

# SENATE BILL No. 745

September 30, 2003, Introduced by Senator CLARKE and referred to the Committee on Commerce and Labor.

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), section 206 as amended and section 707 as added by 1997 PA 52 and section 502 as amended by 2002 PA 686, and by adding section 708.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

8       (2) ~~The certificate of assumed name is effective, unless~~

1 **Unless** terminated by filing a certificate of termination or by  
2 the dissolution or withdrawal of the company, **a certificate of**  
3 **assumed name is effective** for a period expiring on December 31 of  
4 the fifth full calendar year following the year in which the  
5 certificate of assumed name ~~was~~ **is** filed. The **company may**  
6 **extend the** certificate of assumed name ~~may be extended~~ for  
7 additional consecutive periods of 5 full calendar years each by  
8 filing a similar certificate of assumed name not earlier than 90  
9 days before the expiration of the initial or any subsequent  
10 5-year period.

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

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

18 (5) ~~The same name may be assumed by 2~~ **Two** or more limited  
19 liability companies or ~~by~~ 1 or more companies and 1 or more  
20 corporations, limited partnerships, or other enterprises  
21 participating together in a partnership or joint venture **may use**  
22 **the same assumed name**. Each participating limited liability  
23 company shall file a certificate of assumed name under this  
24 section.

25 (6) A limited liability company participating in a merger, or  
26 any other entity participating in a merger under section 705a,  
27 may transfer to the survivor the use of an assumed name for which

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

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

22 (8) A limited partnership converting to a limited liability  
23 company under section 707 or a corporation converting to a  
24 limited liability company under section 708 may transfer to that  
25 limited liability company any unexpired certificate of assumed  
26 name that the limited partnership or corporation had filed with  
27 the administrator before the conversion by providing for the

1 transfer of the assumed name in the certificate of conversion  
2 under section 707 or 708. A certificate of assumed name  
3 transferred under this subsection continues for the remainder of  
4 the original effective period of the certificate of assumed  
5 name. After conversion, the limited liability company may  
6 terminate or extend the certificate under subsection (2).

7 (9) If a limited partnership converts to a limited liability  
8 company under section 707 or a corporation converts to a limited  
9 liability company under section 708, the limited liability  
10 company may transact business in the name of the limited  
11 partnership or corporation as an assumed name, or under any  
12 assumed name of the limited partnership or corporation not  
13 transferred under subsection (8), either by filing a new  
14 certificate of assumed name under subsection (1) or by providing  
15 for the use of the assumed name in the certificate of  
16 conversion. A provision in a certificate of conversion for use  
17 of an assumed name described in this subsection is treated as a  
18 new certificate of assumed name.

19 Sec. 502. (1) An operating agreement may establish and  
20 allocate the voting rights of members and may provide that  
21 certain members or groups of members have only limited or no  
22 voting rights. If an operating agreement does not address voting  
23 rights, votes are allocated as follows:

24 (a) ~~Prior to~~ **Before** July 1, 1997, the members of a limited  
25 liability company shall vote in proportion to their shares of  
26 distributions of the company, as determined in accordance with  
27 section 303.

1 (b) On and after July 1, 1997, except as otherwise provided  
2 in subsection (2), each member of a limited liability company has  
3 1 vote. For purposes of this subdivision, a membership interest  
4 held by 2 or more persons, whether as fiduciaries, members of a  
5 partnership, tenants in common, joint tenants, tenants by the  
6 entirety, or otherwise, is treated as held by 1 member.

7 (2) If a limited liability company in existence before July  
8 1, 1997 allocated votes on the basis of subsection (1)(a), the  
9 company shall continue to allocate votes pursuant to subsection  
10 (1)(a) until the allocation is changed by an operating  
11 agreement.

12 (3) If a membership interest that has voting rights is held  
13 by 2 or more persons, whether as fiduciaries, members of a  
14 partnership, tenants in common, joint tenants, tenants by the  
15 entirety, or otherwise, the voting of the interest shall be in  
16 accordance with the instrument or order appointing them or  
17 creating the relationship if a copy of that instrument or order  
18 is furnished to the limited liability company. If an instrument  
19 or order is not furnished to the limited liability company, 1 of  
20 the following applies to the voting of that membership interest:

21 (a) If an operating agreement applies to the voting of the  
22 membership interest, the vote shall be in accordance with that  
23 operating agreement.

24 (b) If an operating agreement does not apply to the voting of  
25 the membership interest and only 1 of the persons who hold the  
26 membership interest votes, that person's vote determines the  
27 voting of the membership interest.

1 (c) If an operating agreement does not apply to the voting of  
2 the membership interest and 2 or more of the persons who hold the  
3 membership interest vote, the vote of a majority determines the  
4 voting of the membership interest, and if there is no majority,  
5 the voting of the membership interest is divided among those  
6 voting.

7 (4) Only members of a limited liability company, and not its  
8 managers, may authorize the following actions:

9 (a) The dissolution of the limited liability company  
10 ~~pursuant to~~ **under** section 801(c).

11 (b) Merger of the limited liability company ~~pursuant to~~  
12 **under** sections 701 ~~through~~ to 706.

13 (c) **Conversion of a limited liability company to a**  
14 **corporation under section 745 of the business corporation act,**  
15 **1972 PA 284, MCL 450.1745.**

16 (d) ~~(e)~~ An amendment to the articles of organization.

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

1 that transaction or use.

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

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

10 (8) Unless the vote of a greater percentage of the voting  
11 interest of members is required by this act, the articles of  
12 organization, or an operating agreement, a vote of a majority in  
13 interest of the members entitled to vote is required to approve  
14 any matter submitted for a vote by the members.

15 Sec. 707. (1) A domestic partnership or domestic limited  
16 partnership may convert to a limited liability company in  
17 accordance with this section.

18 (2) The **partners must approve the** terms and conditions of a  
19 conversion under this section ~~shall be approved by the partners~~  
20 **and the initial operating agreement of the limited liability**  
21 **company** in the manner provided in the partnership agreement for  
22 amendments to the partnership agreement or, if no provision for  
23 amendments to the partnership agreement is made in the  
24 partnership agreement, by all of the partners. **If a conversion**  
25 **is approved by less than all of the partners pursuant to the**  
26 **partnership agreement, the conversion and the operating agreement**  
27 **may not adversely affect the rights and obligations of a**

1 **dissenting partner.**

2 (3) If a conversion under this section is approved, the  
3 converting partnership or limited partnership shall file both of  
4 the following:

5 (a) Articles of organization that comply with section 203 **and**  
6 **with section 903 if the limited liability company will render**  
7 **professional services.**

8 (b) A certificate of conversion ~~, stating the~~ **that contains**  
9 **all of the following:**

10 (i) **The** name of the partnership or limited partnership and  
11 the date it was formed. ~~In the case of a limited partnership,~~  
12 ~~the certificate of conversion shall include a statement that the~~  
13 ~~certificate of limited partnership is canceled as of the~~  
14 ~~effective date of the articles of organization.~~

15 (ii) A statement specifying each assumed name of the  
16 converting partnership transferred to the limited liability  
17 company under section 206(8). The certificate may include a  
18 statement of the name or assumed names of the converting  
19 partnership that are to be treated as newly filed assumed names  
20 under section 206(9).

21 (iii) The effective date of the conversion if later than the  
22 date the certificate of conversion is filed.

23 (4) If a **partnership or** limited partnership converts to a  
24 limited liability company under this section, the ~~certificate of~~  
25 ~~limited partnership is canceled as of the effective date of the~~  
26 ~~articles of organization~~ **partnership agreement terminates on the**  
27 **effective date of the conversion.**



1           (5) If a conversion under this section takes effect, the  
2 limited liability company is considered the same entity that  
3 existed before the conversion **and the conversion is not a**  
4 **dissolution of the partnership.** All property and rights of the  
5 converting partnership or limited partnership remain vested in  
6 the converted limited liability company. All liabilities of the  
7 converting partnership or limited partnership continue as  
8 liabilities of the converted limited liability company. An  
9 action or proceeding pending against the converting partnership  
10 or limited partnership may be continued as if the conversion  
11 under this section had not occurred. The liability, if any, of a  
12 general partner of the converting partnership or limited  
13 partnership for acts or omissions that occurred before ~~a~~ **the**  
14 conversion ~~under this section~~ is not affected by ~~a~~ **the**  
15 conversion. ~~under this section.~~

16           **Sec. 708. (1) A domestic limited liability company may**  
17 **convert to a corporation under section 745 of the business**  
18 **corporation act, 1972 PA 284, MCL 450.1745. A domestic**  
19 **corporation may convert to a limited liability company under this**  
20 **section.**

21           (2) A domestic corporation converting to a limited liability  
22 company shall prepare a plan of conversion that contains all of  
23 the following:

24           (a) The name of the corporation, the name of the limited  
25 liability company to which the corporation is converting, and the  
26 street address of the limited liability company's principal place  
27 of business.

1           (b) The designation and number of the corporation's  
2 outstanding shares of each class and series, specifying the  
3 classes and series entitled to vote, each class and series  
4 entitled to vote as a class, and, if the number of shares is  
5 subject to change before the effective date of the conversion,  
6 the manner in which the change may occur.

7           (c) The manner and basis of converting the shares of the  
8 corporation into membership interests or obligations of the  
9 limited liability company, into cash or other consideration, or  
10 into any combination of membership interests, obligations, cash,  
11 or other consideration and any other terms and conditions of the  
12 conversion.

13           (d) A statement of whether managers or members will manage  
14 the limited liability company.

15           (e) Any other provision that the board of directors of the  
16 corporation considers necessary or desirable.

17           (3) For a conversion to occur, the board of directors of the  
18 corporation must adopt a plan of conversion. If adopted, the  
19 board of directors shall submit the plan of conversion for  
20 approval at a meeting of the shareholders under the procedures  
21 applicable to a merger under section 703a(2) of the business  
22 corporation act, 1972 PA 284, MCL 450.1703a, including, but not  
23 limited to, the procedures pertaining to dissenters' rights under  
24 that act if any shareholders have the right to dissent under  
25 section 762.

26           (4) If the conversion is approved, the corporation shall file  
27 both of the following:

1 (a) Articles of organization that comply with section 203 and  
2 with section 903 if the limited liability company will render  
3 professional services.

4 (b) A certificate of conversion that contains all of the  
5 following:

6 (i) The name of the corporation and the date it was  
7 incorporated.

8 (ii) A statement that the plan of conversion was approved in  
9 accordance with subsection (3).

10 (iii) A statement specifying each assumed name of the  
11 corporation transferred to the limited liability company under  
12 section 206(8). The certificate may include a statement of the  
13 name or assumed names of the corporation that are to be treated  
14 as newly filed assumed names of the limited liability company  
15 under section 206(9).

16 (iv) The effective date of the conversion if later than the  
17 date the certificate of conversion is filed.

18 (5) If a conversion under this section takes effect, the  
19 limited liability company is considered the same entity that  
20 existed before the conversion and the conversion is not a  
21 dissolution of the corporation. All property and rights of the  
22 corporation remain vested in the limited liability company. All  
23 liabilities of the corporation remain as liabilities of the  
24 limited liability company. An action or proceeding pending  
25 against the corporation may be continued as if the conversion  
26 under this section had not occurred.

27 Enacting section 1. This amendatory act does not take

1 effect unless all of the following bills of the 92nd Legislature  
2 are enacted into law:

3 (a) Senate Bill No. 746.

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5 (b) Senate Bill No. 747. \_\_\_\_\_

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7 (c) Senate Bill No. 748. \_\_\_\_\_

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