

SENATE BILL No. 1446

July 24, 2008, Introduced by Senators BARCIA and ALLEN and referred to the Committee on Commerce and Tourism.

A bill to amend 1993 PA 23, entitled "Michigan limited liability company act," by amending sections 204, 206, 803, and 1004 (MCL 450.4204, 450.4206, 450.4803, and 450.5004), section 204 as amended by 2002 PA 686 and section 206 as amended by 1997 PA 52.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 204. (1) ~~The~~**EXCEPT AS PROVIDED IN SUBSECTION (2), THE**
2 name of a domestic limited liability company shall contain the
3 words "limited liability company", or the abbreviation "L.L.C." or
4 "L.C.", with or without periods or other punctuation.

5 (2) **THE NAME OF A LOW-PROFIT LIMITED LIABILITY COMPANY SHALL**
6 **CONTAIN THE WORDS "LOW-PROFIT LIMITED LIABILITY COMPANY", OR THE**
7 **ABBREVIATION "L.3.C." OR "L.3.C.", WITH OR WITHOUT PERIODS OR OTHER**

1 **PUNCTUATION.**

2 (3) ~~(2)~~—The name of a domestic or foreign limited liability
3 company formed under or subject to this act shall conform to all of
4 the following:

5 (a) Shall not contain a word or phrase, or abbreviation or
6 derivative of a word or phrase, that indicates or implies that the
7 company is formed for a purpose other than the purpose or purposes
8 permitted by its articles of organization.

9 (b) Shall not contain the word "corporation" or "incorporated"
10 or the abbreviation "corp." or "inc.".

11 (c) Shall distinguish the name ~~upon~~**IN** the records in the
12 office of the administrator from all of the following:

13 (i) The name of a domestic limited liability company, or a
14 foreign limited liability company authorized to transact business
15 in this state, that is in good standing.

16 (ii) The name of a corporation subject to the business
17 corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or a
18 nonprofit corporation subject to the nonprofit corporation act,
19 1982 PA 162, MCL 450.2101 to 450.3192.

20 (iii) A name reserved, registered, or assumed under this act,
21 under the business corporation act, 1972 PA 284, MCL 450.1101 to
22 450.2098, or under the nonprofit corporation act, 1982 PA 162, MCL
23 450.2101 to 450.3192.

24 (iv) The name of a domestic or foreign limited partnership as
25 filed or registered, reserved, or assumed under the Michigan
26 revised uniform limited partnership act, 1982 PA 213, MCL 449.1101
27 to 449.2108.

1 (d) Shall not contain a word or phrase, an abbreviation, or
2 derivative of a word or phrase, the use of which is prohibited or
3 restricted by any other statute of this state.

4 (4) ~~(3)~~—If a foreign limited liability company is unable to
5 obtain a certificate of authority to transact business in this
6 state because its name does not comply with ~~subsection~~**SUBSECTIONS**
7 (1), ~~or~~ (2), **AND (3)**, the foreign limited liability company may
8 apply for authority to transact business in this state by adding to
9 its name in the application a word, abbreviation, or other
10 distinctive and distinguishing element, or alternatively, adopting
11 for use in this state an assumed name otherwise available for use.
12 If in the judgment of the administrator that name would comply with
13 subsections (1), ~~and~~ (2), **AND (3)**, those subsections ~~shall~~**DO** not
14 bar the issuance to the foreign limited liability company of a
15 certificate of authority to transact business in this state. The
16 certificate of authority to transact business in this state issued
17 to the foreign limited liability company shall be issued in the
18 name applied for and the foreign limited liability company shall
19 use that name in all its dealings with the administrator and in the
20 transaction of business in this state.

21 (5) ~~(4)~~—The fact that a limited liability company name
22 complies with this section does not create substantive rights to
23 the use of the name.

24 Sec. 206. (1) A domestic or foreign limited liability company
25 may transact business under an assumed name or names other than its
26 name as set forth in its articles of organization or certificate of
27 authority, if not precluded from use of the assumed name or names

1 under section ~~204(2)~~**204(3)**, by filing a certificate stating the
2 true name of the company and the assumed name or names under which
3 business is to be transacted.

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

13 (3) The administrator shall notify ~~the A DOMESTIC OR FOREIGN~~
14 **LIMITED LIABILITY** company of the impending expiration of ~~the A~~
15 certificate of assumed name not later than 90 days before the
16 expiration of the initial or any subsequent 5-year period **DESCRIBED**
17 **IN SUBSECTION (2)**.

18 (4) Filing a certificate of assumed name under this section
19 does not create substantive rights to the use of a particular
20 assumed name.

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

27 (6) A limited liability company participating in a merger, or

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

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

22 Sec. 803. (1) The attorney general may bring an action in the
23 circuit court for the county in which the registered office of a
24 limited liability company is located for dissolution of the **LIMITED**
25 **LIABILITY** company ~~upon~~ **ON** the ground that the company has committed
26 any of the following acts:

27 (a) Procured its organization through fraud.

1 (b) Repeatedly and willfully exceeded the authority conferred
2 ~~upon~~ ON it by law.

3 (c) Repeatedly and willfully conducted its business in an
4 unlawful manner.

5 (D) IF THE LIMITED LIABILITY COMPANY IS A LOW-PROFIT LIMITED
6 LIABILITY COMPANY, CEASED TO MEET ANY OF THE REQUIREMENTS DESCRIBED
7 IN SECTION 102(M) AND FOR 60 DAYS AFTER IT CEASED TO MEET THOSE
8 REQUIREMENTS FAILED TO FILE A CERTIFICATE OF AMENDMENT AMENDING ITS
9 NAME TO CONFORM WITH THE REQUIREMENTS OF SECTION 204.

10 (2) This section does not exclude any other statutory or
11 common law action by the attorney general for dissolution of a
12 limited liability company.

13 Sec. 1004. ~~A~~ THE DEPARTMENT SHALL NOT ISSUE A certificate of
14 authority ~~shall not be issued~~ to a foreign limited liability
15 company unless the name of the company satisfies the requirements
16 of section 204. If the name of a foreign limited liability company
17 does not satisfy the requirements of section 204, the company may
18 take the action authorized by section ~~204(3)~~ 204(4).