

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for the December 1, 2022 Council Meeting

(Report as of November 22, 2022)

I. PUBLIC ACTS

A. Public Act 85 of 2018. The Act amends the Michigan Business Corporation Act as follows:

- Allows various notices to be transmitted via electronic communication.
- Allows the Administrator to give notice to a corporation, if required to do so under the Act, electronically and in the manner authorized by the corporation.
- Allows the Administrator to provide a written notice for failing to file a document in additional formats, including email.
- Allows the Administrator to maintain and reproduce documents filed under the Act in accordance with the Records Reproductions Act and removes references to other forms of document storage and reproduction.
- Requires a corporation's Articles of Incorporation to include a statement of authority vested in the board if the board is to act regarding share designations and issuances in one or more classes or series.
- Allows the board of a corporation to authorize resolutions designating classes and series of shares or eliminating or revising classes and series of shares.
- Revises requirements for owning shares in a professional organization and modifies the provisions for severing employment and financial interests in a professional organization.
- Allows a shareholder or a director to execute a consent to an action that will take effect at a future date.
- Allows a plan of merger or share exchange to take effect without shareholder approval in certain circumstances.
- Redefines, and introduces definitions for, various terms.
- Under the Act, the "administrator" is the chief officer of the Department of Licensing and Regulatory Affairs or his or her designated representative.

(SB 442;Effective: 6/24/2018).

B. Public Act 131 of 2018. The Act amends the Michigan Uniform Partnership Act as follows:

- Revises provisions regarding the liability of a partner of a registered LLP for a debt, obligation, or other liability incurred by the partnership.
- Provides that the limitation on liability applies regardless of the dissolution of the partnership.
- Specifies that these provisions would not affect the personal liability of a partner for a liability of the partnership incurred or arising before the Act's effective date.
- Specifies that the failure of a registered LLP to observe formalities related to exercising its powers or management would not be grounds for imposing liability on a partner.

(SB 841; Effective: 8/1/2018).

C. Public Act 186 of 2018. Public Act 186 enacts the "Pyramid Promotional Scheme Act" which provides the following:

- Prohibits a person from promoting or participating in a pyramid promotional scheme and prescribe penalties for violations of the Act.
- Allows the Attorney General to issue a cease and desist order if he or she has reasonable cause to believe that a person violated, or is about to violate, the Act.
- Allows the Attorney General to bring an action in Circuit Court to enjoin conduct that violates the Act, enforce compliance with the Act, or recover civil fines up to \$10,000 per violation.
- Allows the Attorney General or a prosecuting attorney to issue a written demand for a person to appear and be examined and to produce documents or objects for inspection, before bringing an action in court.
- Establishes a rebuttable presumption that a plan or operation was not a pyramid promotional scheme if certain conditions are met.
- Requires the Attorney General or prosecuting attorney to keep testimony taken or material produced confidential before bringing an action, unless the person under investigation waives confidentiality or the court authorizes disclosure.

(HB 5726; Effective: 9/11/2018).

D. Public Act 380 of 2018. Public Act 380 amends the Michigan Limited Liability Company Act to do the following:

- Requires the Director of the Department of Licensing and Regulatory Affairs to waive the fee for filing initial Articles of Organization for a domestic limited liability company if a majority of the initial membership interests in the company will be held by veterans.
- Requires the person who requested a filing fee waiver to submit to the Director certain documents with the initial articles of organization.

"Veteran" is defined as an individual who served in the United States Armed Forces, including the reserve components, and was discharged or released under conditions other than dishonorable.

(HB 4701; Effective: 3/19/2019).

- E. Public Act 141 of 2019. Public Act 141 amends the Mortgage Loan Originator Licensing Act to grant certain individuals temporary authority to act as a mortgage loan originator without first obtaining a license and specifies the period of time for which the temporary authority would apply. (HB 5084; Effective: 12/05/2019).
- F. Public Act 344 of 2020. Public Act 344 enacts the "Financial Exploitation Prevention Act" to do the following:
- Require a financial institution to develop and implement a policy for training relevant employees to recognize signs of covered financial exploitation.
 - Require the policy to provide certain information, including procedures to follow when covered financial exploitation is found and designation of one or more employees to make a report regarding the covered financial exploitation to a law enforcement agency or Adult Protective Services (APS).
 - Require a report of financial exploitation or suspected financial exploitation to include certain information, including the name of the individual believed to be the victim, a description of the suspected or detected covered financial exploitation, and a designated contact for required notices if the reporter is a financial institution.
 - Require a law enforcement agency or APS to notify, within 10 days after it receives a report of suspected or detected covered financial exploitation, the financial institution whether a reported incident is under investigation or has been referred for investigation.
 - Require a law enforcement agency or APS, within 10 days after it receives a report, to notify the office of the county prosecutor.

- Prohibit a law enforcement agency, APS, or county prosecutor from disclosing the identity of an individual or financial institution that made a report without the individual's or financial institution's consent.
- Specify that a financial institution is immune from liability or penalty under law or regulation of Michigan or a local unit of government for an action or process under the Act, subject to certain exceptions.

(SB 464; Effective: 9/16/2021).

G. Public Act 115 of 2021. Public Act 115 amends Article 9 (Secured Transactions) of the Michigan Uniform Commercial Code to change references to a "correction statement" to an "information statement", and to require a filing office to accept certain financing statement forms approved by the International Association of Commercial Administrators and adopted by the Secretary of State (SOS) and any other form adopted by the SOS. (HB 4694; Effective: 11/22/2021).

H. Public Acts 31 and 32 of 2022. Public Acts 31 and 32 amend the Michigan Limited Liability Company Act and the Michigan Business Corporation Act, respectively, to do the following:

- Allow one or more individuals licensed to engage in the practice of chiropractic medicine to organize a professional limited liability company (PLLC) or a professional corporation (PC), as applicable, with one or more other individuals licensed in the practice of chiropractic medicine, the practice of medicine, the practice of osteopathic medicine and surgery, or the practice of podiatric medicine and surgery.
- Allow one or more individuals licensed to engage in the practice of chiropractic medicine to organize a PLLC or a PC with one or more licensed physician assistants.
- Prohibit one or more physician assistants from forming a PLLC or a PC with a chiropractic physician unless a physician licensed to engage in the practice of medicine or osteopathic medicine and surgery is also a member.

(HB 5295 and HB 5296; Effective: 3/15/2022).

I. Public Act 131 of 2022. Public Act 131 amends the Act that governs local hospital authorities, to do the following:

- Delete a provision requiring the articles of incorporation of a nonprofit corporation, and the contractual arrangements between a hospital authority and the nonprofit corporation, to prohibit a nonprofit corporation from selling, leasing, or otherwise transferring a hospital without voter approval.
- Allow a nonprofit corporation to sell, lease, or otherwise transfer a hospital on terms and conditions the nonprofit corporation considered reasonable if the sale, lease, or other transfer is approved by the hospital authority.

- Delete a provision requiring the articles of incorporation of a nonprofit corporation, and the contractual arrangements between a hospital authority and the nonprofit corporation, to require a nonprofit corporation to adopt and carry out policies designed to ensure that hospital care is provided to a reasonable degree to indigent people in its hospital service area free of charge and that patients not be denied appropriate care on the basis of source of payment.
- Allow a hospital board, by a majority vote of the board, to provide for the dissolution of a hospital authority if the authority has completed the purposes for which it was organized.

(HB 5876; Effective: 6/29/2022).

- J. Public Act 137 of 2022. Public Act 137 amends the Michigan Limited Liability Company Act to modify the definition of "person" to include a nonprofit corporation, and in effect, allows nonprofit corporations to organize an LLC. (SB 926; Effective: 7/20/2022).

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. Senate Bill 64 of 2021. The Bill, among other things, would amend the Michigan Business Corporation Act to require a publicly held domestic corporation or foreign corporation whose executive principal offices are located in Michigan to have, depending upon the size of the board, a certain number of female board members. The Bill was introduced by Senator Santana and was referred to the Committee on Economic and Small Business Development on 1/28/2021.
- B. House Bill 4449 of 2021. The Bill would amend the Michigan Limited Liability Company Act to eliminate a filing fee and a late fee for a professional limited liability company's annual report, require the report to be filed only when the information in it has changed, and eliminate a \$50 fee for filing or transmitting certain documents electronically or by fax. The Bill was introduced by Representative Berman and was referred to the Committee on Appropriations on 10/21/2021.
- C. House Bill 4515 of 2021. The Bill would amend the Deferred Presentment Service Transactions Act, which regulates what are commonly known as payday loans, to prohibit a lender from entering into a loan with a customer who has another such loan open or who has closed a previous loan within the last 30 days, regardless of whether the earlier loan was with that lender or another lender. The bill would also prohibit a lender from entering into a payday loan without first determining that the customer has a reasonable ability to repay the amount owed. The Bill was introduced by Representative Sowerby and was referred to the Committee on Financial Services on 3/16/2021.
- D. House Bill 4597 of 2021. The Bill would amend the Michigan Business Corporation Act to require a domestic corporation or foreign corporation to include with its annual report a statement that describes the female composition of the board. The Bill was introduced

by Representative Kuppa and was referred to the Committee on Workforce, Trades, and Talent on 3/25/2021.

- E. House Bill 4828 of 2021. The Bill would amend the Deferred Presentment Service Transactions Act to require the director of the Department of Insurance and Financial Services (DIFS) to submit, each year for seven years, a report on deferred presentment service transactions (commonly known as payday loans) to the House and Senate committees concerned with banking and financial services. The Bill would also require DIFS to post a similar annual report on its website. The Bill was introduced by Representative Clemente and was referred to the Committee on Insurance and Banking on 6/23/2021.
- F. House Bills 5195, 5198, 5201 and 5204 of 2021. The Bills would amend the language of the Uniform Partnership Act, the Michigan Limited Liability Company Act, the Incorporation of Summer Resort Owners Act and the Regulatory Loan Act, respectively, to make them gender neutral. The Bills were introduced by Representatives Lasinski, Kuppa, Rabhi and Carter, respectively, and were referred to the Committee on Government Operations on 7/1/2021.
- G. Senate Bill 944 of 2022. The Bill would amend Public Act 47 of 1949, which governs local hospital authorities, to do the following:
- Delete a provision requiring the articles of incorporation of a nonprofit corporation and the contractual arrangements between a hospital authority and the nonprofit corporation to prohibit a nonprofit corporation from selling, leasing, or otherwise transferring a hospital without approval by a majority of voters.
 - Allow a nonprofit corporation to sell, lease, or otherwise transfer a hospital on terms and conditions reasonable to the nonprofit corporation if the sale, lease, or other transfer of the hospital by the nonprofit is approved by the hospital authority.
 - Delete a provision requiring the articles of incorporation of a nonprofit corporation and the contractual arrangements between a hospital authority and the nonprofit corporation to require a nonprofit corporation to adopt and carry out policies designed to ensure that hospital care is provided to a reasonable degree to indigent people in its hospital service area free of charge and that patients not be denied appropriate care on the basis of source of payment.
 - Allow a hospital board, by a vote of a majority of the entire board, to provide for the dissolution of a hospital authority if the hospital authority has completed the purposes for which it was organized.

The Bill was introduced by Senator Victory and referred to the Committee on Health Policy on 4/14/2022.

- H. House Bills 5863 and 5864 of 2022. The Bills would amend 1897 PA 230 and the Nonprofit Corporation Act, respectively, to allow summer resort and park associations to convert into domestic nonprofit corporations. The Bills were introduced by

Representative Roth and referred to the Committee on Economic and Small Business
Development on 9/7/2022.

Respectfully submitted as of November 22, 2022:
Eric I. Lark/Chaoyi Ding
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