

State of Wisconsin



1995 Assembly Bill 923

Date of enactment: **June 6, 1996**
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1995 WISCONSIN ACT 400

AN ACT to repeal 183.0107 (1) (b), 183.0901 (3), 183.0908 (4), 183.1101 (1) (b), 215.02 (15) (e), 215.26 (1), 452.12 (2) (b), chapter 776, 813.02 (3) and 813.09; **to renumber** 180.1602 (1); **to renumber and amend** 179.53, 180.1915 and 183.0403 (1); **to consolidate, renumber and amend** 183.0107 (1) (intro.) and (a) and 183.1101 (1) (intro.) and (a); **to amend** 20.865 (1) (a), 20.865 (1) (g), 20.865 (1) (q), 71.07 (7) (b), 93.06 (4), 133.12, 180.0640 (6), 180.0706 (1), 180.1604 (1), 183.0105 (3) (intro.), 183.0201, 183.0301 (1) (b), 183.0301 (2) (b), 183.0304 (2), 183.0401 (2) (c), 183.0402 (3), 183.0403 (2), 183.0403 (3), 183.0403 (4), 183.0403 (5) (b), 183.0405 (1) (b), 183.0405 (1) (e) (intro.), 183.0405 (1) (e) 4., 183.0601, 183.0602, 183.0702 (2) (b), 183.0706 (2) (a), 183.0707, 183.0801 (1) (b), 183.0801 (2) (a), 183.0801 (2) (b), 183.0802 (1) (h), 183.0802 (3), 183.0901 (4) (a), 183.0907 (2) (intro.), 183.0907 (2) (c), 183.0908 (1), 183.0908 (3) (intro.), 183.1008 (1) (intro.), 183.1101 (2), 183.1101 (3), 183.1101 (4), 183.1102, 183.1203 (2) (c), 185.95, 188.26, 452.09 (1) (b), 452.09 (1) (d), 452.09 (1) (e), 452.10 (1), 452.12 (2) (a), 452.12 (2) (c), 452.133 (3) (b), 452.14 (4), 452.22 (2), 551.02 (13) (b), 551.02 (13) (c), 628.04 (1) (b) 1., 891.20 and 972.085; and **to create** 71.21 (5), 179.53 (2), 180.1602 (1), 180.1915 (1) and (2), 183.0202 (6), 183.0403 (1) (b), 183.0802 (1) (k), 183.0909, 452.01 (3j) and 452.01 (3k) of the statutes; **relating to:** withdrawals of limited partners from a limited partnership, business corporation law and limited liability company law revisions, extending the other state tax credit to members of a limited liability company, permitting a limited liability company to obtain a real estate brokers license, repealing provisions for bringing legal actions and for filing injunctions against corporations or limited liability companies and the liability of service corporations and their shareholders, directors, officers and employees.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 2. 20.865 (1) (a) of the statutes is amended to read:

20.865 (1) (a) *Judgments and legal expenses.* A sum sufficient to pay for legal expenses under ss. ~~ss. 59.31 and 776.43~~, for costs under ss. 227.485 and 814.245 and for the costs of judgments, orders and settlements of actions, appeals and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and settlements under ss. 21.13, 165.25 (6),

775.04 and 895.46 that are not otherwise reimbursable as liability costs under par. (fm). Release of moneys under this paragraph pursuant to any settlement agreement, whether or not incorporated into an order, is subject to approval of the attorney general.

SECTION 3. 20.865 (1) (g) of the statutes is amended to read:

20.865 (1) (g) *Judgments and legal expenses; program revenues.* From the appropriate program revenue and program revenue–service accounts, a sum sufficient to pay for legal expenses under ss. ~~ss. 59.31 and 776.43~~, for costs under ss. 227.485 and 814.245 and for the cost

* Section 991.11, WISCONSIN STATUTES 1993–94: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

of judgments, orders and settlements of actions, appeals and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and settlements under ss. 21.13, 165.25 (6), 775.04 and 895.46 that are not otherwise reimbursable as liability costs under par. (fm). Release of moneys under this paragraph pursuant to any settlement agreement, whether or not incorporated into an order, is subject to approval of the attorney general.

SECTION 4. 20.865 (1) (q) of the statutes is amended to read:

20.865 (1) (q) *Judgments and legal expenses; segregated revenues.* From the appropriate segregated funds, a sum sufficient to pay for legal expenses under ss. ~~59.31 and 776.43~~, for costs under ss. 227.485 and 814.245 and for the cost of judgments, orders and settlements of actions, appeals and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and settlements under ss. 21.13, 165.25 (6), 775.04 and 895.46 that are not otherwise reimbursable as liability costs under par. (fm). Release of moneys under this paragraph pursuant to any settlement agreement, whether or not incorporated into an order, is subject to approval of the attorney general.

SECTION 5. 71.07 (7) (b) of the statutes is amended to read:

71.07 (7) (b) If a resident individual, estate or trust pays a net income tax to another state, that resident individual, estate or trust may credit the net tax paid to that other state on that income against the net income tax otherwise payable to the state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes of this paragraph, amounts declared and paid pursuant to the income tax law of another state shall be deemed a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed. Income and franchise taxes paid to another state by a tax-option corporation or limited liability company that is treated as a partnership may be claimed as a credit under this paragraph by that corporation's shareholders or that limited liability company's members who are residents of this state and who otherwise qualify under this paragraph.

SECTION 5m. 71.21 (5) of the statutes is created to read:

71.21 (5) Section 164 (a) (3) of the internal revenue code is modified so that state taxes and taxes of the District of Columbia that are value-added taxes, single business taxes or taxes on or measured by all or a portion of net income, gross income, gross receipts or capital stock are not deductible.

SECTION 7. 93.06 (4) of the statutes is amended to read:

93.06 (4) **LAW ENFORCEMENT.** At the request of the attorney general or of any district attorney, assist in the enforcement of any of the following statutes relating to trade: ss. 133.03 to 133.07, 133.10, 133.12 to 133.15, 133.17, 134.01, 185.94, ~~776.32, 776.36~~, 784.04 and 939.31.

SECTION 8. 133.12 of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

133.12 Domestic and foreign corporations and limited liability companies; cancellation of charters or certificates of authority for restraining trade; affidavit. Any corporation or limited liability company organized under the laws of this state or foreign corporation or foreign limited liability company authorized to transact business in this state pursuant to a certificate of authority from the department of financial institutions which violates any provision of this chapter, may, upon proof thereof, in any circuit court have its charter or authority to transact business in this state suspended, canceled or annulled. Every corporation ~~or limited liability company~~ shall, in its annual report filed with the department of financial institutions, show whether it has entered into any contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce. The department of justice shall enforce this section.

SECTION 8g. 179.53 of the statutes is renumbered 179.53 (1) and amended to read:

179.53 (1) A limited partner may withdraw from a limited partnership only at the time or upon the ~~happening~~ occurrence of events an event specified in writing in the partnership agreement, except as provided in sub. (2) and s. 179.105 (2). ~~If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than 6 months' prior written notice to each general partner at his or her address on the books of the limited partnership at its record office in this state.~~

SECTION 8r. 179.53 (2) of the statutes is created to read:

179.53 (2) If all of the following conditions are met, a limited partner may withdraw upon not less than 6 months' prior written notice to each general partner at his or her address on the books of the limited partnership at its record office in this state:

(a) The limited partnership was formed prior to the effective date of this paragraph [revisor inserts date].

(b) On the effective date of this paragraph [revisor inserts date], the partnership agreement of the limited partnership did not specify in writing the time or the events upon the happening of which a limited partner

could withdraw or a definite time for the dissolution and the winding up of the limited partnership.

(c) The limited partnership has not amended its partnership agreement since the effective date of this paragraph [revisor inserts date], to specify in writing, the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership.

SECTION 9. 180.0640 (6) of the statutes is amended to read:

180.0640 (6) A corporation's indebtedness to a shareholder incurred because of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement. This subsection does not affect the validity or priority of a security interest in corporation property created to secure indebtedness incurred because of a distribution.

SECTION 10. 180.0706 (1) of the statutes is amended to read:

180.0706 (1) A shareholder may waive any notice required by this chapter, the articles of incorporation or the bylaws ~~before or after the date and time stated in the notice at any time.~~ The waiver shall be in writing and signed by the shareholder entitled to the notice, contain the same information that would have been required in the notice under any applicable provisions of this chapter, except that the time and place of meeting need not be stated, and be delivered to the corporation for inclusion in the corporate records.

SECTION 11. 180.1602 (1) of the statutes is renumbered 180.1602 (1m).

SECTION 12. 180.1602 (1) of the statutes is created to read:

180.1602 (1) In this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf.

SECTION 13. 180.1604 (1) of the statutes is amended to read:

180.1604 (1) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any record described in s. 180.1602 (1) or (2), the shareholder who complies with s. 180.1602 ~~(1)~~ (1m) or (2), as applicable, may apply to the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded.

SECTION 14. 180.1915 of the statutes is renumbered 180.1915 (intro.) and amended to read:

180.1915 (title) ~~Contract and tort Professional relationships preserved and liability.~~ (intro.) Sections Except as provided in this section, ss. 180.1901 to 180.1921 do not alter any contract, tort or other legal relationship between a person receiving professional services and one or more persons who are licensed, certified or registered to render those professional services and

who are shareholders, directors, officers or employes in the same service corporation. Any legal liability which may arise out of the professional service shall be joint and several among those shareholders of the same service corporation. A shareholder, director, officer or employe of a service corporation is not personally liable for the debts or other contractual obligations of the service corporation nor for the omissions, negligence, wrongful acts, misconduct and malpractice of any person who is not under his or her actual supervision and control in the specific activity in which the omissions, negligence, wrongful acts, misconduct and malpractice occurred. A service corporation may charge for the services of its shareholders, directors, officers, employes or agents, may collect such charges and may compensate those who render such personal services. Nothing in this section shall affect any of the following:

SECTION 15. 180.1915 (1) and (2) of the statutes are created to read:

180.1915 (1) The liability of a service corporation for the omissions, negligence, wrongful acts, misconduct and malpractice of a shareholder, director, officer or employe while the person, on behalf of the service corporation, provides professional services.

(2) The personal liability of a shareholder, director, officer or employe of a service corporation for his or her own omissions, negligence, wrongful acts, misconduct and malpractice and for the omissions, negligence, wrongful acts, misconduct and malpractice of any person acting under his or her actual supervision and control in the specific activity in which the omissions, negligence, wrongful acts, misconduct and malpractice occurred.

SECTION 16. 183.0105 (3) (intro.) of the statutes is amended to read:

183.0105 (3) (intro.) ~~Except as provided in sub. (4),~~ a A statement of change delivered under sub. (2) (a) shall include all of the following information:

SECTION 17. 183.0107 (1) (intro.) and (a) of the statutes, as affected by 1995 Wisconsin Act 27, are consolidated, renumbered 183.0107 (1) and amended to read:

183.0107 (1) Except as provided in this chapter, any document required or permitted by this chapter to be delivered for filing to the department shall be executed by ~~any of the following: (a) Any a~~ manager, if management of the limited liability company is vested in a manager or managers, or ~~by a~~ any member, if management of the limited liability company is reserved to the members.

SECTION 18. 183.0107 (1) (b) of the statutes is repealed.

SECTION 19. 183.0201 of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

183.0201 Organization. One or more persons may organize a limited liability company by signing and delivering articles of organization to the department for filing. The organizer or organizers need not be members of the limited liability company at the time of organization

or thereafter. A limited liability company shall have 2 or more members.

SECTION 20. 183.0202 (6) of the statutes is created to read:

183.0202 (6) If applicable, the delayed effective date and time of the articles of organization permitted under s. 183.0111 (2).

SECTION 21. 183.0301 (1) (b) of the statutes is amended to read:

183.0301 (1) (b) The act of any member, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course of business the business of the limited liability company, binds the limited liability company unless the member has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge that the member has no authority to act in the matter.

SECTION 22. 183.0301 (2) (b) of the statutes is amended to read:

183.0301 (2) (b) Each manager is an agent of the limited liability company, but not of the members or any of them, for the purpose of its business. The act of any manager, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course of business the business of the limited liability company, binds the limited liability company unless the manager has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge that the manager has no authority to act in the matter.

SECTION 23. 183.0304 (2) of the statutes is amended to read:

183.0304 (2) Notwithstanding sub. (1), nothing in this chapter shall preclude a court from ignoring the limited liability company entity under principles of common law of this state that are similar to those applicable to business corporations and shareholders in this state and under circumstances that are not inconsistent with the purposes of this chapter.

SECTION 24. 183.0401 (2) (c) of the statutes is amended to read:

183.0401 (2) (c) ~~Unless earlier removed or earlier resigned, shall~~ Shall hold office until a successor is elected and qualified, or until prior death, resignation or removal.

SECTION 25. 183.0402 (3) of the statutes is amended to read:

183.0402 (3) An operating agreement may impose duties on its members and managers that are in addition to, ~~but not in abrogation of,~~ those provided under sub. (1).

SECTION 26. 183.0403 (1) of the statutes is renumbered 183.0403 (1) (intro.) and amended to read:

183.0403 (1) (intro.) In this section, “expenses”;

(a) “Expenses” has the meaning given in s. 180.0850 (3).

SECTION 27. 183.0403 (1) (b) of the statutes is created to read:

183.0403 (1) (b) “Liabilities” include the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including an excise tax assessed with respect to an employe benefit plan.

SECTION 28. 183.0403 (2) of the statutes is amended to read:

183.0403 (2) A limited liability company shall indemnify or allow reasonable expenses to and pay liabilities of each member and, if management of the limited liability company is vested in one or more managers, of each manager ~~for all reasonable expenses,~~ incurred with respect to a proceeding if that member or manager was a party to the proceeding in the capacity of a member or manager.

SECTION 29. 183.0403 (3) of the statutes is amended to read:

183.0403 (3) An operating agreement may alter or provide additional rights to indemnification of liabilities or allowance of expenses to members and managers.

SECTION 30. 183.0403 (4) of the statutes is amended to read:

183.0403 (4) Notwithstanding subs. (2) and (3), a limited liability company may not indemnify a member or manager for liabilities or permit a member or manager to retain any allowance for expenses provided under those subsections unless it is determined by or on behalf of the limited liability company that ~~the member or manager did not~~ the liabilities or expenses did not result from the member’s or manager’s breach or fail failure to perform a duty to the limited liability company as provided in s. 183.0402.

SECTION 31. 183.0403 (5) (b) of the statutes is amended to read:

183.0403 (5) (b) In situations not described in par. (a), the determination of whether a member or manager, who is a party to a proceeding because the person is a member or manager, has breached or failed to perform a duty to the limited liability company, or whether the liability or expenses resulted from the breach or failure, shall be made by the vote of the members that meets the requirements under s. 183.0404 (1) (a), except that the vote of any member who is a party to the same or a related proceeding shall be excluded unless all members are parties.

SECTION 32. 183.0405 (1) (b) of the statutes is amended to read:

183.0405 (1) (b) A copy of the articles of organization and all amendments to the articles, ~~together with executed copies of any powers of attorney under which any articles have been executed.~~

SECTION 33. 183.0405 (1) (e) (intro.) of the statutes is amended to read:

183.0405 (1) (e) (intro.) Unless already set forth in an operating agreement, ~~a writing~~ written records containing all of the following information:

SECTION 34. 183.0405 (1) (e) 4. of the statutes is amended to read:

183.0405 (1) (e) 4. Other writings ~~prepared under a requirement, if any, in as required by~~ an operating agreement.

SECTION 35. 183.0601 of the statutes is amended to read:

183.0601 Interim distributions. Except as provided in this subchapter, a member is entitled to receive distributions from a limited liability company, before the member's dissociation from the limited liability company and before its dissolution and winding up, to the extent and at the times or upon the events specified in an operating agreement, or, if not otherwise provided in an operating agreement, to the extent and at the times determined by the members or managers under s. 183.0404 (1).

SECTION 36. 183.0602 of the statutes is amended to read:

183.0602 Allocation of distributions. Distributions of cash or other assets of a limited liability company shall be allocated among the members as provided in an operating agreement. If the members do not enter into an operating agreement or the operating agreement does not so provide, distributions shall be allocated ~~on the basis of the value, as stated in the records required to be kept under s. 183.0405 (1), of the contributions made by each member in the same manner that profits are allocated under s. 183.0503.~~

SECTION 37. 183.0702 (2) (b) of the statutes is amended to read:

183.0702 (2) (b) A member who is not a manager does not have authority, in the member's capacity as a member, to transfer title to property of the limited liability company.

SECTION 38. 183.0706 (2) (a) of the statutes is amended to read:

183.0706 (2) (a) An assignee of a limited liability company interest who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of the assignor under an operating agreement and this chapter. An assignee who becomes a member is liable for any of the assignor's obligations under an operating agreement and this chapter to the limited liability company.

SECTION 39. 183.0707 of the statutes is amended to read:

183.0707 Powers of legal representative. If a member who is an individual dies or is adjudged to be incompetent to manage his or her person or estate by a court of competent jurisdiction ~~adjudges the member to be incompetent to manage his or her person or property,~~ the

member's personal representative, administrator, guardian, conservator, trustee or other legal representative shall have all of the rights of an assignee of the member's interest. If a member is a corporation, trust, partnership, limited liability company or other entity and is dissolved or terminated, ~~the powers of that member may be exercised by its legal representative or successor~~ shall have all of the rights of an assignee of the member's interest.

SECTION 40. 183.0801 (1) (b) of the statutes is amended to read:

183.0801 (1) (b) The time provided in and upon compliance with an operating agreement or, if the limited liability company does not have an operating agreement or an operating agreement does not so provide, ~~when on the effective date of~~ the person's admission is as reflected in the records of the limited liability company maintained under s. 183.0405 (1).

SECTION 41. 183.0801 (2) (a) of the statutes is amended to read:

183.0801 (2) (a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with an operating agreement or, if the limited liability company does not have an operating agreement or an operating agreement does not so provide, upon the consent of all members and ~~when on the effective date of~~ the person's admission is as reflected in the records of the limited liability company maintained under s. 183.0405 (1).

SECTION 42. 183.0801 (2) (b) of the statutes is amended to read:

183.0801 (2) (b) In the case of an assignee of a limited liability company interest, as provided in s. 183.0706 (1) and at the time provided in and upon compliance with an operating agreement or, if the limited liability company does not have an operating agreement or an operating agreement does not so provide, ~~when on the effective date of~~ the person's admission is as reflected in the records of the limited liability company maintained under s. 183.0405 (1).

SECTION 43. 183.0802 (1) (h) of the statutes is amended to read:

183.0802 (1) (h) Unless otherwise provided in an operating agreement or by the written consent of all members at the time, if the member is a separate domestic or foreign limited liability company, the dissolution and commencement of winding up of the separate domestic or foreign limited liability company.

SECTION 44. 183.0802 (1) (k) of the statutes is created to read:

183.0802 (1) (k) Unless otherwise provided in an operating agreement or by the written consent of all members at the time, if the member is a partnership or other entity not described under pars. (g) to (j), the dissolution of the partnership or entity.

SECTION 45. 183.0802 (3) of the statutes is amended to read:

183.0802 (3) Unless an operating agreement provides that a member does not have the power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving written notice to the other members, or on any other terms as are provided in an operating agreement. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement or as a result of the wrongful conduct and may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in an operating agreement or otherwise available under applicable law. Unless otherwise provided in an operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term or completion of that undertaking is a breach of the operating agreement.

SECTION 46. 183.0901 (3) of the statutes is repealed.

SECTION 47. 183.0901 (4) (a) of the statutes is amended to read:

183.0901 (4) (a) The business of the limited liability company is continued by the consent of all of the remaining members within 90 days after the date on which the event occurs at which time the remaining members may agree to the admission of one or more additional members or to the appointment of one or more additional managers, or both.

SECTION 48. 183.0907 (2) (intro.) of the statutes is amended to read:

183.0907 (2) (intro.) A dissolved limited liability company may notify its known claimants in writing of the dissolution at any time after the effective date of its articles of dissolution. The written notice shall include all of the following:

SECTION 49. 183.0907 (2) (c) of the statutes is amended to read:

183.0907 (2) (c) The deadline, which may not be fewer than 120 days after the ~~later of the date of the written notice or the filing of articles of dissolution under s. 183.0906~~, by which the limited liability company must receive the claim.

SECTION 50. 183.0908 (1) of the statutes is amended to read:

183.0908 (1) ~~A~~ At any time after the effective date of its articles of dissolution, a dissolved limited liability company may publish a notice of its dissolution under this section that requests that persons with claims, whether known or unknown, against the limited liability company or its members or managers, in their capacities as such, present the claims in accordance with the notice.

SECTION 51. 183.0908 (3) (intro.) of the statutes is amended to read:

183.0908 (3) (intro.) If a dissolved limited liability company publishes a notice under sub. (2) ~~and files articles of dissolution under s. 183.0906~~, the claim of any of the following claimants against the limited liability company or its members or managers is barred unless the claimant commences a proceeding to enforce the claim within 2 years after the ~~later of the date of the publication of the notice or the filing of the articles of dissolution:~~

SECTION 52. 183.0908 (4) of the statutes is repealed.

SECTION 53. 183.0909 of the statutes is created to read:

183.0909 Enforcing claims. A claim not barred under s. 183.0907 or 183.0908 may be enforced under this section against any of the following:

(1) The dissolved limited liability company, to the extent of its undistributed assets.

(2) If the dissolved limited liability company's assets have been distributed in liquidation, a member of the limited liability company to the extent of the member's proportionate share of the claim or to the extent of the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total value of assets distributed to the member in liquidation.

SECTION 54. 183.1008 (1) (intro.) of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

183.1008 (1) (intro.) A foreign limited liability company authorized to transact business in this state may change its registered office or registered agent, or both, by delivering to the department for filing a statement of change that, ~~except as provided in sub. (2)~~, includes all of the following:

SECTION 55. 183.1101 (1) (intro.) and (a) of the statutes are consolidated, renumbered 183.1101 (1) and amended to read:

183.1101 (1) Unless otherwise provided in an operating agreement, an action on behalf of a limited liability company may be brought in the name of the limited liability company by ~~any of the following:~~ ~~(a) One~~ one or more members of the limited liability company, whether or not the management of the limited liability company is vested in one or more managers, if the members are authorized to sue by the affirmative vote as described in s. 183.0404 (1) (a), except that the vote of any member who has an interest in the outcome of the action that is adverse to the interest of the limited liability company shall be excluded.

SECTION 56. 183.1101 (1) (b) of the statutes is repealed.

SECTION 57. 183.1101 (2) of the statutes is amended to read:

183.1101 (2) In an action brought on behalf of a limited liability company, the member ~~or manager~~ bringing

the action shall be a member ~~or manager~~ at the time of bringing the action and at the time of the transaction which is the subject of the action or, ~~in the case of a member,~~ the person's status as a member devolved upon that person by operation of law or under the terms of an operating agreement from a person who was a member at the time of the transaction.

SECTION 58. 183.1101 (3) of the statutes is amended to read:

183.1101 (3) In an action brought on behalf of a limited liability company, the complaint shall describe with particularity the authorization of the member ~~or manager~~ to bring the action and the determination of the authorization.

SECTION 59. 183.1101 (4) of the statutes is amended to read:

183.1101 (4) If an action brought on behalf of a limited liability company is successful, in whole or in part, as a result of a judgment, compromise or settlement of the action, the court may award the member ~~or manager~~ bringing the action reasonable expenses, including reasonable attorney fees, from any recovery in the action or from the limited liability company.

SECTION 60. 183.1102 of the statutes is amended to read:

183.1102 Effect of lack of authority to sue. The lack of authority of a member ~~or manager~~ to sue on behalf of a limited liability company may not be asserted by the limited liability company as a basis for bringing a subsequent suit on the same cause of action.

SECTION 61. 183.1203 (2) (c) of the statutes is amended to read:

183.1203 (2) (c) The manner and basis of converting the interests in each limited liability company that is a party to the merger into limited liability company interests, ~~cash~~ or obligations of the surviving limited liability company or into cash or other property.

SECTION 62. 185.95 of the statutes is amended to read:

185.95 Discrimination against association. Whenever any corporation has discriminated against any association transacting business in this state, its charter may be vacated or its existence annulled, or its license to do business in this state may be revoked ~~in the manner provided in s. 776.36.~~

SECTION 63. 188.26 of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

188.26 Veterans; corporations. Whenever any corporation is formed under ch. 180 or 181 or this chapter for the purpose of assisting any veteran, as defined in s. 45.37 (1a), or operating social clubs in which the name "veteran" appears, the department of financial institutions shall investigate the same to ascertain the character thereof, and whether or not the same has been procured by fraudulent representation or concealment of any material fact relating to such veteran's name, purpose, membership,

organization, management or control or other material fact. If the department of financial institutions so finds, such findings, misrepresentation or concealment shall be reported to the attorney general, and the attorney general thereupon shall ~~as provided in s. 776.35~~ bring an action to vacate or annul the corporate charter.

SECTION 64. 215.02 (15) (e) of the statutes is repealed.

SECTION 65. 215.26 (1) of the statutes is repealed.

SECTION 66b. 452.01 (3j) of the statutes is created to read:

452.01 (3j) "Business entity" means any organization or enterprise, other than a sole proprietorship, which is operated for profit or that is nonprofit and nongovernmental, including an association, business trust, corporation, joint venture, limited liability company, limited liability partnership, partnership or syndicate.

SECTION 66e. 452.01 (3k) of the statutes is created to read:

452.01 (3k) "Business representative" means a director, manager, member, officer, owner or partner of a business entity.

SECTION 66f. 452.09 (1) (b) of the statutes is amended to read:

452.09 (1) (b) The name and address of the applicant; if the applicant is a partnership business entity, the name and address of each member; ~~and if the applicant is a corporation, the name and address of each of its officers~~ business representative.

SECTION 66h. 452.09 (1) (d) of the statutes is amended to read:

452.09 (1) (d) The business or occupation engaged in by the applicant, or if a partnership business entity, by each member, ~~or if a corporation, by each officer~~ business representative, for a period of at least 2 years immediately preceding the date of the application.

SECTION 66k. 452.09 (1) (e) of the statutes is amended to read:

452.09 (1) (e) Any other information which the department may reasonably require to enable it to determine the competency of each applicant, including each ~~member~~ business representative of the ~~partnership,~~ ~~or each officer of the corporation~~ business entity, to transact the business of a broker or salesperson in a manner which safeguards the interests of the public.

SECTION 66L. 452.10 (1) of the statutes is amended to read:

452.10 (1) An application shall be verified by the applicant. If made by a partnership business entity it shall be verified by ~~at least 2 members.~~ ~~If made by a corporation it shall be verified by the president and secretary~~ a business representative.

SECTION 66m. 452.12 (2) (a) of the statutes is amended to read:

452.12 (2) (a) A license may be issued to a ~~corporation~~ business entity if the ~~corporation~~ business entity has

at least one officer business representative licensed as a broker. The license issued to the ~~corporation~~ business entity entitles each officer business representative of the ~~corporation~~ business entity who is a licensed broker to act as a broker on behalf of the ~~corporation~~ business entity.

SECTION 66p. 452.12 (2) (b) of the statutes is repealed.

SECTION 66q. 452.12 (2) (c) of the statutes is amended to read:

452.12 (2) (c) Application for a ~~corporate or partnership~~ business entity license shall be made on forms prescribed by the department, listing the names and addresses of all ~~officers and partners~~ business representatives, and shall be accompanied by the fee specified in s. 440.05 (1). If there is a change in any of the ~~officers or partners~~ business representatives, the change shall be reported to the department, on the same form, within 30 days after the effective date of the change.

SECTION 66r. 452.133 (3) (b) of the statutes is amended to read:

452.133 (3) (b) Act in a transaction on the broker's own behalf, on behalf of the broker's immediate family or firm, or on behalf of any organization or business entity in which the broker has an interest, unless the broker has the written consent of all parties to the transaction.

SECTION 66t. 452.14 (4) of the statutes is amended to read:

452.14 (4) If a broker is a ~~company~~ business entity it shall be sufficient cause for reprimand or for the limitation, suspension or revocation of a broker's license that any ~~officer, director or trustee~~ business representative of the ~~company~~, or any member of a ~~partnership~~ business entity, or anyone who has a financial interest in or is in any way connected with the operation of a brokerage business, has been guilty of any act or omission which would be cause for refusing a broker's license to such person as an individual.

SECTION 66y. 452.22 (2) of the statutes is amended to read:

452.22 (2) The certificate of the secretary or his or her designee to the effect that a specified individual, ~~partnership or corporation~~ business entity is not or was not on a specified date the holder of a broker's, salesperson's or time-share salesperson's license or registration, or that a specified license or registration was not in effect on a date specified, or as to the issuance, limitation, suspension or revocation of any license or registration or the reprimand of any holder thereof, the filing or withdrawal of any application or its existence or nonexistence, is prima facie evidence of the facts therein stated for all purposes in any action or proceedings.

SECTION 76. 551.02 (13) (b) of the statutes is amended to read:

551.02 (13) (b) "Security" does not include any fixed or variable insurance or endowment policy or annuity contract under which an insurer promises to pay money

either in a lump sum or periodically for life or some other specified period; any beneficial interest in any voluntary inter vivos trust not created for the purpose of carrying on any business or solely for the purpose of voting; or any beneficial interest in any testamentary trust; or any member's interest that includes all of the rights set forth in s. 183.0102 (11) in a limited liability company organized under ch. 183 if the aggregate number of members of the limited liability company, after the interest is ~~transferred~~ sold, does not exceed 15 and the right to manage, and the articles of organization do not vest management of the limited liability company is vested in its members in one or more managers.

SECTION 77. 551.02 (13) (c) of the statutes is amended to read:

551.02 (13) (c) "Security" ~~Except as provided in par. (b), "security"~~ is presumed to include an a member's interest in a limited liability company organized under ch. 183 if the ~~right to manage~~ articles of organization vest management of the limited liability company is vested in, or if the operating agreement delegates the essential managerial responsibility of the limited liability company to, one or more managers who are not members, or if the aggregate number of members of the limited liability company, after the interest is sold, exceeds 35. "Security" is ~~not presumed~~ not to include an a member's interest in a limited liability company organized under ch. 183 if the aggregate number of members of the limited liability company, after the interest is sold, does not exceed 35 and the ~~right to manage~~ articles of organization do not vest management of the limited liability company is vested in, nor does the operating agreement delegate the essential managerial responsibilities of the limited liability company to its members one or more managers who are not members.

SECTION 78. 628.04 (1) (b) 1. of the statutes is amended to read:

628.04 (1) (b) 1. That if a natural person, the applicant has the intent in good faith to do business as an intermediary or, if a corporation, partnership or limited liability company, has that intent and has included that purpose in the articles of incorporation, association or ~~organization~~ certificate of limited partnership or general partnership agreement or limited liability company operating agreement;

SECTION 79. Chapter 776 of the statutes, as affected by 1995 Wisconsin Act 27, is repealed.

SECTION 80. 813.02 (3) of the statutes is repealed.

SECTION 81. 813.09 of the statutes is repealed.

SECTION 82. 891.20 of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

891.20 Articles of incorporation, presumptions. Any Except as provided in s. 180.0203 (2), any charter or patent of incorporation which shall have been issued by the governor, secretary of state or department of financial institutions, or by any combination, to any corporation

under any law of the state; any certificate of organization or association of any corporation or joint stock company; the articles of organization of a limited liability company; the articles of association or organization of any corporation, or a certified copy thereof, which shall have been filed or recorded in the office of the secretary of state or with the department of financial institutions, or recorded in the office of any register of deeds or filed or recorded in the office of any clerk of the circuit court under any law of the state; any certificate or resolution for the purpose of amendment, and every amendment in any form, of the charter, patent, certificate or articles of association or organization or of the name, corporate powers or purposes of any corporation or limited liability company, filed or recorded in any of the departments or offices and a certified copy of any such document so filed or recorded shall be received as conclusive evidence of the existence of the corporation, limited liability company or joint stock company mentioned therein, or of the due amendment of the charter, patent, certificate or articles of association or organization thereof in all cases where such facts are only collaterally involved; and as presumptive evidence thereof and of the facts therein stated in all other cases.

SECTION 83. 972.085 of the statutes is amended to read:

972.085 Immunity; use standard. Immunity from criminal or forfeiture prosecution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15, 139.20, 139.39 (5), 195.048, 196.48, 551.56 (3), 553.55 (3), 601.62 (5), 767.47 (4), 767.65 (21), ~~776.23~~, 885.15, 885.24, 885.25 (2), 891.39 (2), 968.26, 972.08 (1) and 979.07 (1), provides immunity only from the use of the compelled testimony or evidence in subsequent criminal or forfeiture proceedings, as well as immunity from the use of evidence derived from that compelled testimony or evidence.

SECTION 84. Initial applicability.

(1) The treatment of sections 71.07 (7) (b) and 71.21 (5) of the statutes first applies to a taxable year of a limited liability company that begins on January 1, 1996, and first applies to the appropriate taxable year of a member of a limited liability company to conform the member's treatment of the credit to the limited liability company's treatment.

(2) The renumbering and amendment of section 180.1915 of the statutes and the creation of section 180.1915 (1) and (2) of the statutes first apply to civil actions commenced on the effective date of this subsection.

SECTION 85. Effective date.

(1) This act takes effect on July 1, 1996, or on the day after publication, whichever is later.
