

# SENATE BILL No. 1445

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

A bill to amend 1993 PA 23, entitled "Michigan limited liability company act," by amending section 102 (MCL 450.4102), as amended by 2002 PA 686.

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

1           Sec. 102. (1) Unless the context requires otherwise, the  
2 definitions in this section control the interpretation of this act.

3           (2) As used in this act:

4           (a) "Administrator" means the director of the department or  
5 his or her designated representative.

6           (b) "Articles of organization" means the original documents  
7 filed to organize a limited liability company, as amended or  
8 restated by certificates of correction, amendment, or merger, by  
9 restated articles, or by other instruments filed or issued under

1 any statute.

2 (c) "Constituent" means a party to a plan of merger, including  
3 the survivor.

4 (d) "Contribution" means anything of value that a person  
5 contributes to the limited liability company as a prerequisite for,  
6 or in connection with, membership, including cash, property,  
7 services performed, or a promissory note or other binding  
8 obligation to contribute cash or property, or to perform services.

9 (e) "Corporation" or "domestic corporation" means any of the  
10 following:

11 (i) A corporation formed under the business corporation act,  
12 1972 PA 284, MCL 450.1101 to 450.2098.

13 (ii) A corporation existing on January 1, 1973 and formed under  
14 another statute of this state for a purpose for which a corporation  
15 may be formed under the business corporation act, 1972 PA 284, MCL  
16 450.1101 to 450.2098.

17 (iii) A corporation formed under the professional service  
18 corporation act, 1962 PA 192, MCL 450.221 to 450.235.

19 (f) "Department" means the department of ~~consumer and industry~~  
20 ~~services~~ **LABOR AND ECONOMIC GROWTH**.

21 (g) "Distribution" means a direct or indirect transfer of  
22 money or other property or the incurrence of indebtedness by a  
23 limited liability company to or for the benefit of its members or  
24 assignees of its members in respect of the members' membership  
25 interests.

26 (h) "Electronic transmission" or "electronically transmitted"  
27 means any form of communication that meets all of the following:

1 (i) It does not directly involve the physical transmission of  
2 paper.

3 (ii) It creates a record that may be retained and retrieved by  
4 the recipient.

5 (iii) It may be directly reproduced in paper form by the  
6 recipient through an automated process.

7 (i) "Foreign limited liability company" means a limited  
8 liability company formed under laws other than the laws of this  
9 state.

10 (j) "Foreign limited partnership" means a limited partnership  
11 formed under laws other than the laws of this state.

12 (k) "Limited liability company" or "domestic limited liability  
13 company" means an entity that is an unincorporated membership  
14 organization formed under this act.

15 (l) "Limited partnership" or "domestic limited partnership"  
16 means a limited partnership formed under the Michigan revised  
17 uniform limited partnership act, 1982 PA 213, MCL 449.1101 to  
18 449.2108.

19 (M) "LOW-PROFIT LIMITED LIABILITY COMPANY" MEANS A LIMITED  
20 LIABILITY COMPANY THAT HAS INCLUDED IN ITS ARTICLES OF ORGANIZATION  
21 A PURPOSE THAT MEETS, AND THAT AT ALL TIMES CONDUCTS ITS ACTIVITIES  
22 TO MEET, ALL OF THE FOLLOWING REQUIREMENTS:

23 (i) THE LIMITED LIABILITY COMPANY SIGNIFICANTLY FURTHERS THE  
24 ACCOMPLISHMENT OF 1 OR MORE CHARITABLE OR EDUCATIONAL PURPOSES  
25 DESCRIBED IN SECTION 170(C)(2)(B) OF THE INTERNAL REVENUE CODE, 26  
26 USC 170, AND WOULD NOT HAVE BEEN FORMED EXCEPT TO ACCOMPLISH THOSE  
27 CHARITABLE OR EDUCATIONAL PURPOSES.

1           (ii) THE PRODUCTION OF INCOME OR APPRECIATION OF PROPERTY IS  
2 NOT A SIGNIFICANT PURPOSE OF THE LIMITED LIABILITY COMPANY.  
3 HOWEVER, IN THE ABSENCE OF OTHER FACTORS, THE FACT THAT A LIMITED  
4 LIABILITY COMPANY PRODUCES SIGNIFICANT INCOME OR CAPITAL  
5 APPRECIATION IS NOT CONCLUSIVE EVIDENCE OF A SIGNIFICANT PURPOSE  
6 INVOLVING THE PRODUCTION OF INCOME OR THE APPRECIATION OF PROPERTY.

7           (iii) THE PURPOSES OF THE LIMITED LIABILITY COMPANY DO NOT  
8 INCLUDE ACCOMPLISHING 1 OR MORE POLITICAL OR LEGISLATIVE PURPOSES  
9 DESCRIBED IN SECTION 170(C)(2)(D) OF THE INTERNAL REVENUE CODE, 26  
10 USC 170.

11           (N) ~~(m)~~—"Majority in interest" means a majority of votes as  
12 allocated by an operating agreement, or by the statute in the  
13 absence of an allocation by operating agreement, and held by  
14 members entitled to vote on a matter submitted for a vote by  
15 members.

16           (O) ~~(n)~~—"Manager" or "managers" means a person or persons  
17 designated to manage the limited liability company pursuant to a  
18 provision in the articles of organization stating that the business  
19 is to be managed by or under the authority of managers.

20           (P) ~~(o)~~—"Member" means a person who has been admitted to a  
21 limited liability company as provided in section 501, or, in the  
22 case of a foreign limited liability company, a person ~~who~~ THAT is a  
23 member of the foreign limited liability company in accordance with  
24 the laws under which the foreign limited liability company is  
25 organized.

26           (Q) ~~(p)~~—"Membership interest" or "interest" means a member's  
27 rights in the limited liability company, including, but not limited

1 to, any right to receive distributions of the limited liability  
2 company's assets and any right to vote or participate in  
3 management.

4 (R) ~~(q)~~—"Operating agreement" means a written agreement by the  
5 member of a limited liability company that has 1 member, or between  
6 all of the members of a limited liability company ~~having~~ **THAT HAS**  
7 more than 1 member, pertaining to the affairs of the limited  
8 liability company and the conduct of its business. The term  
9 includes any provision in the articles of organization pertaining  
10 to the affairs of the limited liability company and the conduct of  
11 its business.

12 (S) ~~(r)~~—"Person" means an individual, partnership, limited  
13 liability company, trust, custodian, estate, association,  
14 corporation, governmental entity, or any other legal entity.

15 (T) ~~(s)~~—"Services in a learned profession" means services  
16 rendered by a dentist, an osteopathic physician, a physician, a  
17 surgeon, a doctor of divinity or other clergy, or an attorney-at-  
18 law.

19 (U) ~~(t)~~—"Surviving company", "surviving entity", or "survivor"  
20 means the constituent that survives a merger, as identified in the  
21 certificate of merger.

22 (V) ~~(u)~~—"Vote" means an affirmative vote, approval, or  
23 consent.