

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for March 19, 2009 Council Meeting

(Report as of March 12, 2009)

I. PUBLIC ACTS

- A. Public Act 9 of 2008. Amends the Nonprofit Corporation Act to permit the use of electronic communication. The Act specifies that when a notice was required or permitted by the Act to be given in writing, electronic transmission is written notice, allows notice of meetings to be electronically transmitted, allows a board of directors to conduct a meeting of shareholders or members solely by means of remote communication, specifies conditions under which a shareholder or member can participate in a meeting and vote by means of remote communication, and allows a corporation's bylaws to permit voting by electronic transmission. (SB 0123; effective 2/29/08)
- B. Public Act 30 of 2008. The Act amend the Michigan Insurance Code to add Chapter 46 (Captive Insurance Companies), Chapter 47 (Special Purpose Financial Captives), and Chapter 48 (Protected Cell Insurance Companies) to the Insurance Code, to allow the formation of captive insurers (e.g., companies that would insure only the risks of their parent or affiliated companies, or particular groups), and allow insurers to form protected cells (accounts whose assets and liabilities would be segregated from the general account or other protected cells of a company). The Act also amended the Michigan Business Tax Act to exempt an insurance company authorized under Chapter 46 or 47 of the Insurance Code from the Act and from the tax it imposes on insurance companies (1.25% of gross direct premiums written on property or risk located or residing in this State). The Act would, among other things, require captive insurance companies to obtain a certificate of authority from the Commissioner of the Office of Financial and Insurance Services (OFIS) in order to conduct business in this State. (SB 1062; effective 3/13/08)
- C. Public Act 88 of 2008. The Act amends the Michigan Business Tax Act (MCL 208.1431c) to allow an "anchor company" (a high technology businesses) to claim a credit against the MBT equal to the sum of up to 5% of the taxable value of the taxable property of a supplier or customer who opens a new location in Michigan located within a ten-mile radius of the anchor company, where the new location is the result of supplier's or customer's relationship with the anchor company. (SB 5858; effective 4/8/08)
- D. Public Act 89 of 2008. The Act amends the Michigan Business Tax Act to revise the tax credits for Brownfield projects to increase the maximum amount of a credit for a project; provide for higher maximum credits for projects designated as urban development area projects; revise the maximum amount of all credits that the Michigan Economic Growth Authority (MEGA) may approve each year; permit a

taxpayer to choose between carrying forward the amount of a credit in excess of MBT liability (as currently allowed) or receiving a refund for 75% of the excess and foregoing the remainder; and extend the time for completion of a multiphase project. (HB 5511; effective 4/8/08)

- E. Public Act 114 of 2008. The Act amends the Michigan Business Tax Act to rewrite the stadium credit provision (MCL 208.1410) so that a taxpayer would be eligible for the credit if the taxpayer satisfied either (instead of both) of the following: (1) is the owner, operator, manager, licensee, lessee, or tenant of more than one facility or stadium in the state used primarily for professional sporting events or other entertainment with a capacity of at least 14,000 patrons per facility and has made a capital investment of at least \$250 million into the construction cost of a qualifying facility or stadium; or (2) is the owner, operator, manager, licensee, lessee, or tenant of more than one facility or stadium in the state used primarily for professional sporting events or other entertainment with a capacity of at least 14,000 patrons per facility and that has not received proceeds from a state appropriation, or a public bond issue, excluding a tax abatement, other waiver of a state or local tax or fee, or a state or local tax or fee from a public entity for road or infrastructure assistance. (HB 5463; effective 4/29/08)
- F. Public Act 148 and 149 of 2008. The Acts amend the Uniform Statutory Rule Against Perpetuities to specify that provisions governing the validity of a nonvested property interest or a power of appointment would not apply to an interest in, or a power of appointment over, personal property held in a trust that was revocable or created after the effective date of the Personal Property Trust Perpetuities Act, apply the existing provisions if the interest in, or power of appointment over, personal property held in trust were created by the exercise of a nonfiduciary second power, but require the use of a 360-year, rather than the current 90-year, period in a determination of whether criteria for validity were satisfied, and in the existing provisions, provide that language in a document governing the effect of an exercise of a power of appointment over property exempt from Federal generation-skipping transfer tax would be inoperative under certain circumstances. The Acts would create the Personal Property Trust Perpetuities Act to provide that an interest in, or a power of appointment over, personal property held in trust would not be invalidated by a rule against perpetuities or other specified rules, except as provided regarding a second power, and allow the indefinite suspension or postponement of the vesting of a future interest, the satisfaction of a condition precedent to the exercise of a general power of appointment, or the exercise of a nongeneral or testamentary power of appointment, with respect to personal property held in trust, subject to provisions involving a second power. (HB 5909 and 4602; effective 5/28/2008)
- G. Public Act 209, 210, and 211 of 2008. Public Act 210 amends the Michigan Consumer Protection Act to prohibit a person engaged in the retail sale of goods or services from refusing to accept a gift certificate, except after an expiration date that was at least five years after the purchase date, restricting the holder of a gift certificate from using it in a manner that was consistent with its terms and conditions, altering terms or conditions of a gift certificate after it was issued, failing to disclose

the terms and conditions of a gift certificate or card, or failing to disclose that terms and conditions applied, and refusing to accept a gift certificate and apply it to a purchase if its value were less than the purchase price. Public Act 211 prohibits a person engaged in the retail sale of goods or services from charging an inactivity fee or other service fee for the possession or use of a gift certificate. Public Act 209 prohibits a person engaged in the retail sale of goods or services from selling to a consumer a gift certificate that expired within a period of less than five years. (HB 4050, 4317, and 4680; effective 11/1/2008)

- H. Public Act 222 of 2008. Amends the Nonprofit Corporate Act to add a definition of “charitable purpose corporation.” The Act prohibits a “charitable purpose corporation” from providing loans or guarantees to an officer or director, unless he or she also was a client and the loan or guarantee was necessary to carry out the corporation’s charitable purposes, requires a charitable purpose corporation that automatically dissolved because it neglected or failed to file annual reports or pay annual fees to notify the Attorney General of the dissolution within 60 days, and prohibits a charitable purpose corporation that automatically dissolved from disposing of its assets without the Attorney General’s approval. The Act would also require a nonprofit corporation’s board to have to have at least three directors. (HB 5681; effective 7/16/08)
- I. Public Act 231 of 2008. Amends the Michigan Commercial Rehabilitation Act and establishes incentives to grocery stores locating within certain areas. The Act allows a qualified local governmental unit (a city, village, or township) to establish a commercial redevelopment district consisting of a qualified facility and includes a retail supermarket, grocery store, produce market, or delicatessen in an underserved area as a qualified facility. The owner of a qualified facility may apply for a commercial rehabilitation exemption certificate, which essentially freezes the taxable value of the facility for one to 10 years. (SB 0294; effective 7/17/08)
- J. Public Act 335 of 2008. Amends the Michigan Business Tax Act to allow the owner of a service station, for tax years beginning after 2008 and ending before 2012, to claim a nonrefundable MBT credit equal to 30% of the cost incurred in the tax year to convert existing fuel delivery systems to provide E85 fuel or qualified biodiesel blends and to create new fuel delivery systems designed to provide E85 fuel or qualified biodiesel blends. (HB 5878; effective 12/23/08)
- K. Public Act 381 of 2008. Amends the Uniform Commercial Code - Article 9 (Secured Transactions) to allow a person identified as a debtor in a financing statement to file an affidavit with the filing office (the Secretary of State’s office or a register of deeds office) stating that the financing statement was fraudulent, unless the financing statement has been filed by a regulated financial institution; requires the filing office to terminate the financing statement upon receiving the affidavit and to notify the person who filed the financing statement (the filer); allows the filer to bring a court action to reinstate the financing statement if the filer believed in good faith that it was legally filed; makes it a felony, punishable by imprisonment for up to five years and/or a \$2,500 fine, to file a false or fraudulent affidavit; allows a filing office to

refuse to accept a record presented for filing or recording if the office had reasonable cause to believe that the record was materially false or fraudulent, if the record were intended for an improper purpose, such as to hinder, harass, or otherwise wrongfully interfere with a person, or under other specified circumstances; allows the person who presented the rejected record to bring a court action to require the filing office to accept the record for filing or recording; exempts a financing statement filed by a regulated financial institution from the provision allowing a filing office to refuse a record, but allows the filing office to request the financial institution to provide verification of regulation or licensure; revises provisions concerning the duration of a financing statement involving a debtor that is a transmitting utility. (HB 5934; effective 3/29/09)

- L. Public Act 383 of 2008. Amends the Uniform Commercial Code - Article 9 (Secured Transactions). The Act provides, among other things, that if a person presents a record to the secretary of state for filing or recording, the secretary may refuse to accept the record for filing or recording if certain circumstances exist, such as that the record is not required or authorized to be filed or recorded with the secretary or that the secretary has reasonable cause to believe the record is materially false or fraudulent; if a correction statement filed with the secretary alleges that a previously filed record was wrongfully filed, the secretary must, without undue delay, determine whether the contested record was wrongfully filed, and the secretary may require the person who filed the correction statement or the secured party to provide any additional relevant information requested, including an original or copy of a security agreement that is related to the record; if the secretary finds that the record was wrongfully filed, the secretary must terminate the record and the record is void and ineffective and the secretary must notify the secured party named in the contested record of the termination; if the secretary refuses to accept a record for filing or recording as described above, the person who presented the record to the secretary may commence an action to require the secretary to accept the record for filing or recording (SB 1236; effective 3/29/09)
- M. Public Act 402 of 2008. Amends the Business Corporation Act to allow a domestic corporation to convert into a "business organization" and a business organization to convert into a domestic corporation and to allow a voting shareholder to dissent from a domestic corporation's conversion plan unless shareholders received cash and/or shares; imposes a \$50 fee for filing a certificate of conversion; specifies that satisfying requirements that preclude an action regarding a transaction in which a director or officer has an interest would not preclude other claims; provides that a certificate of dissolution filed with the administrator (the director of the Department of Energy, Labor & Economic Growth) would be effective at the time the certificate was first received by the administrator, not the date of filing, if certain conditions were met; also repeals chapter 7B (Control Share Acquisitions) of the Act. (HB 5356; effective 1/6/09)
- N. Public Act 424 of 2008. Amends the Charitable Organizations and Solicitations Act and requires a charitable organization's license application to include financial statements that were audited or reviewed by an independent CPA, if the organization

received contributions of \$250,000 or more in its previous tax year. (HB 6633; effective 1/6/09)

- O. Public Act 433 of 2008. Amends the Michigan Business Tax Act and excludes from definition of “gross receipts” certain proceeds, interest income, royalties, dividends, taxes, fees, and surcharges, and includes hedging transactions. (SB 1038; effective 1/1/08)
- P. Public Act 434 of 2008. Amends the Michigan Business Tax Act to delete references to the Commonwealth of Puerto Rico from the definitions of “foreign operating entity.” (SB 1052; effective 1/1/08)
- Q. Public Act 435 of 2008. Amends the Michigan Business Tax Act to exempt from the tax a foreign person that was domiciled in a subnational jurisdiction that did not impose an income tax on a similarly situated person domiciled in this State whose presence in the foreign jurisdiction was the same as the foreign person’s presence in this State. (SB 1009; effective 1/1/08)
- R. Public Act 448 of 2008. Amends the Michigan Business Tax Act and provides for revisions to the historic preservation tax credit. (SB 973; effective 1/9/09)
- S. Public Act 451 of 2008. Amends the Michigan Business Tax Act to allow a qualified financial institution or taxpayer, for the 2008 tax year and each subsequent tax year, to claim a credit against the MBT equal to 75% of the contributions made by the qualified financial institution or by the taxpayer in the tax year to the reserve fund of a fiduciary organization pursuant to the Individual or Family Development Account Program Act. (SB 1020; effective 1/9/09)
- T. Public Act 470 of 2008. Amends the Michigan Business Tax Act to extend the deadline for the goodwill deduction for financial institutions. The provision will now apply to “transactions that occurred on or after July 1, 2007.” (The new language is underlined.) (HB 5118; effective 1/1/08)
- U. Public Act 472 of 2008. Amends the Michigan Business Tax Act to exempt from the modified gross receipts tax payments made by a taxpayer licensed under Article 25 (real estate brokers, associate brokers, or salespeople) or Article 26 (appraisers) of the Occupational Code to an independent contractor licensed under either article. (HB 5924; effective 1/1/08)
- V. Public Act 507 of 2008. Amends the Michigan Business Tax Act to allow a qualified taxpayer to claim a credit against the MBT equal to 50% of the taxpayer’s liability under the Act or \$200,000, whichever is less. “Qualified taxpayer” would mean a taxpayer that owns, operates, or controls an exhibition in this State that is open to the public and that promotes, advertises, or displays the design or concept of products that are designed, manufactured, or produced, in whole or in part, in this State; uses more than 100,000 square feet of floor space; is open to the general public for at least seven consecutive days in a calendar year; its general public attendance during the entire exhibition exceeds 500,000; and more than 3,000 credentialed journalists,

including international journalists, attend the exhibition. (HB 6524; effective 1/13/09)

- W. Public Act 551 of 2008. Repeals the Uniform Securities Act and enacts the “Uniform Securities Act (2002),” which also requires the registration of securities (e.g., notes, stocks, and bonds) and investment advisers, broker-dealers, and agents, prohibits fraudulent practices in relation to securities, and establishes civil remedies and criminal penalties for violations; among other things, revises definitions, expands exemptions from securities registration requirements, requires certain actions for relief to be brought within two years after discovery or five years after a violation, whichever is earlier. (HB 5008; effective 10/1/09)
- X. Public Act 566 of 2008. Amends the Michigan Limited Liability Company Act and defines low-profit limited liability company as an LLC that has included in its articles of organization a purpose that meets, and that at all times conducts its activities to meet, all of the following requirements: (1) the LLC significantly furthers the accomplishment of one or more charitable or educational purposes described in IRC 170(c)(2)(b), and would not have been formed except to accomplish those charitable or educational purposes; (2) the production of income or appreciation of property is not a significant purpose of the LLC; (3) the purposes of the LLC do not include accomplishing one or more political or legislative purposes described in IRC 170(c)(2)(d); in the absence of other factors, the LLC’s production of significant income or capital appreciation would not be conclusive evidence of a significant purpose involving the production of income or the appreciation of property. (SB 1445; effective 1/16/09)
- Y. Public Act 567 of 2008. Amends the Michigan Limited Liability Company Act and requires the name of a low-profit LLC to contain the words “low-profit limited liability company,” or the abbreviation “L.3.C.,” with or without periods or other punctuation; allows the Attorney General to bring a circuit court action for dissolution of a low-profit LLC that ceased to meet any of the requirements described in the proposed definition of low-profit limited liability company and, for 60 days after it ceased to meet those requirements, failed to file a certificate of amendment amending its name to conform with the naming requirements for an LLC. (SB 1446; effective 1/16/09)
- Z. Public Act 572 of 2008. Amends the Michigan Business Tax Act to increase the credit for certain capital expenditures. Under the Act, an eligible taxpayer must spend at least \$30.0 million on capital expenditures before January 1, 2011. This amount previously was \$25.0 million. (SB 1264; effective 1/16/09)
- AA. Public Act 578 of 2008. Amends the Michigan Business Tax Act to permit a qualified taxpayer to assign all or a portion of certain Brownfield tax credits allowed under the MBT Act or under the Single Business Tax (SBT) Act, rather than just under the SBT Act. (SB 982; effective 1/16/09)

- BB. Public Act 580 of 2008. Amends the Michigan Business Tax Act to authorize the Michigan Economic Growth Authority (MEGA) to enter into agreements to provide tax credits “to stimulate the domestic commercialization and affordability of high-power energy batteries..., and to help insure that job growth from battery technology and commercial production develops alongside advanced vehicle technology development and renewable power generation initiatives both within and outside the transportation sector.” (HB 6611; effective 1/16/09)

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. Senate Bill 2 of 2009. The Bill would create a small business ombudsman’s office and a small business compliance advisory panel to investigate and review the actions of regulatory agencies of this state, and monitor and ensure compliance with relevant laws and policies and recommend appropriate changes in policy, procedure, and legislation; and provide for certain powers and duties of certain state officers and agencies. The Bill was referred to the Committee on Economic Development and Regulatory Reform on January 14, 2009. The Bill was sponsored by Alan Sanborn.
- B. Senate Bill 26, 27 and 28 of 2009. The Bill would amend section 17048 of the Public Health Code (MCL 333.17048), sections 2 and 4 of the Professional Service Corporation Act (MCL 450.222 and 450.224) and sections 902 and 904 of the Michigan limited Liability Company Act (MCL 450.4902 and 450.4904) to allow the ability to form a limited liability company or professional corporation by physicians or physician’s assistant groups. The Bill was referred to the Committee on Health Policy on January 27, 2009. The Bill was sponsored by Tony Stamas.
- C. Senate Bill 44 of 2009. The Bill would create the Adult Entertainment Tax Act to create and impose a state excise tax on persons engaged in the business of operating an adult entertainment facility. The Bill was referred to the Committee on Local, Urban and State Affairs on January 27, 2009. The Bill was sponsored by Raymond Basham.
- D. Senate Bills 79 and 114 of 2009. The Bills would amend the Michigan Public Health Code to require smoke-free workplaces and public restaurants. The Bills were referred to the Committee on Government Operations and Reform on January 28, 2009. The Bills were sponsored by Thomas George and Raymond Basham.
- E. Senate Bill 94 of 2009. The Bill would amend 1989 PA 88 (MCL 445.541-547) and create the Watercraft Manufacturer and Dealer Act, which would revise the regulation of new watercraft manufacturers, wholesalers, and dealers. The Bill was referred to the Committee on Economic Development and Regulatory Reform on January 28, 2009. The Bill was sponsored by Randy Richardville.
- F. Senate Bill 362 and 363 of 2009. Bill 362 would amend the Michigan Vehicle Code and allow for separate licensure of recreational vehicle dealers as dealers. Bill 363 would create the Recreational Vehicle Franchise Act to regulate the relationship between recreational vehicle manufacturers and dealers in Michigan. The Bills were

referred to the Committee on Commerce and Tourism on March 11, 2009. The Bills were sponsored by Jim Barcia and Jason Allen.

- G. House Bill 4099, 4196, 4341 and 4377 of 2009. The Bills would amend the Michigan Public Health Code to require smoke-free workplace and food service establishments, and/or smoke-free commercial and public buildings. The Bills were referred to either the Committee on Commerce or the Committee on Regulatory Reform in January and February, 2009. Bill 4099 was sponsored by Paul Scott. Bill 4196 was sponsored by Dian Slavens. Bill 4341 was sponsored by Joan Bauer. Bill 4377 was sponsored by Lee Gonzales.

Respectfully submitted,

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March 12, 2009