

**Bill will permit nonprofit corporations to conduct business electronically**

The 2001 amendments to the Business Corporation Act<sup>1</sup> included changing the act to permit corporations to use electronic transmissions to conduct the internal business of the corporation. SB 123, introduced on January 30, 2007, amends the Nonprofit Corporation Act to provide similar authority for nonprofit corporations. The bill passed the Senate on April 19, 2007, and has been referred to the House Committee on Commerce.

The bill defines "electronic transmission" as any form of communication that meets all of the following:

- It does not directly involve the physical transmission of paper.
- It creates a record that may be retained and retrieved by the recipient.
- The recipient through an automated process may directly reproduce it in paper form.

When a notice is required or permitted by the Act to be given in writing, electronic transmission would constitute written notice. When the Act permits a notice or communication to be electronically transmitted, the notice or communication would be given when electronically transmitted to the person entitled to it in a manner authorized by the person. The bill also permits the Corporation Division to send by electronic transmission comments regarding documents submitted electronically. In addition, the bill specifically provides that an electronically submitted document may be corrected by filing a Certificate of Correction.

**Learned professions**

The Bureau of Health Professions has received inquiries regarding expanding the types of business arrangements permitted for physician assistants and nurse practitioners. Physician assistants have expressed an interest in being permitted to become shareholders in professional service corporations or members in professional limited liability companies, either alone or with physicians and surgeons. In addition, documents have been submitted to the Corporation Division by profit corporations and limited liability companies, not formed as professional service corpo-

rations or professional limited liability companies, indicating that they wish to open retail medical clinics and provide medical services to the public using physician assistants or nurse practitioners.

Public Act 139 of 1997, effective November 18, 1997, amended section 4 of the Professional Service Corporation Act, MCL 450.224, to clarify that physicians and surgeons licensed under different provisions of the Public Health Code may be shareholders together in a professional service corporation. The legislature did not, however, include physician assistants as licensed persons who may be a shareholder in a professional service corporation.

The analysis for HB 4944, which became 1997 PA 139, discusses whether nurse practitioner or physician assistants should be permitted to be shareholders in the same professional service corporation as physicians and surgeons. The bill amendments did not expand the definition of licensed persons to include either physician assistants or nurse practitioners.<sup>2</sup>

Michigan follows the learned professions doctrine, and corporations formed under the Business Corporation Act are not permitted to offer medical services to the public.<sup>3</sup> Section 201 of the Michigan Limited Liability Company Act requires a limited liability company which provides services in a learned profession to form as a professional limited liability company.<sup>4</sup> The Bureau of Commercial Services will continue to work closely with the Bureau of Health Professions to review requests and inquiries in light of the present law. For specific information on the licensing or limitations on the practice of physician assistants or nurse practitioners, contact the Department of Community Health, Bureau of Health Professions, [http://www.michigan.gov/mdch/0,1607,7-132-27417\\_27529---,00.html](http://www.michigan.gov/mdch/0,1607,7-132-27417_27529---,00.html).

**Educational corporations**

Section 171 of the General Corporation Act<sup>5</sup> requires an educational corporation that wishes to conduct a postsecondary educational program to obtain a statement from the Bureau of Career Development, Department of Labor & Economic Growth that confirms the adequacy of the pro-

posed institution in five distinct areas before its articles of incorporation may be filed with the Corporation Division. Over the years, the Corporation Division has filed articles for some educational institutions based on letters of "no objection to filing" that did not specifically address whether the corporation met the adequacy requirements.

The Corporation Division has changed its practices, and, working with the Office of Postsecondary Services, will require articles for postsecondary educational corporations be accompanied by a statement from the Office of Postsecondary Services that confirms the five areas of adequacy specified in MCL 450.171(3) have been met.

Section 171(6) of the General Corporation Act permits an existing educational corporation to expand its academic offerings or degree-granting authority beyond that specified in its initial articles of incorporation. However, to do so the educational corporation must obtain a written determination that the facilities, equipment, and staff or the proposed facilities, equipment, and staff are adequate for the offering of the additional educational program and submit the statement with the amendment to its articles expanding its purposes.

It has been brought to the attention of the Corporation Division that there is apparently a misconception or misunderstanding that a corporation can avoid having to meet the adequacy requirements for educational corporations by acquiring, in some manner, permission from an existing educational corporation to use the same words or phrases in their purpose clause that the existing educational corporation has in its purpose clause. Section 173 of the General Corporation Act<sup>6</sup> provides in part, "The articles of every educational corporation shall clearly set forth the educational system of the institution to be founded and the character of the degrees, honors, diplomas, or certificates which it proposes to grant, and same shall be approved ... prior to the filing of the articles of incorporation." The degree-granting authority for an educational corporation is based on the approval of Office of Postsecondary Services and not on the filing of documents with the Corporation Division.

There is no authority for an educational corporation to assign, transfer, or convey its degree-granting authority by the sale or purchase of its purpose clause, or portions of its purpose clause. Both new corporations and existing corporations expanding their purposes must present to the Corporation Division a written determination of adequacy from the Office of Postsecondary Services before articles for an educational corporation or amendment to expand the educational purposes of an existing corporation can be filed.

### Fraudulent Filings

During the last three years, the Corporation Division has noticed an increase in submissions of documents by unauthorized persons. The scenarios are quite varied and have included altered documents, false documents, unauthorized signatures, and submission of documents for entities dissolved 50-100 years ago.

To reduce the likelihood that a document is filed for the wrong entity, the Corporation Division may ask for additional information when unique and unusual situations occur. For example, a recent Certificate of Revocation of Dissolution stated shareholders approved the revocation but the corporate name and identification number provided matched a corporation without shareholders dissolved by the incorporators. In addition, the names and addresses on the revocation were different from the names and addresses in the filed documents for the corporation. Because of the discrepancies in information the submitter was contacted for more information.

Additional information may also be requested when documents are submitted for corporations that dissolved prior to the adoption of the current statutes. In one instance a person wanted to file an Appointment of Agent for a corporation that dissolved 107 years ago. In another instance, a stranger wanted to revoke the 1975 dissolution of a corporation to claim funds that are listed on the Department of Treasury's list of unclaimed property.

### Proposed Stop Tax Haven Abuse Act

On February 17, 2007, Senator Carl Levin introduced S 681, the "Stop

Tax Haven Abuse Act." Section 106 of the bill includes limitations on legal opinion protection from penalties with respect to transactions involving offshore secrecy jurisdictions. Section 203 of the bill adds company formation agents to the list of persons subject to the anti-money laundering obligations of the Bank Secrecy Act. Individuals and firms engaged in the business of forming corporations and other entities, both offshore and in the 50 States, would be responsible for knowing the identity of the person for whom they are forming the entity. The bill directs the Treasury to develop anti-money laundering regulations for this group.

Information regarding the bill on Senator Levin's web site <http://levin.senate.gov/senate/statement.cfm?id=269514> states, "We expect and intend that, as in the case of all other entities covered by the Bank Secrecy Act, the regulations issued in response to this bill would instruct hedge funds, private equity funds, and company formation agents to adopt risk-based procedures that would concentrate their due diligence efforts on clients that pose the highest risk of money laundering." The full text of the legislation is available at <http://thomas.loc.gov/cgi-bin/thomas>.

### Issues regarding *Miller v Allstate*

On remand from the Michigan Supreme Court, the court of appeals in *Miller v Allstate Ins Co*<sup>8</sup> determined that PT Works was not properly incorporated. Reviewing the definition of "professional service" in section 2(c) of the Professional Service Corporation Act,<sup>9</sup> the court determined that physical therapy is a personal service offered to the public that requires a license and, therefore, is a business that could be formed under the professional service corporation act. The court found section 251(1) of the Business Corporation Act prohibits formation under the act if there is another act under which the corporation could be formed unless the other act specifically permits formation under the Business Corporation Act, and the Professional Service Corporation Act contains no such provision.

In addition, the court noted professional service corporations are included in the list of corporations in

section 123(1) of the Business Corporation Act<sup>10</sup> that are prohibited from forming under the Act. The court determined PT Works was formed to engage in a business for which a corporation may be formed under another statute, the Professional Service Corporation Act, and found that PT Works was improperly formed.

Information is available on the Bureau of Commercial Services website<sup>11</sup> regarding filing requirements for corporations impacted by the *Miller* decision. Prior to *Miller* the Corporation Division followed Attorney General Opinion No. 6592 (1989) and only required corporations providing services in a learned profession to form as professional service corporations. The agency is working with the Business Law Section on amendments to the Business Corporation Act and Professional Service Corporation Act to address issues raised by *Miller*.

### NOTES

1. 2001 PA 57.
2. <http://archive.legislature.mi.gov/documents/1997-998/billanalysis/House/pdf/1997-HLA-4944-A.pdf>.
3. AGO No. 6592 (1989).
4. AGO No. 6592 (1989).
5. MCL 450.4201.
6. MCL 450.171.
7. MCL 450.173.
8. No 259992, 2007 Mich App LEXIS 1441 (May 31, 2007).
9. MCL 450.222(c).
10. MCL 450.1123(1).
11. [www.michigan.gov/corporations](http://www.michigan.gov/corporations).

*G. Ann Baker is the director of the Corporation Division of the Michigan Bureau of Commercial Services, Lansing. Ms. Baker routinely works with the department, legislature, and State Bar of Michigan's Business Law Section to review legislation. Ms. Baker is a member of the International Association of Commercial Administrators, and of the State Bar's Committee on Libraries, Legal Research and Legal Publications. She is a past chairperson of the Business Law Section and a current member of the Section's Corporate Laws Committee and the Unincorporated Enterprises Committee's Subcommittee on the LLC Act.*