
Amendments to Michigan Nonprofit Corporations Act & Ancillary Statutes

By Deanna M. Deldin / Mar 13, 2015

On January 10, 2015, Governor Snyder approved amendments to the Michigan Nonprofit Corporation Act[1] (the "Act") which became effective January 15, 2015. Contemporaneously, minor amendments were made to the Dissolution for Charitable Purposes Act[2] and Limited Liability Company Act[3]. The Act was modelled on the Business Corporation Act ("BCA"). Although the BCA has been updated since that time, the Act has not. One of the goals of the amendments was to update the Act to reflect changes that were made to the BCA over the years and another was to codify common practices of nonprofit corporations. Below is a summary of the more relevant and significant amendments to the Act and ancillary statutes.

- Allows for a quorum of the board or a committee to be as small as one-third of the directors or committee members in office. Previously a one-third quorum was permitted only if there were eight or more directors in office.
- Permits the board of a private foundation to consist of one or more directors. Other nonprofit corporations must have a minimum of three directors.
- Authorizes the removal of directors in a directorship corporation by the directors only for cause and provides that the articles of incorporation may permit that directors who are appointed by persons other than the directors to be removed with or without cause.
- Permits membership organizations to take action by ballot if provided for in the organization's articles of incorporation or bylaws approved by the members.
- Allows directors in a directorship corporation to vote by proxy when voting for directors, unless prohibited by the articles of incorporation or bylaws.
- Allows shareholder or member meetings to be held without notice if the meeting does not involve election of directors or other action involving control or governance of the corporation.
- Allows a nonprofit corporation to limit a non-volunteer director's liability to the corporation, its members or its shareholders for any action taken or failure to take action as a director, subject to certain exceptions. Prior law had allowed the limitation of liability only for volunteer directors. The amendment also eliminates the exception for gross negligence.
- Allows organizations having more than 20 members or shareholders to approve mergers, conversions, assets sales, dissolutions and renewal of corporate existence by a vote of a majority of the members or shares actually voting, as opposed to a majority of the shares or members entitled to vote.
- Allows a nonprofit corporation to provide in its articles of incorporation that certain persons have the right to manage the business and affairs of the corporation. (It is not unusual in the health system context for the parent corporation to control certain management decisions.)
- Provides that abstaining from a vote or submitting a ballot marked "abstain" is not considered a vote cast or counted as a vote, unless otherwise provided in the articles of incorporation.
- Allows the shareholders, members or directors of a nonprofit corporation to enter into an agreement that restricts the discretion of the board of directors, governs distributions to shareholders or members, establishes who shall be officers and directors, governs the exercise or division of voting rights, requires dissolution upon a specified event, transfers to persons the authority to manage the business and affairs of the corporation or otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation.
- Distinguishes between an executive committee which consists of all directors and may take board action between meetings of the board, and nonexecutive committees which may include non-directors, but may not exercise the powers of the board between meetings.
- Ratifies an Attorney General Opinion which held that nonprofit corporations may employ physicians and other members of the "learned professions".
- Limits member and director ability to obtain certain corporation information in certain instances that would impair the rights of privacy or free association of the shareholders or members, impair the lawful purposes of the corporation or would not be in the best interests of the corporation or its donors.
- Expands upon the procedure for approving and evaluating claims for indemnification.
- Prohibits a nonprofit corporation or other charitable purpose entity from merging, converting, dissolving, or restating its articles of incorporation to become governed by the Business Corporation Act, without the consent of the Attorney General, and also sets forth procedures for obtaining Attorney General consent.
- Prohibits the Department of Licensing and Regulatory Affairs from accepting a certificate of dissolution or merger, or an amendment to the articles of incorporation unless it was accompanied by a circuit court order dissolving the corporation or entity, the written consent of the Attorney General to the dissolution, or an affidavit from the person requesting the Attorney General's consent stating that the Attorney General failed to provide a response within 120 days of the request.
- Specifically authorizes in the Limited Liability Company Act the merger of a domestic limited liability company with a nonprofit corporation and clarifies the definitional terms, "business organization" and "nonprofit corporation".

In general, it is not necessary for most nonprofit corporations to amend their articles of incorporation or bylaws by virtue of these amendments, unless there are provisions in their governing documents which are inconsistent with the changes. For example, if a private foundation wants to reduce its minimum board size below three directors or a nonprofit with a smaller board wants to reduce its quorum requirement below a majority of those serving, amendments would be necessary.

For further information regarding the changes to the various acts, you may contact Deanna M. Deldin, ddeldin@clarkhill.com, 313-967-4074, or any of the attorneys in Clark Hill's Tax Exempt Organizations law group.

[1] Act 162 of 1982, MCL § 450.2101 et seq.

[2] Act 169 of 1965, MCL § 450.251 et seq.

[3] Act 23 of 1993, MCL § 450.4101 et seq.