

Weston Hurd Client Advisory - April 2012

Changes to Ohio's Corporate and LLC Laws Enacted

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Substitute House Bill 48 will become effective May 4, 2012. This act makes a number of changes to Ohio's corporation and limited liability company (LLC) laws. If you do business in the form of one of these entities, these changes could affect you. Following is a brief description of some of the topics covered in the new law. As with any change in the law, it may be prudent to review your entity documents and update them as necessary to take advantage of some of these changes.

CORPORATIONS

Indemnification

Corporations have long been entitled to indemnify their officers and directors. Many qualified people would not serve but for this important protection. The new law strengthens the indemnification protections by prohibiting a corporation (both profit and nonprofit) from eliminating or impairing this right after the occurrence of an act or omission becomes subject to an action where indemnification is sought.

Number and Qualification of Directors

Present law dictates that a corporation have a minimum of three directors, unless it has less than three shareholders. Under the new law, any corporation (profit or nonprofit) may have as few as one director. The new law also makes it clear that a director must be a human being who is at least 18 years of age.

Duties of Directors

For efficiency, corporate boards of directors sometimes set up committees to study specific matters. The new law makes it clear that a director serving on a committee of directors is acting as a director. In other words, he or she has the same duties (and protections) as when conducting board business.

Dissenting Shareholder Rights

When a shareholder does not vote in favor of certain types of transactions or changes to the way a corporation is governed, the shareholder has the right to surrender the shareholder's shares for their fair cash value. This is known as dissenter's rights. The new law provides circumstances where no relief is available to dissenting shareholders and modifies how fair cash value is determined in certain circumstances. These changes could impact your corporation if you are about to amend your articles of incorporation to make changes to your stock, if you are about to

engage in the sale of all or substantially all of your assets, or if you are about to engage in a merger or consolidation.

Dissolution

The procedures for voluntarily dissolving a corporation have been changed. The new procedures include the ability to declare when the dissolution will become effective (but the dissolution date cannot be more than 90 days after a certificate of dissolution is filed). There is also a new mechanism for notifying creditors of the dissolution and managing how creditor claims will be handled. If you are contemplating a voluntary dissolution of your corporation, it will be important to be aware of these new requirements.

LIMITED LIABILITY COMPANIES

Operating Agreements

What happens if the member or members of a LLC sign an operating agreement, but the LLC itself never does? That question is answered in the new law. The LLC is bound by the agreement whether or not it has signed it. The new law also delineates a number of things that an operating agreement cannot do.

Withdrawing Members

The new law more clearly defines the rights and obligations of a withdrawing member. For example, some of the duties of the withdrawing member continue after withdrawal, while others are terminated.

Assignments and Substitute Members

Under the new law, an assignee of a membership interest is only entitled to receive (to the extent assigned) distributions of cash and other property (as well as tax allocations) the assignor would have been entitled to. If an assignee becomes a substituted member, then the assignee is bound by the LLC's operating agreement, whether or not the assignee ever actually signs it. These provisions will be important to you if you are considering assigning or taking an assignment of a LLC interest.

Fiduciary Duties

The new law states that the only fiduciary duties a member owes to the LLC and the other members are the duties of loyalty and care. The law then defines what those duties involve. Important to know if you are or are about to become a member of a LLC. As for managers, the law maintains the requirement that a manager act in good faith and in a manner the manager believes to be in or not opposed to the best interests of the company, but specifies that these are the only fiduciary duties a manager owes to the LLC under most circumstances.

Judicial Dissolution

The new law expands the circumstances under which a LLC may be judicially dissolved.

If you have any questions, comments or concerns about this Client Alert, please contact your Weston Hurd lawyer.

Todd G. Jackson is a Partner with Weston Hurd LLP. He focuses his practice on providing advice to small and mid-sized, closely-held businesses and their owners and executives. His experience includes negotiating and drafting or reviewing construction agreements, asset purchase agreements, stock purchase agreements, product warranties, loan documentation, limited liability



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