

CORPORATE LAWS COMMITTEE
REPORT PREPARED FOR THE MARCH 8, 2012 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee.

No meeting is currently scheduled. Our most recent meeting was on January 25, 2012. We have completed our amendment package and are in the process of seeking legislative sponsorship.

2. Council Approval.

The Committee does not request Council approval of any items at this meeting.

3. Membership.

The Committee remains open to participation by any interested parties. The Committee has approximately 35 members on its active roster.

4. Accomplishments Toward Committee Objectives.

The Committee continues to monitor developments in corporate laws throughout the country and to consider changes to the Business Corporation Act. This is an ongoing and continuous process. As noted above, the Committee has prepared a package of additional proposed amendments to the Michigan Business Corporation Act. A summary of the proposed amendments is attached.

5. Meetings and Programs.

No programs are currently scheduled, though the Committee is open to participation in presentations discussing changes to the Act. The Committee anticipates additional meetings in connection with consideration of amendments to the Michigan Business Corporation Act. We will also consider the possibility of a webinar in connection with the BCA amendments once passed.

6. Publications.

The committee was responsible for the fall 2011 issue of the Michigan Business Law Journal. Several excellent articles were included and the committee thanks the contributors.

7. Legislative/Judicial/Administrative Developments.

As described above, the Committee has developed a package of additional amendments to the Business Corporation Act and the Professional Services Corporation Act. See the attachment to this report for a summary.

The Committee also monitors bills that would affect corporation statutes that are introduced without its input and considers these together with the Bureau of Commercial Services of the Department of Energy, Labor and Economic Growth.

The Committee reviews judicial decisions affecting matters of Michigan corporate law. From time to time the Committee proposes statutory amendments that are intended to address the effects of

specific case law. Additionally, the Committee has prepared and filed amicus curiae briefs at the invitation of the Michigan Supreme Court.

8. Analysis of Applicable Strategic Plan Issues.

The activity of the Committee is directly related to the Strategic Plan mission of promoting improved legislation and regulation for business and the goal of reviewing Michigan laws affecting business formation, capital raising, corporate governance and related legal matters. The Committee attempts to keep Michigan corporate law current with national trends and competitive with the business law environments of other jurisdictions.

9. Miscellaneous.

The Committee will continue to accept ideas for technical and other amendments to the Business Corporation Act, which is amended periodically. Suggestions in this regard may be addressed to committee chair, Justin G. Klimko. The Committee also will consult with the Department of Licensing and Regulatory Affairs regarding efforts to further streamline corporate filings and information dissemination.

Any questions regarding this report may be directed to me.

Justin G. Klimko
Butzel Long
150 West Jefferson, Suite 900
Detroit, Michigan 48226
Telephone: 313-225-7037
Fax: 313-225-7080
e-mail: klimkojg@butzel.com

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**ATTACHMENT TO REPORT OF
CORPORATE LAWS COMMITTEE FOR THE MARCH 8, 2012 COUNCIL MEETING**

Summary of Proposed BCA Amendments

The most notable changes included in the package of proposed amendments are the following:

1. Combining the provisions of the Professional Service Corporation Act with the Business Corporation Act and eliminating the PSCA as a separate act. Professional corporations will be governed by new Chapter 2A of the BCA. This will enable better integration of the law applicable to business corporations generally and professional service corporations specifically. It also make clear when a corporation must incorporate as a professional corporation and when it may choose to incorporate either as a professional corporation or a regular business corporation.
2. Permitting privately held corporations to create classes of assessable shares under Section 488.
3. Clarifying that a corporation may agree to submit a matter to a vote of its shareholders even if, after initially approving the matter, the board of directors later determines that it no longer recommends the matter or recommends against approval of the matter by the shareholders. This provision will be included in new Section 529 and is intended to make explicit this authorization in tandem with the existing language of Section 703a. Similar provisions are found in the Delaware General Corporation Act and the Model Business Corporation Act.
4. Amending the indemnification sections of the BCA to limit a corporation's ability to revoke indemnity rights after the occurrence of the events on which a claim or action against the indemnified person is based.
5. Providing a mechanism for amending a corporation's articles of incorporation after the first meeting of the board but before there are shareholders or subscriptions for shares.
6. Correcting an oversight in the appraisal provisions of the BCA that inadvertently excluded a reference to Section 754 (regarding "upside-down acquisitions").
7. Clarifying Chapter 7A to make explicit the implied understanding that the highest share price paid should be calculated taking into account capitalization changes made by the corporation while the interested shareholder has owned the shares.
8. Amending several sections to better integrate the conversion provisions of the BCA added in the 2009 amendments.