
Legislative Report

By: Graham K. Crabtree
Fraser, Trebilcock, Davis & Dunlap

MDTC Legislative Report

In my last report, I shared my enthusiasm for the bi-annual "lame duck" session as a phenomenon of interest to political junkies like myself, and provided some speculation about what last fall's lame duck session might produce. I had hoped, with a few misgivings, that my discussion would be of some interest to those less fascinated with the political drama in Lansing, but now that the dust has settled and the journals of the 94th Legislature are finally closed, it seems that the work of the anxiously-awaited lame duck session was probably even less interesting than my predictions. Our legislators returned from deer season as expected, stayed for respectable period, and passed a slew of Bills, producing a total of 586 Public Acts for the year. But only a few of these will be of any great interest to civil litigators, as such, and most of the controversial issues were deferred for further consideration by the incoming 95th Legislature.



Mr. Crabtree is a shareholder and appellate specialist at Fraser Trebilcock Davis & Dunlap, P.C. -- before joining the Fraser firm, Crabtree was the Majority Counsel and Policy Advisor to the Judiciary Committee of the Michigan

Senate from 1991 until 1996. Crabtree is a registered Lobbyist since 1997, a board member for the Michigan Defense Trial Counsel, chairs the Civil Defense Basic Training Series and updates the Board and Members on current legislative issues. Mr. Crabtree can be contacted at gcrabtree@fraser-lawfirm.com. or 517-517-377-0895.

New Public Acts

The few interesting Public Acts of 2008 produced by the lame duck session include the following:

Practicing Without a License. 2008 PA 319 This act has amended the Occupational Code, MCL 339.601, to create enhanced criminal penalties for those who dare to practice as architects, professional engineers or professional land surveyors without a license. The act also adds a new section MCL 339.2006, which will preclude any action for recovery of compensation for services performed by such persons without proper licensure and allow a party contracting for such work to recover a refund of any amount paid for the work, after deducting the value of the goods or services retained.

UCC – Fraudulent Financing Statements. 2008 PA 381 This act amends the Uniform Commercial Code to add a new section MCL 440.9501a, which will provide new procedures for challenging fraudulently-filed financing statements. A companion act, **2008 PA 381** amends the Code to add new provisions allowing the Secretary of State to refuse records presented for filing under certain circumstances, including cases where the record is being filed for a purpose outside the scope of Article 9; where the Secretary of State has reasonable cause to believe that the record is materially false or fraudulent; and where the record asserts a claim against a current or former governmental employee relating to the performance of the employee's public duties, and for which the filer does not hold a properly executed security agreement or court judgment.

Vehicle Code Amendments – Drunk and Reckless Driving. 2008 PA 461; 2008 PA 462; and 2008 PA 463. This package of amendatory acts will amend several sections of the Vehicle Code, effective October 31, 2010. Among other changes, these acts will establish enhanced penalties for "very drunk" driving offenses (operating a vehicle with blood-alcohol content of .17% or more) and require use of ignition interlock devices in conjunction with other penalties for drunk driving convictions in certain circumstances. This legislation will also create new criminal penalties for reckless driving and moving violations causing death or a serious impairment of body function to replace existing sections of the Vehicle Code and Penal Code providing penalties for felonious driving and negligent homicide.

It should be noted that these acts must be carefully compared because some sections of the Vehicle Code (§§ 303, 319, 625 and 904d) are amended by more than one of these acts, with slight differences in language. In a case such as this, where a single section of the law is amended in different ways by different acts enacted at the same time, the amendatory act filed later in time will govern, and the prior act or acts will be a nullity to the extent of any conflict. Thus, §§ 303, 319, 625 and 904d will be amended to read as provided in Public Act 463, with any inconsistent language in Acts 461 and 462 rendered ineffective.

New Uniform Securities Act. 2008 PA 551. This act will create a new Uniform Securities Act (2002), which will replace the current Uniform Securities Act (1964 PA 265 – MCL 451.501 to 451.818), effective October 1, 2009.

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Small Claims Court. There was one notable pocket veto – **Senate Bill 786 (Kuipers – R)**, which would have amended MCL 600.8401 to increase the jurisdictional limit for small claims courts from \$3,000 to \$5,000 over the next three years.

New Legislation

As I've mentioned before, the new Legislature will have the same balance of power as the last one, although the Democrats will enjoy a more solid majority in the House and there will be a significant number of new members in that body to learn the ropes. The Senate was not up for election last year, so the same Republican majority will continue to call the shots there for the next two years. As usual, many of the Bills that died at the end of the last session have been re-introduced as new Bills in the new session. As of this writing (March 9, 2009) there are 346 Senate Bills in the hopper, and 525 House Bills. Because it is still very early in the game, we have not yet seen the first Public Act of 2009, and only a handful of Bills have been passed by the originating body.

New “Kreiner Fix” Bill. The newly re-introduced Bills include several of the policy initiatives that we were watching with interest last year. These include, most notably, a new “Kreiner fix” Bill – **Senate Bill 83 (Whitmer – D)** – proposing amendments to the Insurance Code of 1956, MCL 500.3135, to substantially broaden the statutory definition of “serious impairment of body function,” and new legislation proposing elimination of the product liability immunity for drugs approved by the U.S. Food and Drug Administration created by the 1995 tort reform legislation.

House Bill 4316 (Brown – D), House Bill 4317 (Kennedy – D) and Senate Bill 19 (Gleason – D)

Drug Immunity. Calls for action on the drug immunity bills have been generated by the United States Supreme Court's recent decision in *Wyeth v Levine*, ___ US ___ (No. 06-1249 *rel'd* 3-4-09), holding that the plaintiff's state law failure to warn product liability claim was not pre-empted by the FDA's approval of the warnings for the drug in question under the federal Food Drug and Cosmetic Act. I'll go out on a limb here to predict that this legislation will be promptly passed by the House to languish in the Senate, as it did last session. It appears, however, that there is some very considerable popular support for this Bill, which may ultimately bring about a sufficient number of Republican defections to secure its final passage. If that support continues to grow in the next two years, this Bill may become a candidate for action in next year's lame duck session.

The Legacy of “Reform Michigan Government Now”

Our legislators are keenly aware of the public's disappointment with the last Legislature's performance and the desire for reform manifested by last year's failed Reform Michigan Government Now! ballot initiative. Although this crudely-fashioned “stealth” proposal was kept off of the ballot by its numerous deficiencies, the lessons learned have not been forgotten. Thus, there are now a number of Bills and Joint Resolutions proposing a variety of reforms, and a few others designed to prevent the success of future “stealth” campaigns. These include:

Term Limits and Part-Time Legislature. SJR A (Bishop – R).

This Senate Joint Resolution proposes amendments to Article IV of the Michigan Constitution which would eliminate the term limits for legislators taking office on or after January 1, 2011, and make the Legislature part-time. **HJR L (Cushingberry – D)** also proposes the elimination of the current legislator term limits.

Appropriation Bills and Referenda. SJR C (McManus – R) proposes an amendment to

Article II of the Michigan Constitution which would limit the exemption of appropriation Bills from the power of referendum. The exemption would be limited to Bills that substantially fund one or more state departments or make appropriations to meet deficiencies in state funds. This limitation would prevent the popular ploy of including an insignificant appropriation in a Bill effecting a substantive change in the law in order to immunize the legislation from the referendum process. This Joint Resolution also proposes an amendment which would require a geographically broad base of support for initiative and referendum petitions by requiring that such petitions be signed by at least 100 registered electors in at least 42 counties, and at least one elector in each county.

Committee Term Limits. SJR G (McManus – R) proposes an amendment to Article IV of the

Legislative Report

Michigan Constitution which would prohibit any legislator from serving as chair of the same legislative committee for more than four years.

Legislators' Pay. HJR A

(Opsommer – R) This House Joint Resolution proposes that salary increases for state legislators be tied to the average increase for other state employees or the increase in the consumer price increase. It also proposes that legislators' pay be docked for unexcused absences, or if work on the budget has not been completed by Labor Day. Reductions of legislators' pay for unexcused absences are also proposed by **HJR F (Rogers – R)** and **HJR N (Brown – D)**. **HJR D (Knollenberg – R)** proposes a pro-rata reduction of legislators' pay for any absence from session.

Legislative Election Districts.

SJR F (Anderson – D) proposes amendments to Article IV of the Michigan Constitution creating a new system of apportionment for

legislative election districts.

Approval of Ballot Questions.

Senate Bill 7 (Gleason – D) would amend the Michigan Election Law to require supporters of a ballot question proposing amendment of the Constitution, an initiated law or a referendum to submit their proposed petition to the Board of State Canvassers for review and approval before circulating the ballot question petition for signatures. The Bill would also require the Board of State Canvassers to check submitted petitions for duplicate signatures, require circulators to certify that signatures were not knowingly obtained through fraud, deceit or misrepresentation, and provide new criminal penalties for petition circulators who obtain signatures by fraud, deceit or misrepresentation.

Absentee Voting. House Bill

4097 (Griffin – D) would amend the Michigan Election Law to eliminate the current restrictions on absentee voting.

Other Bills proposing the same include **House Bill 4367 (Stanley – D)** and **Senate Bill 97 (Brater – D)**

Public Funding of Supreme Court Campaigns. Senate Bill

53 (Cherry – D) would amend the Michigan Campaign Finance Act to establish a system for public funding of Supreme Court elections. The Bill proposes that the public funds to be used for this purpose would be derived primarily from the income tax – \$3.00 for each individual filer (or each spouse filing jointly) who does not exercise the option not to have that amount of his or her taxes credited to the fund.

Your Voice

The MDTC Board will be discussing pending legislation and positions to be taken on Bills and Resolutions of interest at its future meetings. Your comments and suggestions are appreciated, and may be submitted to the Board through any Officer, Board Member, Regional Chairperson or Committee Chair.