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MEMBER, MICHIGAN CAPITOL COMMITTEE

## SENATE BILL 442 TESTIMONY

### HOUSE COMMERCE AND TRADE COMMITTEE

TUESDAY, NOVEMBER 28, 2017

BY DAVE BISWAS

LEGISLATIVE DIRECTOR

### OFFICE OF SENATE MAJORITY FLOOR LEADER MIKE KOWALL

Thank you, Chairman Leutheuser and members of the House Commerce and Trade Committee, for taking up Senate Bill 442. Senator Kowall and I are currently in Senate session, and below is an overview of the bill.

Senate Bill 442 was the result of discussion and work by the Business Corporation Act Committee of the Business Law Section of the State Bar of Michigan. The last update to the act occurred in late 2012 and consolidated the Professional Corporations Act and the BCA. **There are no fee increases in this legislation.**

The bill would repeal Section 1062 of the Michigan Business Corporation Act (the "BCA") and amend the following sections of the BCA: 131, 143, 151, 202, 217, 246, 282, 283, 286, 287, 288, 301, 302, 405, 407, 525, 611, 703a, 707, 746, 762, 764, 765, 778, 784, 911, 922, 923, 1016, 1021, 1042, 1056, and 1060.

***Professional Corporations:*** Several sections of the BCA would be amended to clarify the circumstances under which entities (in addition to individuals) may be shareholders of professional corporations and to clear up some inconsistent language in the BCA. In general, these amendments would provide that entities may be shareholders of professional corporations as long as all of the owners of such entities are properly licensed in a relevant profession. *Affected sections: BCA §§ 282, 283, 286, 287, and 288.*

**“Second-Step” Mergers:** The BCA would be amended to provide that (1) shareholder approval is not required for a “second step” merger that follows a “first step” tender offer in which the offeror acquires a majority of the target’s stock, (2) providing that shareholders would have dissenters’ rights with respect to such mergers even though shareholder approval would not be required, and (3) clarifying that shares acquired in such tender offers do not count in determining whether a person is an “interested shareholder” for purposes of Chapter 7A of the BCA. Many of these proposed amendments are based on similar proposed amendments to the Model Business Corporation Act and the Delaware General Corporation Law. The proposed changes to Section 762 also update some language relating to the Nasdaq Stock Market. *Affected sections: BCA §§ 703a, 707, 762, 764, 765, and 778.*

**“Blank Check” Preferred Stock:** The BCA would be amended to permit a corporation’s board of directors to designate series of “blank check” preferred stock. These amendments are meant to address a perceived flaw in the BCA under which the board can only designate *classes—not series*—of preferred stock. *Affected sections: BCA §§ 202, 301, and 302.*

**Remote Participation in Shareholder Meetings:** The BCA would be amended to clarify the rules concerning remote (e.g., Internet-based) participation in shareholder meetings. *Affected section: BCA § 405.*

**Shareholder and Director Consents Effective in the Future:** The BCA would be amended to allow both shareholders and directors to execute written consent resolutions that would be effective in the future, whether or not the person is a shareholder or director at the time the consent is executed. This tracks developments in the Delaware General Corporation Law. *Affected sections: BCA §§ 407 and 525.*

**Plans of Conversion:** The BCA would be amended to clarify the requirements concerning the approval of plans of conversion whereby a non-corporate business organization converts into a corporation. Rather than listing required approvals applicable to the converting organization, the revised language would defer to the requirements applicable to the conversion under the entity’s governing statute. For example, the BCA would not impose additional requirements relating to how an LLC approves conversion to a domestic corporation if the LLC complied with the requirements of the applicable LLC statute for the conversion. *Affected section: BCA § 746.*

***Resident Agents and Registered Offices:*** The BCA would be amended to allow a corporation's board of directors to amend its articles of incorporation to delete references to resident agents and registered offices without needing shareholder approval to do so. Currently, the BCA allows such amendments to delete references to the corporation's *initial* resident agent and registered office. The amendment would broaden that language to permit elimination of any reference, initial or otherwise, so long as there is a statement on file with the Corporations Division of the current resident agent and registered office. *Affected section: BCA § 611.*

***Business Combinations Under Chapter 7A:*** Section 784(2) of the BCA would be deleted as unnecessary. It contains a qualification to a provision that was eliminated in the last round of amendments. This is a simple cleanup. *Affected section: BCA § 784.*

***Stylistic Changes:*** In addition to the above-discussed changes, several sections of the BCA (all listed at the beginning of this memorandum) would be amended to make certain stylistic and technical changes to conform to rules and conventions of the Michigan Legislative Service Bureau.

**Please feel free to contact me with any questions at (517) 202-8446.**

