

Business Corporation Act Amendments

Rep. Huizenga introduced HB 5356 in October that contains amendments to the Business Corporation Act drafted by the Corporate Laws Committee of the Business Law Section. The amendments permit the use of abbreviations, such as inc., co., corp., and ltd., with or without periods; permit appointment of a limited liability company as resident agent; and permit conversion of a corporation to a business organization and conversion of a business organization to a corporation, if permitted by the law that will govern after the conversion.

An amendment to section 545a clarifies that an interested director transaction that satisfies section 545a(1) could still be subject to attack for other defects. Amendments to sections 564a and 564b clarify language regarding indemnification and permit general authorization of advances in connection with a single proceeding. The amendments also include repeal of Chapter 7B, commonly referred to as the control share act.

Legislation to Address *Miller v Allstate*

HB 5356 is tie barred to HB 5357 and HB 5358, introduced by Rep. Meisner and Rep. Clemente, respectively, which amend the Professional Service Corporation Act and Michigan Limited Liability Company Act. The bills contain amendments to address issues raised by *Miller v Allstate*,¹ which held that a corporation providing professional services must form under the Professional Service Corporation Act rather than the Business Corporation Act. Prior to *Miller* the Corporation Division followed Attorney General Opinion No. 6592, which states that only corporations providing services of lawyers, physicians, surgeons, dentists, and psychologists were required to organize as professional service corporations. The intent of the bills is to preserve the status quo as it existed before the *Miller* decision.

HB 5356 amends the Business Corporation Act to clarify that a corpora-

tion may form under the Business Corporation Act to provide professional services, other than services in a learned profession. It also adds a definition for "service in a learned profession" and has a savings clause for existing corporations. HB 5357 amends the Professional Service Corporation Act to clarify that only corporations providing "services in a learned profession" are required to organize as professional service corporations. It adds a definition for "services in a learned profession," simplifies the definition of "professional service," and adds a savings clause for existing corporations. HB 5358 amends the Michigan Limited Liability Company Act to simplify the definition of "professional service."

HB 5356 and HB 5357 were amended in committee to add chiropractors and optometrists to the definition of "services in a learned profession," restricting them to only incorporating as professional service corporations. The house passed HB 5356-5358 on December 6, 2007, with further amendments to HB 5356 and HB 5337 to add physical therapists to the definition of "services in a learned profession" and restrict them to only incorporating as professional service corporations. The bills have been referred to the Senate Committee on Economic Development and Regulatory Reform.

Section 4(3) of the Professional Service Corporation Act, MCL 450.224(3), provides that when a professional service corporation renders a professional service included within the Public Health Code "all the shareholders of the corporation shall be licensed or legally authorized in this state to render the same professional service." The bills as amended would limit chiropractors, optometrists, and physical therapists to organizing as professional service corporations and, therefore, would limit ownership to shareholders licensed to provide the same professional service. The impact of the amended bills on existing corporations and existing professional service corporations that offer the services of chiropractors, op-

tometrists, or physical therapists is unclear.

On November 21, 2007, the Michigan Supreme Court granted the applications for leave to appeal in *Miller v Allstate*. The court invited the Attorney General, the Prosecuting Attorneys Association of Michigan, the Michigan Association for Justice, the Insurance Institute of Michigan, and the Business Law and Health Care Law Sections of the State Bar to file briefs amicus curiae. The issues to be briefed include whether PT Works must be incorporated under the Professional Service Corporation Act and, if so, whether the failure to do so means that the physical therapy provided was not lawfully rendered. The parties are invited to consider the possible application of sections 9 and 13 of the Professional Service Corporation Act, MCL 450.229 and 450.233, and section 271(c) of the Business Corporation Act, MCL 450.1271(c). The Corporation Division has requested that the Attorney General file a brief.

Reference to Michigan Business Tax Added to BCA

SB 942, introduced November 29, 2007, amends sections 911 and 1062 of the Business Corporation Act, MCL 450.1911 and 450.2062. The amendment to section 911 adds the Michigan Business Tax apportionment percentage to the information to be reported on foreign corporation annual reports. The amendment to section 1062 provides for the Michigan Business Tax apportionment percentage to be used to determine the foreign corporation's shares attributable to Michigan to be used to ascertain the required fee to be paid for an increase in shares attributable to Michigan.

Governor Granholm signed the bill on December 27, 2007. It became Public Act 182 of 2007 and has immediate effect.

2008 Annual Reports and Statements

Michigan corporations and domestic and foreign limited liability companies in good standing can file their 2008 and prior year annual reports

and statements online. Previously filed reports can be viewed and printed from Business Entity Search at www.michigan.gov/entitysearch. If a prior year report for 2006 or 2007 has not been filed, FileOnline provides a reminder message and advises the customer of the date when the prior report or statement must be filed to remain in good standing.

The 2008 limited liability company and professional limited liability company annual statements and reports are due on February 15, 2008. Professional limited liability companies are liable for late penalty fees. FileOnline will indicate what fee is due, and both current and prior year annual statements and reports may be filed online if the company is in good standing.

The 2008 profit corporation reports are due May 15, 2008. Policy C-67, signed May 10, 2007 (<http://www.dleg.state.mi.us/bcsc/forms/corp/pol/c-67.pdf>), provides for assessment of statutory late penalty fees of \$10 for each month or part of a month that a profit corporation report is late, not to exceed \$50 in addition to the \$25 annual fee.

The late penalty fee schedule is as follows:

- \$10 May 16-31
- \$20 June 1-30
- \$30 July 1-31
- \$40 August 1-31
- \$50 September 1 or later

Michigan profit corporations in good standing may file their 2008 report and prior year reports for 2006 and 2007 online. It is expected that online filing will be available in spring 2008 for foreign profit corporations in good standing, which have 60,000 or fewer shares attributable to Michigan or which have previously reported all shares attributable to Michigan.

When filing annual statements and reports online, fees are paid by credit card. A receipt can be printed before exiting the application, and the filed statement or report can be viewed online immediately after filing. To file online go to www.michigan.gov/fileonline.

Scams Targeting Businesses Reported in Other Jurisdictions

Businesses in North Carolina recently received documents entitled "Important Final Notice" from a company called the National Companies Register Corporation that imply that the businesses are required to nationally register under the Patriot Act of 2001. The notice contains a seal similar to the state seal of North Carolina and a Web site that is capable of redirecting the person to the North Carolina Secretary of State's Web site. The notice warns businesses to pay \$487 to avoid dissolution. North Carolina posted an alert on their Web site (<http://www.secretary.state.nc.us/corporations/>) in late December 2007 alerting businesses to the fraud. In Canada, recipients received invoices for \$749 for a directory they supposedly ordered from the federal government of Canada. A press release from March 2007 is on the Industry Canada Web site, <http://www.corporationscanada.ic.gc.ca/epic/site/cd-dgc.nsf/en/cs03451e.html>.

In Oregon, businesses received mailings from "Assumed Business Name Renewal Service" that appeared to be from the secretary of state. The solicitation offers to prepare and file all necessary documents with the secretary of state for \$100. Notice regarding the solicitation is on the Oregon Secretary of State's Web site at http://www.sos.state.or.us/corporation/business/suspicious_solicitations.htm.

In Florida, California, Texas, Georgia, and New York, businesses have reported various scams using communications that imply the notice is from a government agency. "Texas Corporate Compliance" used an icon similar to the state seal of Texas when it notified businesses they were required to complete a form listing officers and directors and submit it with a \$125 fee within 10 days or risk loss of the corporation's limited liability status. "Georgia Corporate Compliance" sent notices to Georgia companies regarding completion of "corporation meeting minutes" and

provided forms that appeared to be from the Georgia Secretary of State.

In 2007, California businesses received notices from "California Corporate Compliance" to complete an "Annual Minutes Disclosure Statement" and return it with \$125 to retain their corporate status. The envelope and form contained a seal similar to the state seal of California. In 2006, California businesses received similar notices from the "Compliance Annual Minutes Board" with a request to pay \$150 to remain in good standing. "New York State Corporation Compliance" sent compliance registrations forms to businesses asking them to return the completed form with \$125. In Florida, businesses received similar notices from "Corporate Compliance Center". In Oregon, official looking correspondence was sent to nonprofit corporations by "Corporate Compliance Recorder" regarding an annual minutes requirement around the same time that annual reports were due.

Generally, these mailings have been sent out about the same time that annual filings are required to be made with the state's corporate filing office. The Department of Labor & Economic Growth issued a press release on January 2, 2008, to alert Michigan businesses to the possibility of receiving a misleading mailing.

NOTES

1. *Miller v Allstate*, 275 Mich App 649, 739 NW2d 675 (2007).

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