

NONPROFIT**AMENDMENTS TO THE MICHIGAN NONPROFIT CORPORATIONS ACT**
by *Grace K. Trueman*

In January 2015, Governor Snyder signed Michigan Senate Bills 623, 624, and 929, which make significant revisions to the Michigan Nonprofit Corporation Act (MCL 450.2101 – 450.3192) (the “Act”). The purpose of these companion bills is to clarify and modernize the law governing nonprofit corporations that conduct activities in Michigan; indeed, the revisions constitute a major overhaul of the Act and provide increased flexibility for creating and governing nonprofit corporations. Among the numerous changes, the following major revisions may need to be addressed or incorporated into governing procedures or organizing documents:

1. Indemnification and Liability

The Amended Act revised and expanded upon provisions concerning the indemnification of a director, officer, employee, non-director volunteer, or agent, who is or is threatened to be made a party to a civil, administrative, or criminal suit or proceeding. In addition, a nonprofit may now amend its articles of incorporation to contain a provision limiting or even eliminating a director’s liability to the nonprofit corporation, its members, or its shareholders (except for intentional wrongdoing, such as an intentional criminal act or intentional infliction of harm to the corporation or shareholders).

Of particular importance, Section 209 provides that if an entity’s articles of incorporation contain a provision eliminating volunteer director or officer liability (filed before the effective date of the 2015 amendments), the existing provision automatically works to eliminate the liability of a director or volunteer officer under Section 209(1)(c).

2. Mergers

MCL 450.4705a of the Amended Act now allows one or more domestic nonprofit corporations and limited liability companies to merge. A surviving or new corporation may use the same corporate name as the merged or consolidate corporation. See MCL 450.2722. A nonprofit corporation organized for charitable purposes, however, is restricted from merging (as well as dissolving or converting) without the Attorney General’s consent. The Department of Licensing and Regulatory Affairs will not file a certificate of merger for a nonprofit organized for charitable purposes without a copy of the written consent from the Attorney General’s office, or an affidavit that the nonprofit corporation

served the notice on the Attorney General and the Attorney General’s office failed to respond within 45 days after filing with the Department of Licensing and Regulatory Affairs.

3. Electronic Voting and Notifications

In an effort to keep pace with electronic forms of communication, the Amended Act allows for electronic voting on, and notice of, various corporate matters. Now, participation in meetings via electronic methods of communication is permitted by default, unless there is a provision in the nonprofit’s organizing documents that prohibit such voting methods. This opens the door for electronic voting or notifications through email, online surveys or other polling venues; but this also means that nonprofit corporations will need to address and prevent issues concerning identification of members or shareholders voting through electronic mediums.

4. Learned Profession

Nonprofit corporations operating in Michigan may provide “services in a learned profession” which includes services provided by a dentist, a physician, a doctor of divinity or other clergy, or an attorney. These revisions incorporate the Attorney General’s opinion that nonprofit hospitals and other nonprofits may provide medical services through employed physicians. In other words, the changes clarify from a statutory perspective the industry understanding that nonprofits may employ and enter into other arrangements with licensed or authorized professionals to provide services on behalf of the nonprofit corporation.

The Act also provides nonprofits with the option to limit access to information for shareholders and members. A nonprofit’s articles of incorporation or bylaws can specify that there is no right to inspect in certain instances, such as opening lists of donors would not be in the best interests of the corporation. Other revisions, such as permissibility of certain mergers and acquisitions, and restrictions on dissolving may be applicable to your nonprofit. Nonprofit corporations should consider reviewing and/or amending their respective governing procedures or organization documents to take these significant revisions to the Michigan Nonprofit Corporation Act into account.

Dickinson Wright is working with nonprofit corporations on a case-by-case basis to evaluate each client’s needs and/or compliance with the Amended Act. If you have any questions or concerns regarding how the Amended Act may affect your nonprofit corporation, please contact any attorneys in our Nonprofit Corporation team.

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