

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for June 13, 2008 Council Meeting

(Report as of June 4, 2008)

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 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).
- C. Public Act 36 of 2007. This Act shall be known and may be cited as the "Michigan Business Tax Act" and shall provide for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities. This Act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007. (SB 0094; effective 7/17/07).
- D. Public Act 65 of 2007. Amends Public Act 39 of 1961, which regulates insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, and closing out sales and sales of damaged goods. The Act will allow a city, village, or township clerk to waive the application fee for a license and license renewal to conduct a sale regulated under the Act. (HB 4673; effective 9/28/07).
- E. Public Act 83, 86, 87 of 2007. Amends respectively the Michigan Business Corporation Act, the Limited Liability Company Act, and the Nonprofit Corporation Act to postpone for five years the sunset on the filing fee that must accompany the annual report from September 30, 2007, to September 30, 2012. (HB 4866, 5257, 5258; effective 10/1/07).
- F. Public Act 90 of 2007. Amends the Michigan Business Tax Act by creating a new deduction for businesses that realize an increase in their deferred tax liability due to

the enactment of the new Michigan Business Tax, which was enacted on July 12, 2007, and will take effect on January 1, 2008. The deduction would equal the change in a business's deferred tax liability during the first tax period ending on or after July 12, 2007, and the business would claim the deduction by deducting 4% of this difference during each of the successive five years beginning with the 2015 tax year, 6% of this difference during each of the successive five years beginning with the 2020 tax year, and 10% of this difference during each of the successive five years beginning with the 2025 tax year. If the deduction exceeded a business's tax base in any of these years, the unused portion of the deduction could be carried forward and used in future years. (HB 5104 of 2007).

- G. Public Act 93 of 2007. Amends the Use Tax Act to tax the use or consumption of specified services in the same manner as tangible personal property is taxed. The listed services would be taxed at 6% as of December 1, 2007. (HB 5198 of 2007). *Repealed by Public Act 145 of 2007.*
- H. Public Act 145 of 2007. Amends the Michigan Business Tax to repeal the new state tax on selected services immediately after it takes effect December 1, 2007. The new services tax was put in place by Public Act 93 of 2007 (House Bill 5198). The Act also imposes an annual surcharge on the tax liability of MBT taxpayers "to meet deficiencies in state funds." The surcharge would be imposed after allocation or apportionment to the state but before calculation of the various credits available under the Act. The surcharge would be 32.9 percent for the 2008 tax year and 27.3 percent for the 2009 tax year and beyond. (HB 5408 of 2007).
- I. Public Act 44 of 2006. Amends Public Act 137 of 1929, which provides for the formation of corporations by summer resort owners, to revise the member approval requirements for the board of a summer resort corporation in order to set and collect annual dues and special assessments from its members. The bill specifies that, unless the summer resort corporation's bylaws specifically provide for approval by a majority of the votes cast, the vote of a majority of all of the members of the corporation would be required to approve an action of the board relating to dues and assessments. (SB 751; effective 3/7/06)
- J. Public Act 47 of 2006. Allows corporations to address written notices, reports, statements or communications to shareholders sharing a common address if: (1) the corporation addresses the writing to shareholders as a group, individually, or in any other form to which there are no shareholder objections, (2) the corporation gives at least 60 days notice to the shareholders sharing the common address, (3) there are no written objections from any shareholder with the common address. If there is an objection, the corporation must provide separate copies to those who have objected within 30 days of receiving the objection. (HB 5321; effective 3/9/06)
- K. Public Act 63 of 2006. Amends the portion of the MBCA addressing the dissolution of corporations to provide that the dissolution depends, among other things, on proof that shareholders who have entered into an agreement authorized by Section 488 are unable to agree on material matters respecting management of the corporation's

affairs or are divided in voting power so as to be unable to elect successor directors. The reference to Section 488 replaces a reference to the shareholders acting under the corporation's Articles of Incorporation. Section 488 allows shareholders to enter into agreements to exercise the corporate powers or the management of the business, even to the extent of eliminating the board of directors or restricting its powers. (HB5316; effective 3/20/2006)

- L. Public Act 66 – 67 of 2006. Specify that when a shareholder abstains from voting or submits a ballot marked “abstain,” such action does not count as a vote cast (unless the Articles provide otherwise). This affects a section that requires actions to be authorized by “a majority of votes cast.” A similar amendment is made to the section that deals with voting by a class or series of shares. (HB 5319 and 5320; effective 3/20/2006)
- M. Public Act 68 of 2006. Amends the Act's definition of “willfully unfair and oppressive conduct” to specify that such conduct could include termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder. (HB5323; effective 3/20/06)
- N. Public Act 72 of 2006. Rewrites and rearranges the provision that requires a foreign (out-of-state) corporation to comply with Sections 1021 (dealing with amended applications) and 1035 (the filing of required information) in order to merge with or enter into a share exchange with a domestic (in-state) corporation. (HB 5315; effective 3/20/06)
- O. Public Act 250 of 2006. Creates a new act to regulate the money transmission services business and to require the licensing of persons engaged in providing money transmission services. (HB 5328, effective 7/12/06)
- P. Public Act 510 of 2006. Amends the Michigan Notary Public Act of 2003 to provide that licensed attorneys are eligible to serve as notaries public. (Effective 4/1/07)
- Q. Public Act 581 of 2006. Amends the Banking Code of 1999 to address the trust powers of banks. It provides for a rebuttable presumption that a bank's fee for its fiduciary services is reasonable as required under the Code if the fee or its method of computation is specified in an appropriately disclosed fee schedule or fee agreement before the fee is charged. The Bill also allows a bank to use money or property over which it exercises investment discretion to purchase any product, service, or security from or through the bank or an affiliate of the bank (if the price is reasonable) so long as the bank obtains the written consent of a revocable trust grantor or agency principal or, if the trust is irrevocable or the trust grantor is deceased or incapacitated, if the bank provides 45 days advanced notice to any person entitled to receive trust accountings under Section 7303 of EPIC. If a bank receives a written objection to a notice, and the objection is not resolved or withdrawn, the bank may not make a purchase for at least 60 days after it receives the objection. (HB 6299, effective 1/3/07)

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. Senate Bills 0109 and 0110 of 2007. 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 Economic Development and Regulatory Reform on January 30, 2007. The Bills were sponsored by Raymond Basham and Thomas George.
- B. Senate Bill 0169 of 2007. The Bill would create the Check Cashing Licensing Act. The Bill would regulate check cashing businesses. The Bill was referred to the Committee on Banking and Financial Institutions on February 6, 2007. The Bill was sponsored by Irma Clark-Coleman.
- C. Senate Bill 0274 of 2007. The Bill would amend the Michigan Consumer Protection Act. The Bill would prohibit expiration dates or fees on gift certificates and retail gift cards. The Bill was referred to the Committee on Commerce and Tourism on February 27, 2007. The Bill was sponsored by Gretchen Whitmer.
- D. Senate Bill 0294 of 2007. The Bill would amend the Michigan Commercial Rehabilitation Act. The Bill would establish incentives to grocery stores locating within certain areas. The Bill was referred to the Committee on Economic Development and Regulatory Reform on February 28, 2007, and then recommended for immediate effect on December 6, 2007. The Bill was referred to the Committee of the Whole on December 6, 2007, and placed on Order of Third Reading on December 11, 2007. The Bill was referred to the Committee on Commerce on December 12, 2007. The Bill was sponsored by Mark Jansen.
- E. Senate Bill 0307 of 2007. The Bill would create the Michigan Services Providers Excise Tax Act. The Bill would impose a tax on certain services. The Bill was defeated by the Senate on March 22, 2007. The Bill was sponsored by Liz Brater.
- F. Senate Bill 0312 of 2007. The Bill would create the Commercial Rental Property Specific Tax Act. The Bill would impose a tax upon the owners of certain property. The Bill was referred to the Committee on Finance on March 1, 2007, and then placed on the Order of General Orders on March 15, 2007. The Bill was referred to the Committee on Finance on October 3, 2007. The Bill was sponsored by Gilda Jacobs.
- G. Senate Bill 0387 of 2007. The Bill would amend the Michigan Consumer Protection Act to prohibit as an unfair trade practice issuing a gift certificate or card that expired in less than five years; failing to disclose the expiration date conspicuously on the gift certificate or card, if it had an expiration date; failing to honor a gift certificate or card before it expired; or charging a fee if a consumer did not use a gift certificate or card. The Bill was referred to Committee on Commerce and Tourism on March 29, 2007. The Bill was passed by the Senate on June 13, 2007 and received by the House on June 12, 2006. The Bill was referred to Committee on Commerce. The Bill was sponsored by Nancy Cassis (primary) and nine others.

- H. Senate Bill 0392 and 0393 of 2007. The Bills would create the Uniform Prudent Management of Institutional Funds Act and amend the Nonprofit Corporation Act to incorporate the Uniform Prudent Management of Institutional Funds Act. The Bills would establish the duties and obligations of nonprofit, charitable institutions in the management and use of funds held for charitable purposes. The Bills were referred to the Committee on Economic Development and Regulatory Reform on April 17, 2007, and then reassigned to the Committee on Judiciary on April 18, 2007. The Bills were sponsored by Wayne Kuipers and Gretchen Whitmer.
- I. Senate Bills 0457-0465 of 2007. The Bills would create the Employee Privacy Protection Act and amend the Elliott-Larsen Civil Rights Act. The Bills would prohibit employers from making employment decisions based upon certain conduct that is unrelated to employment, such as physical differences, family health, associational activity, financial credit, familial status, dietary or smoking activity, political activity, and firearms. The Bills were referred to the Committee on Commerce and Tourism on April 26, 2007. SB 0457 creating the Employee Privacy Protection Act was sponsored by Gilda Jacobs.
- J. Senate Bill 0514 of 2007. The Bill would amend the General Property Tax Act. The Bill would allow local governments to exempt from taxes real and personal property owned by food service establishments who prohibit smoking tobacco products within that establishment. The Bill was referred to the Committee on Finance on May 17, 2007. The Bill was sponsored by Jason Allen.
- K. Senate Bill 0732 of 2007. The Bill would designate enterprises owned or controlled by qualified veterans as Michigan Patriot Businesses. Veterans must have served in Operation Iraqi Freedom or Operation Enduring Freedom. The Board would provide technical, managerial, and counseling services and assistance to qualified business enterprises as well as coordinate, make application for, and administer federal funds. Tie Bar with SB 0733 and 0734. The Bill was referred to the Committee on Senior Citizens and Veterans Affairs on September 6, 2007, and then recommended for immediate effect on October 4, 2007. The Bill was referred to the Committee of the Whole on October 4, 2007, who reported favorably, and was placed on Order of Third Reading on October 9, 2007. The Bill was referred to the Military and Veterans Affairs and Homeland Security on October 10, 2007. The Bill was sponsored by Randy Richardville.
- L. Senate Bill 1131 of 2008. The Bill would amend the Motor Fuel Distribution Act to regulate the termination and transfer of motor fuel franchises; to prohibit certain conduct relating to purchasing and selling of alternative motor fuels; and to provide for certain remedies and penalties. The content of the Bill is the same as House Bill 5753. The Bill was referred to the Committee on Agriculture on February 19, 2008. The Bill was sponsored by Dennis Olshove.
- M. House Bill 4011 of 2007. The Bill would amend the Michigan Motor Fuel Distribution Act. The Bill would allow franchised retail gasoline service stations to buy alternative fuels from other distributors and refiners if their own fuel providers do

not offer alternative fuels. The Bill was referred to the Committee on Transportation on January 22, 2007. The Bill was sponsored by Bruce Caswell.

- N. House Bill 4050, 4317, and 4680 of 2007. The Bills would amend the Michigan Consumer Protection Act. The Bills would prohibit expiration and certain fees on gift certificates and gift cards. The Bill was referred to the Committee on New Economy and Quality Life on February 27, 2007. The Bill was reported with recommendation for referral to the Committee on Commerce on June 28, 2007, and recommendation was concurred in. The Bill was referred to second reading on October 16, 2007, read a second time on November 27, 2007, and a third time on November 28, 2007. The House passed the Bill and returned it to the Senate on November 28, 2007. The Bill was referred to the Committee on Commerce and Terrorism on November 29, 2007. The Bill was reported favorably with substitute S-1 on May 21, 2008, the Committee recommended immediate effect, and it was then referred to the Committee of the Whole. The Bill was sponsored by Mark Meadows.
- O. House Bill 4115 of 2007. The Bill would create the Michigan Prescription Drug Fair Pricing Act. The Bill would allow certain prescription drug manufacturers and labelers to enter into rebate agreements with the department of community health; to establish a discount prescription drug program for certain individuals; to allow certain retail pharmacies to offer certain discounts. The Bill was referred to the Committee on Health Policy on January 24, 2007. The Bill was sponsored by Marie Donigan.
- P. House Bill 4163 of 2007. The Bill would amend the Michigan Public Health Code. The Bill would require smoke-free workplaces. The Bill was reported with recommendation from Committee on Commerce and referred to second reading on July 24, 2007. The Bill was read a second time on November 8, 2007, and postponed temporarily. The Bill was placed on a third reading on December 5, 2007, read a third time, its immediate effect was defeated, and it was transmitted to the Senate. The Bill was referred to the Committee on Government Operations and Reform on December 11, 2007. The Bill was placed on the Order of General Orders on May 8, 2008 and then was reported favorably by the Committee of the Whole with substitute S-8. The substitute S-8 was concurred in and placed on order of third reading with substitute S-8. The Senate passed the Bill and it was returned to the House on May 14, 2008 with substitute S-8. The Bill was sponsored by Brenda Clack.
- Q. House Bill 4368 of 2007. The Bill would create the Michigan Services Providers Excise Tax Act. The Bill would impose a tax on certain services. The Bill was referred to the Committee on Tax Policy on March 1, 2007. The Bill was sponsored by George Cushingberry.
- R. House Bill 5008, 5009-5020, and 5022-5024 of 2007. The Bill would create the Uniform Securities Act (2002). It would repeal the existing Uniform Securities Act, Public Act 265 of 1964. The new act would take effect 180 days after enactment. House Bills 5009-5020 and 5022-5024 would each amend a separate act to update references to make them apply to the new Uniform Securities Act. The administrator of the act would be the Office of Financial and Insurance Regulation (OFIR) within

the Department of Labor and Economic Growth. The new act is based on a uniform act developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). According to the NCCUSL, the model act is designed to coordinate federal and state securities legislation. The purpose of such regulation is to prevent fraudulent sales of securities to investors. The Bill was introduced on July 10, 2007 and referred to the Committee on Banking and Financial Services. The Bill was reassigned to the Committee on Commerce on July 17, 2007. The Bill was reported with recommendation with substitute H-2 on April 29, 2008. The House passed the Bill on April 30, 2008 and it was transmitted to the Senate. The Bill was referred to the Committee on Banking and Financial Institutions on May 1, 2008. The Bill was sponsored by William Huizenga.

- S. House Bill 5046 of 2007. The Bill would create a new act under which retail establishments would have to allow customers with certain medical conditions to use toilet facilities usually reserved for employees. The Bill would apply to customers with Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome, or any other medical condition requiring immediate access to a toilet facility. The Bill was reported with recommendation from Committee on Commerce and referred to third reading on September 11, 2007, and read a third time on October 3, 2007. The House passed the Bill and transmitted it to the Senate on October 3, 2007, and the Bill was referred to the Committee on Commerce and Tourism. The Bill was sponsored by Andy Meisner.
- T. House Bills 5356-5358 of 2007. The Bills would amend the Michigan Business Corporation Act, the Professional Service Corporation Act, and the Michigan Limited Liability Company Act to distinguish between "professional service" and "services in a learned profession;" designate the act corporations providing such services would fall under; revise the definition of "person" to include a limited liability company; revise certain procedures to be followed when converting a domestic company into a business organization, or the reverse; and repeal a section of law dealing with "control share acquisitions." The Bill was referred to the Committee on New Economy and Quality of Life on October 24, 2007. The House passed the Bill on December 6, 2007 and transmitted to the Senate. The Bill was referred to Committee on Economic Development and Regulatory Reform on December 11, 2007. The Bill was sponsored by Representative William Huizenga.
- U. House Bill 5681 of 2008. The Bill would amend the Nonprofit Corporate Act to add a definition of "charitable purpose corporation." The Bill was referred to the Committee on Commerce on January 31, 2008. The Bill was reported with recommendation with substitute H-4 on April 29, 2008, referred to second reading, read a second time, and substitute H-4 was adopted. The Bill was then placed on third reading and immediate passage, and read a third time. The House passed the Bill on April 29, 2008 and it was transmitted to the Senate. The Bill was referred to the Committee on Economic Development and Regulatory Reform on April 30, 2008. The Bill was sponsored by Steve Tobocman.

- V. House Bill 5753 of 2008. The Bill would amend the Motor Fuel Distribution Act to regulate the termination and transfer of motor fuel franchises; to prohibit certain conduct relating to purchasing and selling of alternative motor fuels; and to provide for certain remedies and penalties. The content of the Bill is the same as Senate Bill 1131. The Bill was referred to the Committee on Agriculture on February 14, 2008. The Bill was sponsored by Pam Byrnes.

- W. House Bill 6038 of 2008. The Bill would amend the Business Corporation Act (MCL 450.1123). Currently, the Act applies to cemetery, burial, and cremation associations. The bill would delete this reference, thus exempting these associations from regulation under the act. It is tied to Bill 6033, which would amend numerous existing sections of the Cemetery Regulation Act, add several new sections (MCL 456.522 et al.), and provide for the regulation of cemetery owners, require cemetery owners to be licensed, expand permissive duties of the cemetery commissioner, increase fees and penalties, create a new restrictive fund, and revise provisions regarding endowment and perpetual care trusts. The Bill was introduced on May 1, 2008 and referred to the Committee on Regulatory Reform. The Bill was sponsored by George Cushingberry (primary) and fifteen others.

- X. House Bill 6047 of 2008. The Bill would amend 1929 PA 137, entitled Incorporation of Summer Resort Owners by repealing sections 15 and 16 (MCL 455.215 and 455.216). The Bill was introduced on May 6, 2008 and referred to the Committee on Tourism, Outdoor Recreation and Natural Resources. The Bill was sponsored by John Stakoe (primary) and five others.

Respectfully submitted,

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June 4, 2008