

Legislative Analysis



NONPROFIT CORPORATIONS AS PERSONS UNDER THE LIMITED LIABILITY COMPANY ACT

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Senate Bill 926 as reported from House committee

Sponsor: Sen. Wayne Schmidt

House Committee: Commerce and Tourism

Senate Committee: Economic and Small Business Development

Complete to 6-15-22

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Senate Bill 926 would amend the Limited Liability Company Act to modify the definition of a “person” to include nonprofit corporations.

FISCAL IMPACT: Senate Bill 926 would be unlikely to have an appreciable fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) or any other units of state or local government. Current appropriation levels and fees would likely be sufficient to offset any additional costs incurred by LARA.

THE APPARENT PROBLEM:

Currently, the definition of a “person” under the Limited Liability Company Act includes a variety of entities, including other types of for-profit corporations. This has created challenges for nonprofits that have attempted to form as a limited liability company (LLC).

Some nonprofits have been able to become incorporated as LLCs anyway. The form that applicants must submit to LARA does not ask for specification on the type of corporation that is filing for LLC status, so nonprofit corporations can complete this form without noting their nonprofit status. Since LARA evaluates each application based on the information provided on the form, the department will accept an application that doesn’t specify that the corporation is a nonprofit but is otherwise eligible. Applicants that have voluntarily disclosed their nonprofit status, however, have been denied by LARA. This has created a discrepancy as to which nonprofits have been able to form and operate as LLCs, as those that provide complete clarity have been denied while others have been accepted.

THE CONTENT OF THE BILL:

Senate Bill 926 would amend the Michigan Limited Liability Company Act to include nonprofit corporations in the definition of “persons” for purposes of the act.

The act provides regulations regarding the organization of limited liability companies, the rights of these companies, and the rights of regulatory agents. It authorizes a **person** to form or enter a limited liability company that is subject to oversight and regulation by LARA.

A **person** is now defined as an individual, partnership, limited liability company, trust, custodian, estate, association, corporation, governmental entity, or any other legal entity.

The bill would modify this definition to include nonprofit corporations.

MCL 450.4102

HOUSE COMMITTEE ACTION:

The House Committee on Commerce and Tourism reported the Senate-passed version of the bill without amendment.

ARGUMENTS:

For:

Changing the definition of a “person” to include nonprofit corporations would provide clarity for both nonprofits and LARA. There is no reason that nonprofits should be treated differently than for-profits for the purposes of forming an LLC, and the only reason that some nonprofits have been denied LLC status is because they do not currently conform with the act. This adjustment would resolve a purely technical issue.

Against:

No arguments opposing the bill were offered in House committee.

POSITIONS:

Representatives of the following entities testified in support of the bill (6-7-22):

- Department of Licensing and Regulatory Affairs
- Michigan Community Capital

Legislative Analyst: Holly Kuhn
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.