

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for the March 7, 2019 Council Meeting

(Report as of February 26, 2019)

I. PUBLIC ACTS

- A. Public Act 101 of 2017. The Act amends the Revised Judicature Act to do the following: Specify that a business court would have jurisdiction over business and commercial disputes in which equitable or declaratory relief was sought or in which the matter otherwise met circuit court jurisdictional requirements; and modify the definition of a "business or commercial dispute" to include any of the following: a) an action in which all of the parties are business enterprises, unless the only claims asserted are expressly excluded under the Act; b) an action in which one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members of a limited liability company or similar business organization, directors, officers, agents, employees, suppliers, guarantors of a commercial loan, or competitors, and the claims arise out of those relationships; or c) an action in which one of the parties is a nonprofit organization, and the claims arise out of that party's organizational structure, governance, or finances. (SB333; effective 10/11/2017).
- B. Public Act 141 of 2017. The Act amends Article 2 of the Uniform Securities Act, which governs exemptions from registration requirements, to include references to amended and new U.S. Securities and Exchange Commission (SEC) rules for determining whether intrastate sales or offers of securities meet certain residency requirements. The Act also adds reference to these SEC rules to the definition of "intrastate offering exemption" in Article 4A (Michigan Investment Markets). (HB 4305; effective 10/30/17).
- C. Public Act 148 of 2017. The Act amends Section 305a of the Municipal Health Facilities Corporations Act to allow the board of trustees of a municipal health facilities corporation or a subsidiary board to restructure the corporation or subsidiary corporation as a nonprofit corporation subject to the Nonprofit Corporation Act if both of the following conditions are met: the corporation or subsidiary corporation is located in a county with a population of more than 45,000 and less than 60,000 as of the most recent decennial census; the restructuring is completed before June 30, 2018. The restructuring would need to comply with the requirements of Section 305a and the Nonprofit Corporation Act, as well as applicable licensing and other regulatory requirements. (SB 450; effective 11/2/17).
- D. Public Act 217 of 2017. The Act amends the Michigan Business Tax Act to allow a development project that qualifies for tax credits under the Act to be amended to extend the duration of time provided to complete the project if certain criteria are met. The Act allows a qualified taxpayer to claim a credit against the Michigan Business Tax for certain brownfield development projects if the taxpayer has unused credits or

a preapproval letter issued after December 31, 2007, and before January 1, 2013, or received a preapproval letter before January 1, 2008, under the former Single Business Tax Act, provided that the project is completed not more than five years after the preapproval letter for the project is issued unless otherwise extended or if it is a multiphase project not more than 10 years after the preapproval letter, if applicable, for the project is issued. (HB 4420; effective 12/20/17).

- E. Public Act 239 of 2017. The Act amends the Michigan Strategic Fund Act to revise the Community Revitalization Program by (1) extending eligibility for community revitalization incentives to property used for a neighborhood and commercial corridor food initiative through September 30, 2022; (2) requiring at least 5 percent of community revitalization incentives to be awarded to neighborhood and commercial corridor food initiatives; and (3) prohibiting the provision of incentives to new neighborhood and commercial corridor food initiatives that are located within one mile of an existing retail supermarket, grocery store, or produce market (HB 4207; effective 12/21/17).
- F. 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)

G. 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 would apply 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)

H. 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).

I. 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)

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. House Bills 4048 and 4049 of 2019. The Bills would amend the Nonprofit Corporation Act and Public Act 230 of 1897, respectively, to allow summer resort associations to convert into nonprofit corporations. The Bills would allow summer resort associations to convert into domestic nonprofit corporations by satisfying the requirements laid out under the Nonprofit Corporation Act. Additionally, HB 4049 would require any conversion to be approved by shareholders holding at least 2/3 of the capital stock of the summer resort association. The Bills were introduced by Representative Inman and were referred to the Committee on Commerce and Tourism on 1/16/2019.
- B. Senate Bill 16 of 2019. The Bill would allow the recapture of tax credits from businesses relocating out of Michigan. The Bill was introduced by Senator Ananich and was referred to the Committee on Finance on 1/15/2019.
- C. Senate Bill 115 of 2019. 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. See attached for a copy of the Bill. NOTE: THE BUSINESS LAW SECTION SHOULD TAKE AN INTEREST IN THIS BILL. The Bill was introduced by Senator Santana and was referred to the Committee on Economic Development and Small Business Development on 2/14/2019.

Respectfully submitted as of February 26, 2019:
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SENATE BILL No. 115

February 14, 2019, Introduced by Senator SANTANA and referred to the Committee on Economic and Small Business Development.

A bill to amend 1972 PA 284, entitled "Business corporation act," by amending section 1002 (MCL 450.2002), as amended by 2008 PA 402, and by adding section 505a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 505A. (1) BEGINNING JANUARY 1, 2021, A PUBLICLY HELD
2 DOMESTIC CORPORATION OR FOREIGN CORPORATION WHOSE PRINCIPAL
3 EXECUTIVE OFFICES, ACCORDING TO THE CORPORATION'S SEC 10-K FORM,
4 ARE LOCATED IN THIS STATE MUST HAVE A MINIMUM OF 1 FEMALE DIRECTOR
5 ON ITS BOARD. A CORPORATION MAY INCREASE THE NUMBER OF DIRECTORS ON
6 ITS BOARD TO COMPLY WITH THIS SECTION.

7 (2) BEGINNING JANUARY 1, 2023, A PUBLICLY HELD DOMESTIC
8 CORPORATION OR FOREIGN CORPORATION WHOSE PRINCIPAL EXECUTIVE
9 OFFICES, ACCORDING TO THE CORPORATION'S SEC 10-K FORM, ARE LOCATED
10 IN THIS STATE MUST COMPLY WITH 1 OF THE FOLLOWING, AS APPLICABLE:

SENATE BILL No. 115

1 (A) IF ITS NUMBER OF DIRECTORS IS 6 OR MORE, THE CORPORATION
2 MUST HAVE AT LEAST 3 FEMALE DIRECTORS.

3 (B) IF ITS NUMBER OF DIRECTORS IS 5, THE CORPORATION MUST HAVE
4 AT LEAST 2 FEMALE DIRECTORS.

5 (C) IF ITS NUMBER OF DIRECTORS IS 4 OR FEWER, THE CORPORATION
6 MUST HAVE AT LEAST 1 FEMALE DIRECTOR.

7 (3) BY JULY 1, 2020, THE ADMINISTRATOR SHALL PUBLISH A REPORT
8 ON ITS PUBLIC INTERNET WEBSITE THAT DOCUMENTS THE NUMBER OF
9 DOMESTIC CORPORATIONS AND FOREIGN CORPORATIONS WHOSE PRINCIPAL
10 EXECUTIVE OFFICES, ACCORDING TO THE CORPORATION'S SEC 10-K FORM,
11 ARE LOCATED IN THIS STATE AND THAT HAVE AT LEAST 1 FEMALE DIRECTOR.

12 (4) BY MARCH 1, 2021, AND BY MARCH 1 OF EACH SUBSEQUENT YEAR,
13 THE ADMINISTRATOR SHALL PUBLISH A REPORT ON ITS PUBLIC INTERNET
14 WEBSITE THAT CONCERNS, AT A MINIMUM, ALL OF THE FOLLOWING:

15 (A) THE NUMBER OF CORPORATIONS SUBJECT TO THIS SECTION THAT
16 WERE IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION DURING AT
17 LEAST 1 POINT DURING THE PRECEDING CALENDAR YEAR.

18 (B) THE NUMBER OF PUBLICLY HELD CORPORATIONS THAT MOVED THEIR
19 UNITED STATES HEADQUARTERS TO THIS STATE FROM ANOTHER STATE OR OUT
20 OF THIS STATE INTO ANOTHER STATE DURING THE PRECEDING CALENDAR
21 YEAR.

22 (C) THE NUMBER OF PUBLICLY HELD CORPORATIONS THAT WERE SUBJECT
23 TO THIS SECTION DURING THE PRECEDING YEAR, BUT ARE NO LONGER
24 PUBLICLY TRADED.

25 (5) A CORPORATION THAT VIOLATES THIS SECTION, OR THAT FAILS TO
26 TIMELY FILE BOARD MEMBER INFORMATION WITH THE ADMINISTRATOR UNDER A
27 RULE PROMULGATED UNDER SUBSECTION (6), IS SUBJECT TO AN

1 ADMINISTRATIVE FINE OF NOT MORE THAN \$100,000.00 FOR A FIRST
2 VIOLATION, OR A FINE OF NOT MORE THAN \$300,000.00 FOR A SECOND OR
3 SUBSEQUENT VIOLATION. ALL OF THE FOLLOWING APPLY FOR PURPOSES OF
4 THIS SUBSECTION:

5 (A) EACH DIRECTOR SEAT THAT IS REQUIRED UNDER THIS SECTION TO
6 BE HELD BY A FEMALE, AND THAT IS NOT HELD BY A FEMALE DURING AT
7 LEAST A PORTION OF A CALENDAR YEAR, IS A SEPARATE VIOLATION OF THIS
8 SECTION.

9 (B) IF A FEMALE DIRECTOR HAS HELD A DIRECTOR SEAT THAT IS
10 REQUIRED UNDER THIS SECTION TO BE HELD BY A FEMALE FOR AT LEAST A
11 PORTION OF A CALENDAR YEAR, IT IS NOT A VIOLATION OF THIS SECTION.

12 (C) ADMINISTRATIVE FINES COLLECTED UNDER THIS SECTION SHALL BE
13 AVAILABLE, UPON APPROPRIATION BY THE LEGISLATURE, FOR USE BY THE
14 ADMINISTRATOR TO OFFSET THE COST OF ADMINISTERING THIS SECTION.

15 (6) THE ADMINISTRATOR MAY PROMULGATE RULES TO IMPLEMENT THIS
16 SECTION.

17 (7) AS USED IN THIS SECTION:

18 (A) "FEMALE" MEANS AN INDIVIDUAL WHO SELF-IDENTIFIES HER
19 GENDER AS A WOMAN, WITHOUT REGARD TO THE INDIVIDUAL'S DESIGNATED
20 SEX AT BIRTH.

21 (B) "PUBLICLY HELD CORPORATION" MEANS A CORPORATION THAT HAS
22 OUTSTANDING SHARES LISTED ON A MAJOR UNITED STATES STOCK EXCHANGE.

23 Sec. 1002. (1) A foreign corporation that receives a
24 certificate of authority under this act, until a certificate of
25 revocation or of withdrawal is issued under this act, has the same
26 rights and privileges as a domestic corporation organized for the
27 purposes set forth in the application pursuant to which the

1 certificate of authority is issued. Except as otherwise provided in
2 this act, the corporation is subject to the same duties,
3 restrictions, penalties, and liabilities of a similar domestic
4 corporation.

5 (2) ~~This~~ EXCEPT AS PROVIDED IN SUBSECTION (3), THIS act does
6 not authorize this state to regulate the organization or internal
7 affairs of a foreign corporation authorized to transact business in
8 this state.

9 (3) SECTION 505A APPLIES TO A FOREIGN CORPORATION THAT IS A
10 PUBLICLY HELD CORPORATION TO THE EXCLUSION OF THE LAW OF THE
11 JURISDICTION IN WHICH THE FOREIGN CORPORATION IS INCORPORATED. AS
12 USED IN THIS SUBSECTION, "PUBLICLY HELD CORPORATION" MEANS A
13 FOREIGN CORPORATION THAT HAS OUTSTANDING SHARES LISTED ON A MAJOR
14 UNITED STATES STOCK EXCHANGE.

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.