of this state. The secretary of state shall, during the last week of June of each year, report to the attorney general in writing, the name and postoffice address of each and every association which has failed to comply with the provisions of this section. And upon the receipt of such report, it shall be the duty of the attorney general to institute proceedings in any court of competent jurisdiction, to collect said penalties, and all necessary expenses incurred by the attorney general in such proceedings shall be audited by the board of state auditors, and paid from the general fund of the state. And in case an association organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchises shall be sold at mortgage sale or at private sale, it shall be the duty of the last board of managers of such association, within 30 days thereafter, to give written notice of such change to the secretary of state and the county clerk of the county where the principal office of such association is located, signed by a majority of such last board of managers, which said notice shall be recorded as amendments are required to be recorded. And in case of neglect to give such notice, they shall be subject to the same penalties provided in case of neglect to make annual reports, which said penalties shall be collected and applied in the same manner as in case of neglect in making annual reports. The neglect or refusal to file the reports, required by this section to be filed, shall be deemed to be wilful when the report required is not filed within the time herein limited. Whenever any association has neglected or refused to make and file its report within 20 days after the time limited in this section, the secretary of state shall cause notice of that fact to be given by mail to such association, and to each last known officer and manager thereof, directed to their respective postoffice addresses. The certificate of the secretary of state or his deputy, of the mailing of such notices, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said association. All actions and suits based on the neglect or refusal of the officers or managers of such associations to make and file the reports required by this section, shall be commenced within 2 years next after such neglect or refusal has occurred, and not afterwards.

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History: Add. 1903, Act 244, Imd. Eff. June 18, 1903 ;-- Am. 1905, Act 63, Eff. Sept. 16, 1905 ;-- CL 1915, 7962 ;-- CL 1929, 9921 ;-- CL 1948, 449.313

Compiler's Notes: This section and MCL 449.312 were impliedly repealed by Act 233 of 1923. See Whitney Realty Co. v. Secretary of State, 228 Mich. 96, 199 N.W. 669 (1924).

449.314 Existing associations; articles, filing; penalty; franchise fee.

Sec. 14.

Every partnership association heretofore organized, is required to file a copy of its statement in writing or articles of association, verified by the oath of the secretary of the board of managers or certified by the register of deeds of the county in which said statement or articles were recorded, as a full and true copy of the same with its date of record together with all amendments to such statement or articles if any have been made and recorded, in the office of the secretary of state of this state on or before the first day of January 1904. The officers and managers of every such partnership association failing to file such copy of its statement in writing or articles within the time herein prescribed, shall each be subject to a penalty of 25 dollars, and in addition thereto the sum of 5 dollars for each and every secular day after

January first, 1904. Such penalty shall be for the same use, and shall be collected in the same manner, by the attorney general, as prescribed in section 13 of this act: Provided, That partnership associations already organized shall not be required to pay a franchise fee upon their recording articles of association under this act.

History: Add. 1903, Act 244, Imd. Eff. June 18, 1903 ;-- CL 1915, 7963 ;-- CL 1929, 9922 ;-- CL 1948, 449.314

449.315 Existing associations; articles, amendment, procedure; evidence.

Sec. 15.

Every association organized or existing under the provisions of this act may, at any annual meeting or any meeting duly called for that purpose by a resolution adopted by a vote of 2/3 in value of interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendments shall not become operative until a copy of such resolutions, signed by the chairman and secretary of the board of managers of such association, shall have been recorded as is provided herein for the recording of the original articles of association when such amendment shall have the same force and effect as though said amendments had been included in the original articles, and a record or copy of the record of such resolution certified as provided in section 1 for the certification of the original articles of association shall be received in all courts of this state as prima facie evidence of the things therein stated.

History: Add. 1903, Act 244, Imd. Eff. June 18, 1903 ;-- CL 1915, 7964 ;-- CL 1929, 9923 ;-- CL 1948, 449.315

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449.316 Existing associations; reorganization as corporation, procedure; franchise fee; period of existence.

Sec. 16.

Every partnership association now existing, organized under Act No. 191 of the Public Acts of 1877, as amended, being chapter 160 of the Compiled Laws of 1897, may at any time reorganize under any act providing for the incorporation of companies for a purpose or purposes for which such association was organized: Provided, Such reorganization is authorized and directed by a vote of 2/3 in interest of the members holding the capital stock of any such partnership association, at a regular meeting of the members of such association, or at a meeting called expressly for that purpose in accordance with the by-laws or statement in writing by which it was organized. The resolution or other action by which said vote is expressed shall be certified in duplicate by the executive officers of the association so reorganizing, and attached to its articles of incorporation when the same are recorded; and in addition to said resolution or other action the said officers shall certify the name of the association and the date upon which the same was organized under the statute now known as chapter 160 of the Compiled Laws of 1897, and every such association so organized before this act becomes operative may reorganize as herein provided without paying the franchise fee provided in Act No. 182 of the Public Acts of 1891, being section 8574 of the Compiled Laws of 1897: Provided, That the period for the existence of the corporation so organized shall be coincident with the period of existence remaining to the partnership association at the date of its reorganization as above provided.

History: Add. 1903, Act 244, Imd. Eff. June 18, 1903 ;-- Am. 1911, Act 252, Eff. Aug. 1, 1911 ;-- CL 1915, 7965 ;-- CL 1929, 9924 ;-- CL 1948, 449.316
Compiler's Notes: For provisions of Act 191 of 1877, referred to in this section, see MCL 449.301 et seq. Act 182 of 1891, referred to in this section, was repealed by Act 309 of 1929.

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