



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1455 (as introduced 8-17-10)
Sponsor: Senator Tupac A. Hunter
Committee: Commerce and Tourism

(as enacted)

Date Completed: 9-14-10

CONTENT

The bill would amend the Michigan Limited Liability Company Act to do all of the following:

- Authorize the conversion of a limited liability company (LLC) into another business organization, and the conversion of a business organization into an LLC.**
- Allow an LLC to indemnify or insure an LLC member or manager or another person, and repeal the current authorization to indemnify or insure a manager.**
- Specify that a transaction could not be enjoined, set aside, or give rise to damages or other sanctions because of a manager's interest in the transaction if certain conditions were established.**
- Revise provisions regarding a judgment creditor of an LLC member.**
- Revise a provision pertaining to a person's admission as a member of an LLC.**
- Provide for the dissolution of an LLC that had not yet commenced business.**

LLC Conversion into other Business Organization

Under the bill, a domestic LLC could convert into a business organization if the conversion were permitted by the law that would govern the internal affairs of the business organization after conversion and the surviving business organization complied with that law in converting. The domestic LLC proposing to convert would have to adopt a plan of conversion that included information required by the bill.

A vote of the members of the LLC would be required to adopt a plan of conversion. A unanimous vote would be required unless the articles of organization or an operating agreement provided otherwise. If less than a unanimous vote were required, a member who did not vote in favor could withdraw from the LLC before conversion and receive the fair value of his or her interest in the LLC.

When a conversion took effect, the surviving business organization would have all of the liabilities of the domestic LLC. The title to all real estate and other property rights of the LLC would remain vested in the surviving business organization. The surviving business organization could use the name and assumed names of the LLC, if required filings were made and the laws regarding the use and form of names were followed. The surviving business organization would be considered to be the same entity that existed before the conversion and to be organized on the date that the LLC originally was organized.

As used in the bill's conversion provisions, "business organization" and "entity" would mean those terms as defined in Section 705a of the Act, which deals with the merger of LLCs with business organizations. Under Section 705a, "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 LLC. "Entity" means a business organization or a domestic LLC.

Business Organization Conversion into LLC

The bill would allow a business organization to convert into a domestic LLC if the conversion were permitted by the law that governed the internal affairs of the business organization and the business organization complied with that law in converting. The business organization proposing to convert into an LLC would have to adopt a plan of conversion that included information required by the bill.

When a conversion took effect, the business organization would convert into the surviving LLC, which would have all of the liabilities of the business organization. The title to all real estate and other property and rights owned by the business organization would remain vested in the surviving LLC. The surviving LLC could use the name and assumed names of the business organization, if required filings were made and the laws regarding the use and form of names were followed. The surviving LLC would be considered to be the same entity that existed before conversion and to be organized on the date that the business organization originally was organized.

Indemnification/Insurance

Except as otherwise provided in an operating agreement, the bill would permit an LLC to do either of the following:

- Indemnify, hold harmless, and defend a member, manager, or other person from and against any and all losses, expenses, claims, and demands sustained by that person.
- Purchase and maintain insurance on behalf of a member, manager, or other person against any liability or expense asserted against or incurred by that person, whether or not the company could indemnify the person under the bill.

An LLC could not indemnify a person, however, for any of the following:

- The receipt of a financial benefit to which the person was not entitled.
- Liability for voting for, or assenting to, a distribution in violation of an operating agreement or a prohibited distribution.
- A knowing violation of law.

The bill would repeal Section 408 of the Act, which authorizes an LLC to indemnify and/or purchase and maintain insurance on behalf of a manager.

Manager's Interest in Transaction

Under the bill, except as otherwise provided in an operating agreement, a transaction in which a manager or agent of an LLC was determined to have an interest could not, because of that interest, be enjoined, be set aside, or give rise to an award of damages or other sanctions if the manager or agent interested in the transaction established any of the following:

- The transaction was fair to the company at the time entered into.

- The material facts of the transaction and the manager's or agent's interest were disclosed or known to the managers and they authorized, approved, or ratified the transaction.
- The material facts of the transaction and the manager's or agent's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.

Judgment Creditor

Under the Act, if a court receives an application from any judgment creditor of a member of an LLC, the court may charge the member's membership interest with payment of the unsatisfied amount of judgment, with interest. The bill specifies that, if an LLC were served with a charging order and notified of its terms, the member's judgment creditor would be entitled to receive only any distribution or distributions to which the judgment creditor was entitled with respect to the member's membership interest. The bill would delete the current provision under which the judgment creditor has only the rights of an assignee of the membership interest.

Unless otherwise provided in an operating agreement, the member remains a member and retains all rights and powers of membership except the right to receive distributions to the extent charged. The bill specifies that a judgment creditor that obtained a charging order would not become a member of the LLC.

The bill states that a charging order would be a lien on the member's membership interest. A person could not foreclose on that lien or on the membership interest under the Act or any other law, however, and the charging order would not be an assignment of the member's membership interest.

Section 507 of the Act, which contains these provisions, would provide the exclusive remedy by which a judgment creditor of an LLC member could satisfy a judgment out of the member's membership interest in an LLC. A court order to which a member could have been entitled that required an LLC to take an action, provide an accounting, or answer an inquiry would not be available to a judgment creditor attempting to satisfy a judgment out of the member's membership interest, and a court could not issue an order to a judgment creditor.

Admission as Member of an LLC

Under the Act, a person may be admitted as a member of an LLC in connection with the formation of the LLC, by signing the initial operating agreement. The bill, instead, would allow a person to be admitted as a member, in connection with the formation of an LLC, in any of the following ways:

- The person complied with requirements for admission, if an operating agreement included requirements for admission.
- The person signed the initial operating agreement or the person's status as a member was reflected in the records, tax filing, or other written statements of the LLC, if an operating agreement did not include requirements for admission.
- In any manner established in a written agreement of the members.

Currently, after the formation of an LLC, a person may be admitted as a member in one of the following ways:

- In the case of a person acquiring membership interest directly from the LLC, by complying with the provisions of an operating agreement prescribing the requirements

- for admission or, in the absence of those provisions, upon the unanimous vote of the members entitled to vote.
- In the case of an assignee of a membership interest, by unanimous vote of the members entitled to vote, unless otherwise provided in an operating agreement.

The bill also would allow admission as a member as provided in the plan of merger or plan of conversion, if the person were becoming a member of a surviving LLC as the result of a merger or conversion approved under the Act.

Dissolution of LLC

The Act includes requirements for the dissolution of an LLC and the winding up of its affairs. Under the bill, an LLC could be dissolved and its affairs wound up when a majority of the LLC's organizers voted for dissolution, if the LLC had not commenced business; had not issued any membership interests; had no debt or other liabilities; and had not received any payments, or had returned any payments it had received after deducting any amount disbursed for payment of expenses, for subscriptions to its membership interests.

When it began winding up its affairs, an LLC that dissolved as allowed under the bill would have to execute a certificate of dissolution and file it with the Director of the Department of Energy, Labor, and Economic Growth. The certificate would have to include a statement that the LLC met the requirements for dissolution described above.

MCL 450.4102 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

S0910\1455sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.