

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

December 1, 2005

I. PUBLIC ACTS

- A. Public Act 244 of 2005. Creates a new act to regulate the business of providing deferred presentment service transactions (also referred to as payday lending or check cashing) and to require the licensing of providers of deferred presentment service transactions. (HB 4834; effective 11/28/05)
- B. Public Act 229 of 2005. Amends the Single Business Tax to add to “business income” the amount of the federal domestic production activities deduction, subject insurance companies to the sales and use tax, reduce the amount of the gross receipts reduction (increasing SBT base), reduce the amount of the excess compensation reduction (increasing SBT base), treat members of a limited liability company like officers, shareholders, partners and individuals for purposes of the small business credit, include all members of a group of companies with common ownership in determining whether a controlled group is small enough to take the small business credit, eliminate the apprenticeship credit as of September 30, 2005, prevent firms with an unused SBT loss or credit obtained while filing separately from using that loss or credit faster by filing a joint return with an affiliate in a later year, and specify that underpayment due to some of the changes proposed in the bill would not subject the taxpayer to penalties imposed under the Act. (HB 5098; effective 11/21/05)
- C. Public Acts 217-220 of 2005. Amends the Michigan Business Corporation Act, the Michigan Limited Liability Act, the Nonprofit Corporation Act and the Michigan Revised Uniform Limited Partnership Act to require the Director of the Department of Labor and Economic Growth (DLEG) to establish, by December 31, 2006, a procedure for accepting the delivery of documents filed under those laws by electronic transmission. Beginning on that date, a person will be able to file a document under those statutes by electronic transmission. The DLEG has begun the process and expects to meet the December 31, 2006 deadline. (SB 664-667; effective 11/21/05)
- D. Public Act 212 of 2005. Amends the Michigan Business Corporation Act to allow a qualified high-technology business to apply for an exemption from fees charged under the Act for additional authorized shares, for up to eight consecutive tax years or for tax years in which the business had under \$10 million in gross revenue. (SB 298; effective 11/21/05)
- E. Public Act 133 of 2005. Child Care Licensing Act--amends the Act to require child care/day care centers to perform criminal history background checks on current employees and before making an offer of employment to an individual,

and forbidding centers from employing persons convicted of listed offenses; also provides for reporting requirements for employees of child care/day care centers and prescribes criminal penalties for failure to report. In addition, the Department of Human Services must conduct criminal background checks on applicants for child care/day care center licensure. (HB 4936; effective 1/1/06)

- F. Public Acts 192-195 of 2005. Amend various statutes to repeal sections that require banks, domestic credit unions, savings banks, and savings and loan associations that file a suspicious activity report with an agency of the Federal government to file a copy of the report with the Department of State Police within 24 hours. (HB 4997-5000; effective November 7, 2005)
- G. Public Act 113 of 2005. Exempts from licensure under the Mortgage Brokers, Lenders, and Servicers Licensing Act an individual who is an employee of a Professional Employer Organization (PEO), as defined in the Single Business Tax Act, and is solely acting as a residential mortgage originator for only one mortgage broker or lender. The public act specifies that the mortgage broker or lender would have to direct and control the activities of the individual and be responsible for all of the individual's activities and assume responsibility for the individual's actions covered by the proof of financial responsibility deposit required under the Act. (SB 540; effective 9/22/05)
- H. Public Act 105 of 2005. Retail sales--requires video game retailers to post in a prominent area within retail establishments a sign that provides information about a rating system or notifies consumers that a rating system is available to aid in selection of a game; retailers also have to make available to consumers, on request, information explaining the video game rating system. A video game retailer who violates the statute is responsible for a state civil infraction and may be ordered to pay a civil fine of up to \$1,000. (HB 4703; effective 12/1/05)
- I. Public Acts 25, 36-39 of 2005. Amend various statutes to provide that the Secretary of State's receipt of an application for a certificate of title on which a security interest in a vehicle, watercraft, or off-road vehicle was indicated, would be a perfection of a security interest and equivalent to the filing of a financing statement under the Uniform Commercial Code. Also, the filing of an application under the Mobile Home Commission Act for a certificate of title indicating a security interest in a mobile home would be required to perfect the security interest and would be equivalent to the filing of a financing statement under the Uniform Commercial Code. (HB 4450-4453; effective 6/7/05 and HB 4454; effective 5/23/05)
- J. Public Acts 16-19 of 2005. Unemployment insurance--prohibit and provide sanctions for transferring or acquiring a trade or business for the sole or primary purpose of obtaining a lower contribution rate or reimbursement payment in lieu of contributions required under the Employment Security Act. (HB 4414, 4415; SB 171, 174; effective 7/1/2005)

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. Senate Bill 14 of 2005: Would amend the income tax act to provide a \$1,000 tax credit to taxpayers purchasing alternative energy vehicles. The Bill was referred to the Committee on Finance on January 12, 2005.
- B. Senate Bill 16 of 2005: Would introduce the “Check Cashing Licensing Act,” requiring any person or entity, with the exception of certain banks, credit unions, and governmental entities, to obtain a license under the Act before engaging in the business of check cashing. The Bill was referred to the Committee on Banking and Financial Institutions on January 12, 2005.
- C. Senate Bill 114 – 115 of 2005: Would add provisions to the Michigan Business Corporation Act and Michigan Limited Liability Act with regard to converting business entities, including the transfer of any unexpired certificate of assumed name held by the converting entity. Referred to the Committee on Commerce and Labor on February 1, 2005.
- D. Senate Bill 123 of 2005. Would amend Public Act 451 of 1994, entitled "Natural Resources and Environmental Protection Act," prohibiting the sale of mercury-added products. Referred to the Committee on Natural Resources and Environmental Affairs on February 1, 2005.
- E. Senate Bill 127 of 2005: Would introduce the “Michigan Telecommunications Act,” which would preclude cellular or mobile telecommunication service providers from providing, selling or including customer numbers with directory assistance without obtaining customer consent. Referred to the Committee on Technology and Energy on February 1, 2005.
- F. Senate Bill 157 of 2005: Would amend the Single Business Tax Act to include in the tax base any settlement amount paid pursuant to an agreement with a state or federal governmental agency based on questionable practices related to stock or securities transactions to the extent that amount was deducted in determining taxable income. This would apply to tax years beginning after December 31, 2003. Deductions taken in 2002 or 2003 tax years would be added to 2004 tax year only. Referred to the Committee on Finance on February 3, 2005.
- G. Senate Bill 164 of 2005: Would introduce the “Deferred Deposit Loan Act,” which requires a person or entity, with the exception of certain banks, credit unions and governmental entities, to obtain a license under the Act before providing deferred deposit loans for consideration. Referred to the Committee on Banking and Financial Institutions on February 3, 2005.
- H. Senate Bill 176 of 2005: Would introduce the “Money Transmission Services Act”, which regulates money transmission service businesses and requires licensing of persons engaged in providing money transmission services. Referred to the Committee on Banking and Financial Institutions on February 9, 2005.

- I. Senate Bill 300 of 2005. Would create the “Nonprofit Health Care Organization Conversion Act” to regulate the conversion and acquisition of a nonprofit health care organization, to prescribe the powers and duties of certain state agencies and departments, to require the disclosure of certain information, to provide for a hearing under certain circumstances, and to prescribe penalties and remedies. Referred to the Committee on Health Policy on March 10, 2005.
- J. Senate Bill 395 of 2005. Would amend 1978 PA 368, entitled "Public Health Code," to prohibit smoking in the workplace. Referred to the Committee on Government Relations on April 19, 2005.
- K. Senate Bill 494 of 2005: Would amend the Michigan Consumer Protection Act to preclude businesses from charging an amount for gasoline during an emergency period that exceeds the average price at which gasoline was readily obtainable within the emergency area during a seven day period preceding the emergency period. The Attorney General would provide statistical information and investigate any complaint alleging a violation of the law. Referred to the Committee on Government Operations on May 11, 2005.
- L. Senate Bill 534 of 2005: Would amend the Single Business Tax Act to provide that, for tax years beginning after December 31, 2005, if a person is engaged in the person’s first or second year of business activity in this state and the person’s apportioned or allocated gross receipts are less than \$500,000 for the tax year, the person need not file a return or pay the tax as provided under the Act. Reassigned to the Committee on Economic Development, Small Business and Regulatory Reform on May 26, 2005.
- M. Senate Bills 625 and 626 of 2005. Would amend the Michigan Liquor Control Code of 1998 in order to regulate out of state wine retailers. Referred to the Committee on Economic Development, Small Business and Regulatory Reform on November 10, 2005.
- N. Senate Bill 663 of 2005: Would amend the Single Business Tax Act to increase the possible reduction to adjusted tax base, for tax years beginning after December 31, 2005, for a taxpayer that has more than 1,000 full-time equivalent employees during the tax year and whose primary business is to supply temporary staffing employees. Passed in the Senate on October 18, 2005 and then referred to the House Committee on Tax Policy.
- O. Senate Bill 704 of 2005: Would amend the Single Business Tax Act to permit a taxpayer to claim a credit against the tax imposed by the Act equal to \$1,000 for each alternative energy vehicle the taxpayer purchased or leased in the tax year as a fleet car. Referred to the Committee on Technology and Energy on August 31, 2005.
- P. Senate Bill 751 of 2005. Would amend 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 to set and

collect annual dues and special assessments from its members. The bill specifies that, unless the summer resort corporation's bylaws specifically provided 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. Passed in the Senate on October 12, 2005 and then referred to the House Committee on Commerce.

- Q. Senate Bill 753 of 2005. Would amend the Michigan Consumer Protection Act prohibiting price gouging of an essential commodity during a period of emergency. Referred to the Committee on Commerce and Labor on September 13, 2005.
- R. Senate Bill 864 of 2005. Would amend the Michigan Single Business Tax with respect to professional employer organizations and certain credits. Referred to the Committee on Appropriations on November 3, 2005.
- S. House Bill 4052 of 2005: Would prohibit the sale of cellular telephones and pagers to certain minors without written parental consent and prescribes civil sanctions. Referred to the Committee on Judiciary on January 27, 2005.
- T. House Bill 4087 of 2005: Would enact the “Liquidation Sale Licensing Act,” which would require one who intends to conduct a regulated sale or advertises, represents or holds out that a sale of goods is an insurance, bankruptcy, mortgage, insolvency, assignee’s, executor’s, administrator’s, receiver’s, trustee’s, removal, or going-out-of-business sale or a sale of damaged goods, to first obtain a license from the county clerk. Referred to the Committee on Regulatory Reform on February 1, 2005.
- U. House Bill 4128 of 2005: Would amend the Single Business Tax Act so that, for a period of three consecutive tax years beginning with the first year of operation, qualified businesses shall have no tax liability for tax years beginning after December 31, 2005. Referred to the Committee on Tax Policy on February 1, 2005.
- V. House Bill 4232: Would amend the Michigan Consumer Protection Act to require a seller of retail goods to provide notice to consumers of the seller’s return policy by posting the policy in a conspicuous place visible to the public in the premises where the goods are sold and by printing the return policy on the sale receipt. Referred to the Committee on Commerce on February 8, 2005.
- W. House Bills 4279 and 4280 of 2005: Would amend the Use Tax Act and General Sales Tax Act to exempt previously owned vehicles from taxes levied under the Acts. HB 4280 referred to the Committee on Tax Policy on February 15, 2005. HB 4279 ordered enrolled on October 27, 2005.
- X. House Bill 4343 of 2005: Would amend the Consumer Mortgage Protection Act to change its name to the “Home Loan Protection Act” and impose new

restrictions on home loans. Referred to the Committee on Banking and Financial Services on February 17, 2005.

- Y. House Bill 4529 of 2005: Would create the Michigan Prescription Drug Fair Pricing Act to allow prescription drug manufacturers and labelers to enter into rebate agreements with the Department of Community Health, and would establish a prescription program to provide discounted prescription drug prices to uninsured and underinsured residents of Michigan and to residents of Michigan who are recipients of benefits under the state Medicaid program. Referred to the Committee on Health Policy on March 22, 2005.
- Z. House Bill 4842 of 2005: Would amend the General Sales Tax Act to permit a person subject to tax under the Act to exclude from the gross proceeds used for the computation of the tax the sale of an article of clothing or footwear to be worn on an individual if the sale is made in the first 10 calendar days of August of each year. Referred to the Committee on Tax Policy on May 31, 2005.
- AA. House Bill 4897 of 2005: Would create the Used Car Return Act, which would require dealers selling defective or damaged used vehicles to repair the defect or condition at the dealer's expense or retain the vehicle and refund the purchase price unless the defect or condition is disclosed to the purchaser in a written statement at the time of sale. Referred to the Committee on Commerce on June 8, 2005.
- BB. House Bill 5012: Would amend the Michigan Business Corporation Act to require the filing of a report describing, in detail, the effect on any existing employee pension or retirement plan of any merger, share exchange or sale of substantially all assets involving a domestic corporation or a foreign corporation authorized to transact business in this state. Referred to the Committee on Commerce on June 29, 2005.
- CC. House Bills 5164-5165 of 2005. Would amend the General Sales and Use Tax Acts with respect to sales/use tax on the difference between trade-in and purchase price. Referred to the Committee on Tax Policy on September 13, 2005.
- DD. House Bills 5204 and 5205 of 2005. Would amend the General Sales Tax Act (MCL 205.54bb) and Use Tax Act (205.94z), respectively, to provide a motion picture company with a credit equal to the amount of sales tax and use tax paid, if the company has spent at least \$250,000 in the state for purposes related to the filming or production of a single motion picture, and the tangible personal property subject to taxation is used exclusively as an integral part of the production activities in the state. The credits would only be available to production companies that begin production after the bills' effective date, and would be available through the end of 2006. Works of an obscene nature would not be eligible for the credits. House Bills 5204-5207 are tie-barred to each other. Referred to the Committee on Finance on November 9, 2005.

- EE. House Bill 5206 of 2005. Would amend the Single Business Tax Act (MCL 208.35d) to provide an SBT credit to a motion picture production company that spends at least \$250,000 in the state for purposes related to the filming or production of a single motion picture. The credit would be equal to 130 percent of the company's tax liability attributable to the filming or production of a motion picture in the state, and would be available for tax years that begin before January 1, 2007. The credit would not apply to the filming of a motion picture of an obscene nature. If the credit and any unused carry-forward exceed the taxpayer's tax liability, the excess would not be refundable but could be carried forward for 10 years or until the excess is exhausted, whichever occurs first. Additionally, a taxpayer could assign all or a portion of the credit. If the taxpayer both claims and assigns portions of the credit, the taxpayer would claim its portion in the tax year in which the activity occurs. The assignee would have to claim the credit in the same year in which the credit was assigned. House Bills 5204-5207 are tie-barred to each other. Referred to the Committee on Finance on November 9, 2005.
- FF. House Bills 5207 and 5208 of 2005. Would amend the Single Business Tax Act (MCL 208.35e) to add definitions for "motion picture", "motion picture production company", and "obscene matter or an obscene performance." House Bills 5204-5207 are tie-barred to each other. Referred to the Committee on Finance on November 9, 2005.
- GG. House Bill 5209 of 2005. Would amend the History, Arts, and Libraries Act (MCL 399.721) to require the state film office to adopt policies and standards for making state-owned property available to be used free of charge for film and television production in the state. House Bills 5204-5207 are tie-barred to each other. Referred to the Committee on Finance on November 9, 2005.
- HH. House Bill 5223 of 2005. Would amend the General Sales Tax Act providing sales tax exemption for the difference in sales price between alternative fuel vehicles and vehicles powered by motor fuel. Referred to the Committee on Tax Policy on September 27, 2005.
- II. House Bill 5263 of 2005. Would amend the Banking Code of 1999 to require bank employees to report suspected financial abuse of an elder. Referred to the Committee on Banking and Financial Services on October 6, 2005.
- JJ. House Bill 5298 of 2005. Would amend the Savings Bank Act to require savings bank employees to report suspected financial abuse of an elder. Referred to the Committee on Banking and Financial Services on October 18, 2005.
- KK. House Bill 5299 of 2005. Would amend the Credit Union Act to require credit union employees to report suspected financial abuse of an elder. Referred to the Committee on Banking and Financial Services on October 18, 2005.

LL. House Bills 5315-5323. Would amend the Michigan Business Corporation Act (and were referred for a second reading on November 8, 2005):

1. House Bill 5315 of 2005. Would rewrite and re-arrange 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.
2. House Bill 5316 of 2005. Would amend the portion of the MBCA addressing the dissolving of companies to say 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 the Section 488 Agreement 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.
3. House Bill 5317 of 2005. Would amend a section of the MBCA that allows for amendments to the Articles of Incorporation. Some amendments can be made by the board without shareholder action; others require shareholder approval. The bill would amend language dealing with shareholder approval to say that: "Other amendments of the Articles of Incorporation, except as otherwise provided in this Act, shall be proposed by the board and approved by the shareholders as provided in this section. The board may condition its submission of the amendment to the shareholders on any basis."
4. House Bill 5318 of 2005. Would amend a section of the MBCA dealing with committees of a corporation created by the board to specify that a committee could create one or more subcommittees and delegate all or part of its power or authority to a subcommittee, unless prohibited by a resolution of the board, the Articles of Incorporation, or the bylaws.
5. House Bills 5319 and 5320 of 2005. House Bill 5319 would specify that when a shareholder abstains from voting or submits a ballot marked "abstain," that 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." House Bill 5320 would make a similar amendment to a section that deals with voting by a class or series of shares. The two bills are tie-barred.
6. House Bill 5321 of 2005. Addresses cases where a corporation is required or desires to provide a written notice, report, statement, or communication to shareholders sharing a common address. The bill would allow it to do so if all of the following requirements are met: 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 would have to begin providing separate copies to those who have objected within 30 days of receiving the objection.

7. House Bill 5322 of 2005. Addresses when documents filed with the relevant state administrator become effective. The bill specifies that "when endorsed by the administrator, a document becomes effective as of the date of receipt, unless a subsequent effective date, not later than 90 days after the date of delivery, is set forth in the document." This rewrites the existing provision that says the document is effective when it is endorsed.
 8. House Bill 5323 of 2005. Would amend 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.
- MM. House Bill 5328 of 2005. Would create a new act to regulate the money transmission services business and to require the licensing of persons engaged in providing money transmission services. Referred to the Committee on Banking and Financial Services on October 18, 2005.
- NN. House Bill 5338 of 2005. Would amend the Savings and Loan Act of 1980 to require savings and loan employees to report suspected financial abuse of an elder. Referred to the Committee on Banking and Financial Services on October 19, 2005.
- OO. House Bill 5437 of 2005. Would amend the Michigan Consumer Protection Act with respect to gift certificates and gift cards. Referred to the Committee on Commerce on November 22, 2005.

Respectfully submitted,

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