

## BUSINESS LAW SECTION

### LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for May 6, 2011 Council Meeting

(Report as of May 3, 2011)

#### I. PUBLIC ACTS

- A. Public Act 15 of 2011. The “shopping reform and modernization act” included a repeal of the consumer item pricing act and requires the price of an item to be displayed where the item was located. A person who suffered a loss as a result of a violation could bring an individual or class action to recover actual damages or \$250, whichever was greater, for each day a violation was found. (HB 4158; effective 9/1/2011)
- B. Public Act 38 of 2010. Amends section 27a of the Revenue Act (MCL 205.27a) to give direction to the Department of Treasury regarding treatment of a taxpayer that filed a Single Business Tax (SBT) return that included an entity disregarded for federal income tax purposes. Specifically, for a taxpayer that filed a tax return under the former SBT Act that included an entity disregarded for federal income tax purposes under the Internal Revenue Code, both of the following would apply: (i) the Department of Treasury could not assess the taxpayer an additional tax or reduce an overpayment because the taxpayer included the disregarded entity on its SBT return; and (ii) the Department of Treasury could not require the disregarded entity to file a separate tax return. In addition, if a taxpayer filed a SBT return that included an entity disregarded for federal income tax purposes, the taxpayer could not claim a refund based on the disregarded entity’s filing a separate return as a distinct taxpayer. The Act is curative, will be retroactively applied, and is intended to correct any misinterpretation concerning treatment of an entity disregarded for federal income tax purposes that may have been caused by the court of appeals decision in *Kmart Michigan Prop Servs v Michigan Dep’t of Treasury*, 283 Mich App 647 (2009). In that case, the court of appeals held that a taxpayer that elected to be classified as a disregarded entity for federal tax purposes nevertheless could file a return separate from its owner under the SBT Act. (HB 5937; effective 3/31/10)
- C. Public Act 61 of 2010. Amends section 1311 of the Insurance Code (MCL 500.1311) to address the takeover of a domestic property and casualty insurer having 200 or fewer employees directly or indirectly through an affiliate transacting the insurer’s business. Under the Act, if a proposal made by an outside entity to merge with or acquire control of the insurer is not supported by a majority of the insurer’s board of directors, then 66.67% of the outstanding voting securities must approve (i) any proposal to enter into an agreement to merge with or otherwise acquire control of the insurer or any person controlling the insurer, or (ii) for the purpose of obtaining control, a proposal seeking the election of two or more members of the board of directors of the insurer or any person controlling the insurer. (SB 1174; effective 4/30/10)

- D. Public Act 124 of 2010. The Act amends section 17048 of the Public Health Code (MCL 333.17048) to require supervising physicians who organized a professional service corporation or a professional limited liability company (PLLC) with physician's assistants (PAs) to meet applicable requirements of the code; extends the requirements to physicians supervising PAs who, before the public act took effect, organized a professional service corporation or a PLLC that had only PAs as shareholders or members; requires the Department of Community Health to include on the license renewal form a space for a PA to disclose whether he or she was a shareholder in a professional service corporation or a member in a PLLC organized before the bill took effect; and requires a PA who was a shareholder or member to disclose in the license renewal form whether any physicians were shareholders or members, the name and license number of the supervising physician, and whether the supervising physician was a shareholder or member in the same professional service corporation or PLLC as the PA. (SB 26; effective 7/19/10)
- E. Public Act 125 of 2010. The Act amends sections 2 and 4 of the Professional Service Corporation Act (MCL 450.222 and 450.224) to include services rendered by a physician's assistant (PA) in the definition of *professional service*; and allows physicians to organize a professional corporation with PAs and prohibit PAs from organizing a professional corporation that would have only PAs as shareholders. (SB 27; effective 7/19/10)
- F. Public Act 126 of 2010. The Act amends sections 902 and 904 of the Michigan Limited Liability Company Act (MCL 450.4902 and 450.4904) to include services rendered by a physician's assistant (PA) in the definition of *professional service*; allows physicians to organize a professional limited liability company (PLLC) with other physicians licensed under the Public Health Code; allows physicians to organize a PLLC with PAs; and prohibits PAs from organizing a PLLC that would have only PAs as members. (SB 28; effective 7/19/10)
- G. Public Act 138 of 2010. The Act amends various sections of Public Act 118 of 1981 (MCL 445.1561, et seq.), which regulates automobile dealer franchises, and add sections 14a and 14b to do all of the following: expand the Act's list of prohibited activities by a manufacturer; prohibit a manufacturer from imposing a property use agreement on a dealer, unless monetary consideration or separate and valuable consideration that could be calculated to a sum certain were offered and accepted for the agreement; prohibit a manufacturer from charging back to a dealer an approved and paid warranty claim, unless the manufacturer showed that the claim was fraudulent or false within two years after payment or showed it to be unsubstantiated, to lack proper documentation, or to be improperly diagnosed or repaired within 12 months after payment; allow a manufacturer to conduct an audit of a dealer's records relating to a warranty or promotion claim submitted by the dealer; and provide that a manufacturer that violated the Act "may" (rather than "shall") be liable for all court costs and attorney fees incurred by a dealer. (SB 1308; effective 8/4/10)
- H. Public Act 139 of 2010. The Act amends Public Act 118 to revise requirements for a manufacturer to compensate a dealer for certain items upon the termination of a

dealer agreement, including, among other things: require the payment of fair and reasonable compensation for each vehicle that met certain criteria; require compensation for certain data processing programs, software, and equipment, the net cost of any upgrades or alterations to dealership facilities that the manufacturer required in the last two years, and the net cost of any furnishings the manufacturer required the dealer to purchase in the last two years, establish procedures for determining compensation for a dealer's fair rental value; and require compensation for a dealer's goodwill under certain circumstances and specify procedures for determining the value of that goodwill. (SB 13089; effective 8/4/10)

- I. Public Acts 140 and 141 of 2010. The Acts amend various sections of Public Act 118 of 1981 (MCL 445.1561 et seq.), which regulates automobile dealer franchises, and add provisions concerning compensation to dealers upon termination of a dealership agreement, determining compensation for goodwill and the relevant market area of dealerships. The Acts also revise requirements for a manufacturer to compensate a dealer for certain items on the termination of a dealer agreement; requires the payment of fair and reasonable compensation for each vehicle that meets certain criteria; requires compensation for certain data processing programs, software, and equipment, the net cost of any upgrades or alterations to dealership facilities that the manufacturer required in the last two years, and the net cost of any furnishings the manufacturer required the dealer to purchase in the last two years; establishes procedures for determining compensation for a dealer's fair rental value; and requires compensation for a dealer's goodwill under certain circumstances and specifies procedures for determining the value of that goodwill. (HB 6099 and HB 6100; effective 8/4/10)
- J. Public Act 156 of 2010. The Act amends the Michigan Business Tax Act definition of financial institutions to include federally chartered farm credit system institutions. The bill would amend Chapter 2B of the Michigan Business Tax Act to include a federally chartered Farm Credit System institution in the definition of "financial institution". The present definition includes a bank holding company, national bank, State-chartered bank, thrift institution, and savings and loan holding company. Under Chapter 2B, every financial institution with nexus to the State is subject to a franchise tax in lieu of the business income tax and the modified gross receipts tax. The franchise tax is imposed upon the financial institution's tax base (net capital) after allocation or apportionment to the State, at a rate of 0.235%. (HB 5295; effective 1/1/08)
- K. Public Act 157 of 2010. The Act amends Chapter 77 of the Insurance Code (the Michigan Life and Health Insurance Guaranty Association Act) to do the following: (1) Exclude from coverage under the chapter any policy or contract that provided benefits under Medicare Part C or D, and exclude from coverage a portion of a policy or contract to the extent that assessments required under Chapter 77 were preempted by State or Federal law and (2) Increase the maximum amount of certain benefits that the Life and Health Insurance Guaranty Association is obligated to cover from \$100,000 to \$250,000. (HB 6097; effective 9/2/10)

- L. Public Acts 195 and 196 of 2010. The Acts amend the Michigan Consumer Protection Act, specifically MCL 445.903, by adding a section to regulate the use of charitable donation boxes, which would prohibit, among other things, marking a clothing donation box or any sign near a clothing donation box in any manner that represents or implies that any personal property placed in the clothing donation box, or the proceeds of that personal property, is donated to 1 or more charitable organizations if it is not. (HB 5716 and HB 5717 of 2009; effective 10/5/10)
- M. Public Act 198 of 2010. The Act provides for an amnesty by amending the revenue Act to do the following: (1) Create a tax amnesty period between May 15, 2011, and June 30, 2011, for taxes due before January 1, 2010; (2) Require a taxpayer requesting amnesty to make a full payment of the tax and interest due for any prior period by the last day of the amnesty period; (3) Of the revenue generated by the amnesty program, appropriate \$6.8 million to the Department of Treasury for administration and public awareness of the program; (4) Specify that this would be a work project appropriation and any unencumbered or unallotted funds would be carried forward into the following fiscal year. The amnesty period begins on May 15, 2011, and ends on June 30, 2011. During the amnesty period, the State Treasurer will waive all criminal and civil penalties for failing or refusing to file a return, failing to pay a tax, or making an excessive claim for a refund of a tax for a tax administered under the Act (e.g., the State income tax, the Michigan Business Tax, and the sales tax) if a taxpayer complied with the bill's requirements. (SB 884; effective 10/5/10)
- N. Public Act 200 of 2010. The Act amends the Michigan Business Tax Act to exclude from gross receipts 100% of the excise taxes paid by a person on or for cigarettes or tobacco products. Under Section 203 of the Michigan Business Tax (MBT) Act, a business must pay tax on amounts defined in the Act as "gross receipts", including certain taxes collected by businesses on behalf of the State. Public Act 433 of 2008 amended the Act to phase out the MBT on certain amounts, including amounts collected by a business to pay the State and Federal excise taxes on cigarettes and other tobacco products. Under Public Act 433, a percentage of the amount collected by a business for certain taxes is excluded from the definition of "gross receipts" and is therefore no longer taxed under the MBT Act. The amount excluded is being phased in over a three-year period starting at a rate of 60% of that amount in the 2008 tax year, and increasing to 75% in the 2009 tax year, and 100% in the 2010 tax year and each subsequent tax year. (SB 361; effective 10/5/10)
- O. Public Act 290 of 2010. The Act amends various sections of the Michigan Limited Liability Company Act (MCL 450.4101, et. seq) to do all of the following: authorize the conversion of a limited liability company (LLC) into another business organization, and the conversion of a business organization into an LLC; allow an LLC to indemnify or insure an LLC member or manager or another person, and repeal the current authorization to indemnify or insure a manager; specify that a transaction could not be enjoined, set aside, or give rise to damages or other sanctions because of a manager's interest in the transaction if certain conditions are established; revise provisions regarding a judgment creditor of an LLC member; revise a provision pertaining to a person's admission as a member of an LLC; and provide for

the dissolution of an LLC that had not yet commenced business. (SB 1455; effective 12/16/10)

- P. Public Act 331 of 2010. The Act amends the Municipal Health Facilities Corporations Act by amending MCL 331.1306, and by adding section 308 to do the following: (i) allow a board of trustees or a subsidiary board to convert its municipal health facilities corporation into a nonprofit corporation, organized on a stock basis; (ii) prescribe factors that a board could consider in evaluating whether to pursue such a conversion; and (iii) require the approval of the governing body of the local unit of government for a conversion, under certain circumstances. (SB 1115, effective 12/29/10)

## **II. NEW BILLS AND STATUS OF PENDING BILLS**

- A. Senate Bill 0359 of 2011. The Bill would amend the Business Corporation Act (MCL 450.1101, et. seq) by adding a chapter 9A authorizing Benefit Corporations which articles shall include "creating general public benefit". The Bill was introduced on May 4, 2011 and referred to the Committee on Economic Development. The Bill was sponsored by Mark Jansen (primary).
- B. Senate Bill 0360 of 2011. In conjunction with the SB 0359, the Bill would amend 1972 PA 284, entitled Business Corporation Act, by amending sections 105, 106, 202, 211, and 911 (MCL 450.1105, 450.1106, 450.1202, 450.1211, and 450.1911), to include, among other things, a definition of "Benefit Corporation" as a domestic corporation that meets the requirements for being a benefit corporation under chapter 9A and has not terminated its status as a benefit corporation under that chapter. The Bill was introduced on May 4, 2011 and referred to the Committee on Economic Development. The Bill was sponsored by Mark Jansen (primary).
- C. Senate Bill 1116 of 2010. Bill 1116 would amend the Michigan Nonprofit Corporation Act by amending MCL 450.2123 and 450.2217, and by adding section 746 to do the following: (i) apply the Michigan Nonprofit Corporation Act to a domestic corporation formed by the conversion of a municipal health facilities corporation to a nonprofit corporation under Section 308 of the Municipal Health Facilities Corporations Act (MCL 15331.1308); (ii) allow a nonprofit organization (including a municipal health facilities corporation) to convert to a domestic corporation; and (iii) require a nonprofit organization proposing to convert to a domestic corporation to adopt a plan of conversion and file a certificate of conversion with DELEG. The Bill was introduced on February 9, 2010, and referred to the Committee on Health Policy. On March 11, 2010, the Bill reported favorably without amendment, the Committee recommended immediate effect, and the Bill was referred to Committee of the Whole. On April 20, 2010, Bill 1116 was referred to the Senate Committee on Health Policy. The Bill was originally tie-barred with SB 1115 of 2010, now PA 331 of 2010. The Bill was sponsored by Bill Hardiman (primary).
- D. House Bill 6166 of 2010. The "Office of Small Business and Entrepreneurship Services" would be created within the Department of Energy, Labor and Economic

Growth. The office shall do all of the following: (a) facilitate the creation and retention of small business jobs in this state; (b) create and operate a 1-stop internet website for small businesses and entrepreneurship services; (c) coordinate programs across state government to create and retain small business jobs in this state; (d) aid and assist small business and entrepreneurs in this state; (e) work to create a business environment that encourages and sustains entrepreneurship in this state; (f) work to empower entrepreneurs to take advantage of the opportunities the market offers in this state; and (g) facilitate the promotion of a positive customer service culture of state employees who interact with the public. The Bill was sponsored by John Proos (primary).

- E. House Bill 6273 of 2010. The Bill would provide that for the 2010 and 2011 tax years, a qualified taxpayer may claim a credit against the tax imposed by this act equal to the total compensation paid by the qualified taxpayer to all qualified employees during the tax year for which the credit is claimed or \$10,000.00 for each qualified employee, whichever is less. The credit allowed under this section shall be taken after all other credits provided under this act. The Bill was sponsored by Jim Slezak (primary).
- F. House Bill 4091 of 2011. The Bill would provide, for the 2011 tax year, elimination of the modified gross receipts tax component of the Michigan Business Tax and change the rate of the remaining corporate income tax portion to 6 percent. The Bill was sponsored by Ken Horn (primary).
- G. House Bill 4240 of 2011. The Bill would prohibit state departments from promulgating rules more stringent than required by federal standards, unless specifically required to by state statute. The Bill would require state agencies to consider exempting small businesses from adopted rules and identify and estimate the number of small businesses affected by the proposed rule if not exempted. The Bill was sponsored by Ken Goike (primary).
- H. House Bill 4361 of 2011. The Bill provides for elimination of the modified gross receipts tax component of the Michigan Business Tax and changes the rate of the remaining corporate income tax portion to 6 percent. The Bill was sponsored by Jud Gilbert (primary).
- I. House Bill 4362 of 2011. The Bill would provide "grandfather" status for a range of special business tax breaks and subsidies that were granted to particular firms under targeted exemptions and credits. The "grandfather" status would be available only for firms with already certified tax breaks or subsidies. This bill is part of the Governor's proposal to convert the Michigan Business Tax into a 6 percent corporate income tax. The Bill was sponsored by Jud Gilbert (primary).
- J. House Bill 4377 of 2011. The Bill would amend the Michigan consumer protection act by amending section 3 (MCL 445.903) by adding section 3J to preclude the sale of window blinds in this state without "all of the following:(a) cleats, hardware, and instructions for installation that would allow the window blind cord to be secured

[and] (b) a warning about the danger of accidental hanging or strangulation from a window blind cord that is not secured." The Bill was sponsored by Lisa Brown and referred to the Committee on Regulatory Reform.

Respectfully submitted,

Eric I. Lark / William C. Lentine  
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May 3, 2011