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BILL



ANALYSIS

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House Bill 5323 (as passed by the House)
Sponsor: Representative Steve Tobocman
House Committee: Commerce
Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 2-22-06

CONTENT

The bill would amend the Business Corporation Act to include in its definition of “willfully unfair and oppressive conduct” by a corporation the termination of employment or limitations on employment benefits to the extent that the actions interfered with distributions or other shareholder interests disproportionately as to the affected shareholder. The bill also would allow a corporation to give guarantees to a domestic or foreign limited liability company.

Willfully Unfair & Oppressive Conduct

Under the Act, a shareholder may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder.

“Willfully unfair and oppressive conduct” means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

Under the bill, willfully unfair and oppressive conduct could include the termination of employment or limitations on employment benefits to the extent that the actions interfered with distributions or other shareholder interests disproportionately as to the affected shareholder.

Limited Liability Company Guarantees

Under the Act, a corporation, subject to certain limitations, has the power to make contracts, give guarantees and incur liabilities, borrow money at rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest in its property. This power includes the power to give guarantees that are necessary or convenient to the conduct, promotion, or attainment of the business of any of the following corporations, whether or not subject to the Act:

-- All of the outstanding shares of which are owned, directly or indirectly, by the contracting corporation.

- A corporation that owns, directly or indirectly, all of the outstanding shares of the contracting corporation.
- All of the outstanding shares of which are owned, directly or indirectly, by a corporation, whether or not subject to the Act, that owns, directly or indirectly, all of the outstanding shares of the contracting corporation.

Under the bill, the power to make contracts, give guarantees, incur liabilities, etc. would include the power to give guarantees that were necessary or convenient to the conduct, promotion, or attainment of the business of any of the following corporations, whether or not subject to the Act, and domestic or foreign limited liability companies:

- All of the outstanding shares or interests of which were owned, directly or indirectly, by the contracting corporation.
- A corporation or limited liability company that owned, directly or indirectly, all of the outstanding shares of the contracting corporation.
- All of the outstanding shares or interests of which were owned, directly or indirectly, by a corporation, whether or not subject to the Act, or a limited liability company that owned, directly or indirectly, all of the outstanding shares of the contracting corporation.

As currently provided, those guarantees would have to be considered to be in furtherance of the corporate purpose of the contracting corporation.

MCL 450.1106 et al.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt
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