

Online filing for limited liability company annual statements

Limited liability companies (LLCs) formed or qualified to do business in Michigan before October 1, 2007, are required to file an annual statement by February 15, 2008. In addition to the annual statement, professional limited liability companies (PLLCs) must also file an annual report listing the members and managers of the professional limited liability company.

Notices of delinquency will be sent in November 2007 to all domestic and foreign LLCs and PLLCs liable for a 2006 annual statement or report for which the statement or report has not been filed. Beginning November 15, 2007, LLCs and PLLCs will be able to file online annual statements and reports for 2006, 2007, and 2008 at <https://www6.dleg.state.mi.us/corpsfilings/>. Fees are paid by credit card and the filed statement or report is available online within a few minutes after the filing is completed. A change in resident agent, registered office, or registered office mailing address can be made when filing online.

LLCs and PLLCs that do not file an annual statement or report within 60 days of the delinquency notice will no longer be in good standing. No documents can be filed for a LLC or PLLC that is not in good standing and the name is available for use by others. To be restored to good standing, the company must submit a Certificate of Restoration of Good Standing, accompanied by the annual statements or reports and fees for all the years for which they were not filed and paid, and the \$50 fee for filing the Certificate of Restoration of Good Standing.

A Certificate of Restoration is available online at <http://www.dleg.state.mi.us/bcsc/forms/corp/llc/770.pdf> for a domestic company and at <http://www.dleg.state.mi.us/bcsc/forms/corp/llc/771.pdf> for a foreign company. Preprinted annual statements and reports are available by contacting the Corporation Division at (517)241-6470.

Name availability online

The name availability program used by the Corporation Division is being added to the Web site. The program will identify conflicting names and permit you to display the record for the entity, using the name being checked when there is a conflict. The program also includes warnings when a required word is needed, and when a name includes a word or phrase that is restricted or prohibited by law. For a name containing the word "bank", for example, the program will notify the user that the word "bank" is restricted. An alphabetical list of some words and phrases that are restricted is available on the Corporation Division's Web site at <http://www.dleg.state.mi.us/bcsc/forms/corp/pub/restrict.pdf>.

Protecting Entity Names

No substantive rights to a name are acquired by filing with the Corporation Division.¹ Companies must be diligent to protect the rights they acquire in any particular name. Periodically checking on Business Entity Search² for a similar business name is a simple way to monitor corporation, limited liability company, and limited partnership names in Michigan. Many states offer similar online search capabilities, which may be used to monitor entity names of businesses involved in interstate commerce. Links to Web sites for U.S., Canada, and some foreign jurisdictions are available on the International Association of Commercial Administrators (IACA) Web site.³

Federal and state trademark registrations can also be monitored to determine if any marks similar to an entity's name are in use. Federal marks can be searched online⁴ and a list of Michigan registered marks is posted online monthly.⁵

Several statutes provide some additional name protection for non-profit corporations. MCL 430.51 provides that if two or more benevolent, humane, fraternal, or charitable organizations claim the right to the same name, or names substantially similar, the organization that first became

incorporated is entitled to the exclusive use of such name. MCL 430.101 is similar to MCL 430.51 but also includes military, ex-military, and patriotic organizations. The organizations described in MCL 430.51 and 430.101 that incorporate may have greater rights to a name than an unincorporated association. In addition, several acts provide for penalties and fines for infringing on names of certain organizations.⁶

Miller v Allstate Ins Co

In *Miller v Allstate Ins Co*,⁷ decided May 31, 2007, the Michigan Court of Appeals held that if a corporation can be formed under the Professional Service Corporation Act it may not form under the Business Corporation Act. The court interpreted "professional service" in section 2(c) of the Professional Service Corporation Act⁸ as a nonexclusive list and concluded that a corporation must form as a professional service corporation if it is providing a personal service to the public that requires a license. The definition in section 2(c) includes health professions listed in Article 15 of the Public Health Code; occupations referred to as professions in the Occupational Code, requiring professional experience and providing for rules of professional conduct; and lawyers. The Bureau of Commercial Services looked at the various licensed activities and identified the occupations that are similar to the occupations listed in section 2(c). The Bureau narrowly applies *Miller* to only those occupations that are like the occupations listed in section 2(c).⁹

The learned profession doctrine has a long history in Michigan. The adoption of the Professional Service Corporation Act, 1961 PA 192, permitted lawyers and doctors to organize as a profit corporation for the first time. The Bureau of Commercial Services is working with the Corporate Laws Committee on amendments to the Business Corporation Act, Professional Service Corporation Act, and Michigan Limited Liability Company Act to clarify that only learned professions are limited to organizing as

professional service corporations and professional limited liability companies.

The parties in *Miller v Allstate Ins Co* and three related unpublished opinions¹⁰ have filed application for leave to appeal to the supreme court. The cases and action by the courts will be monitored to determine if any additional steps will need to be taken.

Anti-Money Laundering

The U.S. Senate Permanent Subcommittee on Investigations, chaired by Senator Carl Levin, is concerned about the U.S. companies that are being used for organized crime, money laundering, securities fraud, tax evasion, and other misconduct. The Government Accountability Office report issued in 2006 reported that none of the states require background information on incorporators or organizers and very little information is collected regarding the owners of companies.¹¹

In testimony before the subcommittee on November 14, 2006, Senator Levin¹² noted that the United States is a leading member of the Financial Action Task Force on Money Laundering (FATF) and has worked with the FATF to convince countries to comply with the FATF's 40 recommendations¹³ for strong and effective anti-money laundering laws. However, the United States has not complied and failed a 2006 FATF review of U.S. anti-money laundering laws.

In many jurisdictions, the corporation and limited liability company statutes are administered by the secretary of state.¹⁴ The National Association of Secretaries of State in 2006 established a task force to study company formation and to make recommendations for federal and state consideration. The task force report was released in July 2007 and contains recommendations for increasing awareness of requirements of the Office of Foreign Assets Control without the states being responsible for checking beneficial owners.¹⁵

The IACA included discussions of company formation issues and concerns about beneficial owners in its 2006 and 2007 annual meetings. Doc-

uments related to those discussions are available online.¹⁶

The American Bar Association (ABA) Task Force on Gatekeeper Regulation and the Profession was created in February 2002.¹⁷ The mission of the task force is to respond to anti-money laundering initiatives that affect attorney-client privilege. The message from the chair of the ABA Business Law Section, in the April 2007 electronic newsletter included information regarding the ABA gatekeeper task force.¹⁸ The committees on banking law, consumer financial services, and federal regulation of securities have been asked to make special efforts to include education on anti-money laundering in "best practices."

SR 681¹⁹ introduced by Senator Levin and HR 2136²⁰ introduced by Representative Lloyd Doggett are intended to address abusive tax shelters and offshore tax havens. They would impose standards on written tax opinions by tax practitioners.

NOTES

1. See MCL 285.101-285.108 for special rules for farm names.
2. http://www.dleg.state.mi.us/bcs_corp/sr_corp.asp.
3. <http://www.iaca.org/node/21>.
4. <http://tess2.uspto.gov/bin/gate.exe?f=tess&state=alteg.1.1>.
5. <http://www.dleg.state.mi.us/bcsc/forms/corp/mark/markcom.pdf>.
6. MCL 420.201-430.202; MCL 430.104-430.105; MCL 430.54-430.55.
7. No 259992, 2007 Mich App LEXIS 1441.
8. MCL 450.222(c).
9. http://www.michigan.gov/documents/cis/Website_update_re_Miller111_203547_7.pdf.
10. *Best Care Rehabilitation Inc v Allstate Insurance Company*; *Allstate Ins Co v A&A Medical Transportation Services*, and *Preferred Medicine Inc v Allstate Ins Co*.
11. <http://www.gao.gov/new.items/d07196t.pdf>.
12. <http://levin.senate.gov/newsroom/release.cfm?id=265861>.
13. <http://www.abanet.org/crimjust/taskforce/news/fatf.pdf>.
14. In Michigan, it is the Department of Labor & Economic Growth.

15. http://nass.org/index.php?option=com_content&task=view&id=113&Itemid=256.

16. <http://www.iaca.org/node/107>.

17. <http://www.abanet.org/crimjust/taskforce/home.html>.

18. <http://www.abanet.org/buslaw/newsletter/0058/materials/print.pdf>.

19. <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:s.00681>.

20. <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR02136>.

G. Ann Baker is the director of the Corporation Division of the Michigan Bureau of Commercial Services, Lansing. Ms. Baker routinely works with the department, legislature, and State Bar of Michigan's Business Law Section to review legislation. From 1981 to 1984, she served as the Director of the Office of Franchise and Agent Licensing, administering the Michigan Franchise Investment Law and the broker, dealer, agent, and investment adviser portion of the Michigan Uniform Securities Act. Ms. Baker is a member of the International Association of Commercial Administrators, and of the State Bar's Committee on Libraries, Legal Research and Legal Publications. She is a past chairperson of the Business Law Section and a current member of the Section's Corporate Laws Committee and the Unincorporated Enterprises Committee's Subcommittee on the LLC Act. Ms. Baker has been a frequent speaker at ICLE courses and is actively involved in programs to train officers and directors of non-profit corporations.