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Senate Bills 1445 and 1446 (as introduced 7-24-08)
Sponsor: Senator Jason E. Allen (S.B. 1445)
 Senator Jim Barcia (S.B. 1446)
Committee: Commerce and Tourism

Date Completed: 9-16-08

CONTENT

The bills would amend the Michigan Limited Liability Company (LLC) Act to do all of the following:

- Define "low-profit limited liability company", which would refer to an LLC formed to accomplish charitable or educational purposes.**
- Require a low-profit LLC to use certain words or abbreviations in its name.**
- Allow the Attorney General to seek the dissolution of a low-profit LLC that failed to meet the requirements for being a low-profit LLC and failed to amend its name to conform with LLC naming requirements.**

The bills are described in detail below.

Senate Bill 1445

The bill would define "low-profit limited liability company" as an LLC that has included in its articles of organization a purpose that meets, and that at all times conducts its activities to meet, all of the following requirements:

- The LLC significantly furthers the accomplishment of one or more charitable or educational purposes described in Section 170(c)(2)(b) of the Internal Revenue Code (IRC), and would not have been formed except to accomplish those charitable or educational purposes.
- The production of income or appreciation of property is not a significant purpose of the LLC.
- The purposes of the LLC do not include accomplishing one or more political or legislative purposes described in Section 170(c)(2)(d) of the IRC.

The bill specifies that, in the absence of other factors, the fact that the LLC produced significant income or capital appreciation would not be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

(Section 170 of the IRC allows a tax deduction for any charitable contribution paid within the taxable year. Section 170(c) defines "charitable contribution". Section 170(c)(2)(b) includes in that definition a contribution to a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition

(but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals. Section 170(c)(2)(d) includes a contribution to a corporation, trust, or community chest, fund, or foundation that is not disqualified for tax exemption under Section 501(c)(3) of the IRC by reason of attempting to influence legislation, and that does not participate in, or intervene in any political campaign on behalf of or in opposition to any candidate for public office, including the publication or distribution of statements.)

Senate Bill 1446

The Act requires the name of a domestic LLC to contain the words "limited liability company", or the abbreviation "L.L.C." or "L.C.", with or without periods or other punctuation. Under the bill, the name of a low-profit LLC would have to contain the words "low-profit limited liability company", or the abbreviation "L.3.C.", with or without periods or other punctuation.

Under the Act, the Attorney General may bring an action in the circuit court for the county in which an LLC's registered office is located for dissolution of the LLC on the ground that it has committed any of the following acts:

- Procured its organization through fraud.
- Repeatedly and willfully exceeded its legal authority.
- Repeatedly and willfully conducted its business in an unlawful manner.

The bill also would allow the Attorney General to bring an action for dissolution if the LLC were a low-profit LLC that ceased to meet any of the requirements described in the proposed definition of "low-profit limited liability company" and, for 60 days after it ceased to meet those requirements, failed to file a certificate of amendment amending its name to conform with the naming requirements for an LLC.

MCL 450.4102 (S.B. 1445)
450.4204 et al. (S.B. 1446)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Pratt
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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.