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Summary of Key Changes to the Michigan Nonprofit Corporation Act

Some noteworthy amendments to the Michigan Nonprofit Corporation Act were passed recently (Public Acts 557, 558, and 559). The changes, which went into effect earlier this year, seem to have taken some attorneys by surprise.

However, many of the changes simply “legalize” already-existing practices for nonprofits, and they make the process for becoming and serving as a director of a nonprofit easier.

Indeed, one of the primary amendments involves director liability and “indemnification” – or shielding a nonprofit director for any claims resulting from activity on behalf of the nonprofit. The new law expands the indemnification provisions for directors. Directors often serve on a volunteer basis and they are passionate individuals for whatever the nonprofit’s mission may be, but they are right to be worried about liability. These amendments ease those concerns.

In short, the new law allows a Michigan nonprofit to eliminate liability for many actions taken or failure to take action by a director.

A second major change relates to voting flexibility. Members can now vote electronically or at a polling place to authorize an action by the nonprofit – as long as a ballot is provided to every person entitled to vote. Thus, voting via email or another online mechanism is now available. It is hoped that this provision will spur further active participation in nonprofits. Further, the act lets a director give an individual a substitute (i.e. a proxy) to vote for the election of directors.

One of the more controversial changes relates to the transparency of the nonprofit. With the new amendments, a request to inspect a nonprofit’s records must describe the purpose of the inspection and the specific records. Further, the law now permits a nonprofit’s articles of incorporation or bylaws to specify that no right to inspect exists under certain circumstances, such as when doing so would impair the privacy rights of shareholders or members or it would impair the lawful purposes of the corporation. And, a nonprofit can restrict access to donor and member lists if the nonprofit deems opening its lists of donors would not be in the corporation’s best interest.

Also, a nonprofit may now offer services in “learned professions” – e.g. licensed individuals, such as doctors, dentists, attorneys, and even clergy. This provision means that nonprofits will be able to theoretically expand their services. Further, it will help some nonprofits maintain their tax-exempt status with the IRS if revenues are going up. For example, hospitals have always employed physicians, but it was unclear if they could hire and pay an in-house attorney; now they can.

Other changes include:

- Permitting the creation of different classes of directors with differing powers.
- Permitting a nonprofit to shift its management completely away from its board of directors to an independent third party. Doing so also will shift the new liability provisions to the third party, to the extent that the powers of the directors have been shifted to the third party.

- Nonprofits and Limited Liability Corporations (LLCs) may now merge. However, this must be with the consent of the state's Attorney General.
- The Board of Directors may create non-executive committees, which may be comprised of non-members, shareholders, directors or officers, to assist in conducting the board's affairs.
- The provisions that govern directors allow for the removal of a director for cause through a court action.
- The Department of Licensing and Regulatory Affairs may electronically send notices to a resident agent of the nonprofit.

This is meant as a brief summary of the important aspects of the new law – which is wide in its breadth of changes. Please don't hesitate to contact Fausone Bohn, LLP to discuss the amendments further.

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