

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for September 25, 2008 Council Meeting

(Report as of September 10, 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 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. (HB 5511; effective 4/8/08)
- E. 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)

- F. 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)
- G. 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 at least three directors. (HB 5681; effective 7/16/08)

- H. Public Act 231 of 2008. Amends the Michigan Commercial Rehabilitation Act. The Act 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)
- I. 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)
- J. 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)
- K. 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)
- L. 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)
- M. 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*]
- N. 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)

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 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.
- E. 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.
- F. 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 13, 2007. The Bill was referred to Committee on Commerce. The Bill was sponsored by Nancy Cassis (primary) and nine others.

- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. Senate Bill 1445 and 1446 of 2008. Bill 1445 would amend the Michigan Limited Liability Company Act to authorize the formation of a low-profit limited liability company. Bill 1446 would require the name of a low-profit limited liability company

to contain the words “low-profit limited liability company”, or the abbreviation “L3.C.” or “L3.C.” The Bills were referred to the Committee on Commerce and Tourism on July 24, 2008. The Bills were sponsored by Jason Allen and Jim Barcia.

- 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 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.
- O. 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.
- P. 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.
- Q. 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.

- R. 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.
- S. 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.
- T. 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.
- U. 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.
- V. 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.
- W. House Bill 6267 of 2008. The Bill would amend Section 68 of the Condominium Act (MCL 559.168) to require a condominium association to provide a member with copies of the master deed, association bylaws or other condominium documents and permit the association to charge a fee for production of such documents. The Bill was introduced on June 19, 2008 and referred to the Committee on Intergovernmental, Urban and Regional Affairs. The Bill was sponsored by Tory Rocca and twelve others.
- X. House Bill 6294 and 6295 of 2008. Bill 6294 would authorize a county to form a nonprofit corporation with certain restrictions and limitations. Bill 6295 would amend the Open Meetings Act (MCL 15.262) to make nonprofit corporations formed by counties subject the Act. The Bills were introduced on June 27, 2008 and referred to the Committee on Intergovernmental, Urban and Regional Affairs. The Bills were sponsored by John Proos and Jeff Mayes.
- Y. House Bill 6302 and 6303 of 2008. The Bills would amend 1895 PA 1 (MCL 457.221 to 457.227) by adding section 4a and 4b which would exempt personal property and real property used for Masonic purposes from certain property taxes. The Bills were introduced on June 28, 2008 and referred to the Committee on Tax Policy. The Bills were sponsored by Rick Jones and numerous others.
- Z. House Bill 6345 of 2008. The Bill would amend the Motor Fuel Distribution Act (MCL 445.1801 to 445.1808) by adding section 5a which would forbid a franchise from prohibiting a franchisee from offering a discount to a buyer of gasoline based on the method of payment and require a franchisee to clearly display a discount based on the method of payment. The Bill was introduced on July 23, 2008 and referred to the Committee on Commerce. The Bill was sponsored by Tim Moore (primary) and two others.

Respectfully submitted,

Eric I. Lark
Kerr, Russell and Weber, PLC
September 10, 2008