

Spring Cleaning! Time to Clean Our Mailing List

Spring has arrived! We are in the process of cleaning up our newsletter’s mailing list and can really use your assistance. The most effective way to update our mailing list is to receive the updated information from you. If you have moved or no longer wish to receive our newsletter, please let us know so we can update your contact information.

Any changes can be sent to Linda Valantas at (734) 261-2400 or lvalantas@cmda-law.com. Thank you very much for your assistance with this project.

What Every Public Body Should Know about the Freedom of Information Act



Haider Kazim

Over the last few years, with increasing frequency, attorneys at Cummings, McClorey, Davis & Acho, P.L.C., have represented their municipal clients in lawsuits stemming from allegations of violations concerning the Michigan Freedom of Information Act (FOIA).

FOIA cases are unique from other types of litigation, in that they usually can be avoided altogether at the outset. Most violations of FOIA are unintentional and the result of an oversight or a misunderstanding of the statutory requirements by a public official. Unfortunately, for some, FOIA litigation has become a cottage industry in which lawsuits are primarily motivated by the prospect of monetary benefit. It therefore should come as no surprise that more lawsuits alleging FOIA violations are being filed by plaintiffs in pro per, that is, without representation by an attorney. Knowledge of FOIA can enable a public body to avoid such lawsuits or at least discourage their filing.

FOIA provides that a public body must respond to a request for a

public record within five business days after the public body receives the request, unless the person making the request agrees to a longer period of time. The public body must respond by (a) granting the request; (b) issuing a written notice to the requesting person denying the request; (c) granting the request in part and issuing a written notice to the requesting person denying the request in part; or (d) issuing a notice extending for not more than 10 business days the period during which the public body must respond to the request. A public body may not issue more than one notice of extension for a particular request.

Failure to respond to a FOIA request constitutes a public body’s final determination to deny the request. In a circuit court action to compel a public body’s disclosure of a public record, the circuit court shall assess damages against the public body if the circuit court (a) has determined that the public body has not responded in one of the ways noted above; and (b) ordered the public body to disclose or provide copies of all or a portion of a public record.

It is critical that the designated FOIA coordinator for a public

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Highlights of the Tax and Benefit Provisions of 2010 Health Care Act



Christopher Schultz

President Obama recently enacted the Patient Protection and Affordable Health Care Act together with the Health Care and Education Reconciliation Act of 2010. The new law will have a significant impact on many businesses. In this month's newsletter we will provide an overview of the effects the new law will have on insurance companies and employers.

Insurance Companies

The Act is intended to impose certain restrictions on the insurance industry, including prohibiting insurance companies from denying coverage based on pre-existing conditions or discriminating against individuals based on health status or gender. Insurance companies will be prohibited from placing lifetime limits on coverage and, starting in 2014, insurance companies will be prohibited from placing annual limits on coverage. Insurance companies will be required to provide dependent coverage for children up to 26 years of age. Also, insurance companies will be subject to certain reporting requirements including information on how premium dollars are spent and justification for any increase in premiums.

Employers

Starting in 2014, employers with 50 or more full-time employees that do not offer qualified coverage to their full-time employees, will be subject to a penalty of \$750 per full-time employee. If these employers have employees who receive a tax credit through one of the agencies providing health insurance, the employer will be assessed a fee equal to the lesser of \$3,000 per employee receiving a tax credit or \$750 lump sum for each

full-time employee. Employers will be assessed a fee for imposing waiting periods on employees prior to their eligibility for coverage.

Employers with more than 200 employees will be required to automatically enroll employees in health insurance plans. Employers will be required to notify employees about the agencies offering "qualified health plans," the availability of tax credits for premium assistance and the loss of an employer's contribution to an employer-provided health plan if the employee purchases a health plan through the agency.

Employers with less than 25 employees whose average compensation does not exceed \$50,000, will be permitted to elect a tax credit equal to 35% of the employee's health coverage. This credit will increase to 50% of the expenses in the year 2014.

The Act allows the creation of a new "simple cafeteria plan" for employers with an average of 100 or less employees during a two-year period. The new simple cafeteria plans require that the employer make contributions or match employee contributions to the plan. The plans would be available to employees to have at least 1,000 hours of service for the preceding plan year. The plans will allow employees to elect any benefit available under the simple cafeteria plan.

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What Every Public Body Should Know... (cont.)

body takes prompt action upon receiving a request under FOIA. It is certainly foreseeable that a FOIA coordinator would receive a request that would require him or her to forward it to another public official for a response. This can lead to confusion as to which official is responsible for responding to the request, and also could lead to a delayed response. The delay, in turn, may result in a lawsuit alleging a FOIA violation. In such a circumstance, the FOIA coordinator should issue a notice extending the time for responding to the request. Such a notice would allow the public body a total of 15 business days to consider and to respond to a FOIA request.

If documents requested under FOIA request do not exist, a public body must still respond and advise the requesting person that the documents do not exist. A requesting party should not have to file a lawsuit only to find out that a document does not exist. Notifying

the person from the beginning that a document does not exist will avoid a lawsuit and an argument for costs and attorney fees made necessary by a failure to disclose that information.

FOIA is a disclosure statute, intended to provide citizens a glimpse into the workings of their government so they can be informed participants in the democratic process. The more forthcoming a public body is in response to a FOIA request, the less likely it will have to endure the time and expense of a FOIA lawsuit.

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Michigan Legislation Update

RECENTLY ENACTED MICHIGAN LAWS

Texting While Driving Ban



Karen M. Daley

According to CTIA - the Wireless Association, there are over 276 million subscribers to wireless communication services in the United States alone. In addition, over 135 billion text messages are sent each month. Although the use of cell phones and other electronic devices have been shown to increase the risk of an accident, recent studies have found that sending and receiving text messages is by far the riskiest behavior, because it diverts the driver's attention away from the road for extended periods of time.

In an effort to help reduce incidents of distracted driving, the Governor recently signed new legislation banning the use of text messages while driving. The new law amends the Michigan Vehicle Code to prohibit a person from reading, manually typing or sending text messages while operating a moving motor vehicle on a street or highway in the State. The prohibition does not apply to an individual who is: (1) reporting a traffic accident, medical emergency or serious road hazard; (2) reporting a situation in which the person believes his or her personal safety is in jeopardy; (3) reporting or averting the perpetration of a crime; or (4) carrying out official duties as a police officer, law enforcement official, member of a fire department or emergency vehicle operator. The new law also does not ban the use of cell phones to make calls while driving.

Texting will be a primary offense, which means that police officers can pull over motorists solely for using cell phones to send text messages. A individual who violates the prohibition is guilty of a civil infraction, subject to a mandatory fine of \$100 for a first violation and \$200 for a subsequent violation. However, the new law prohibits the Secretary of State from assessing any points on the person's driving record for a violation of the prohibition. The new law will take effect July 1, 2010.

Help for Military and Overseas Voters

The Governor recently signed new legislation that will make it easier for military and overseas voters to participate in elections. The new legislation allows county, city, township and village clerks to send military and overseas voters electronic voter registration applications, absentee voter applications and ballots for all elections, making state and local elections consistent with the federal law. The legislation also standardizes the deadline by which local clerks must have absentee ballots on hand to 45 days before an election. The new law takes effect June 1, 2010, which means that it will apply to the August 3, 2010 election and to each subsequent election in Michigan.

Swine Running at Large

Michigan, like many other states, has a rapidly growing population of wild or feral swine. Current estimates place the number of feral swine in Michigan at between 3,000 and 5,000. Feral swine can spread many different types of diseases, including ones that threaten domestic livestock, pets, and native wildlife. Some of these diseases can also be spread to humans.

Because wild sows are capable of producing many offspring each year (from one to four litters of up to 12 piglets each) and because additional animals may be escaping into the wild each year from private shooting ranches or other locations, Michigan's feral swine population is expected to grow very rapidly if aggressive steps are not taken soon.

As a result, new legislation has been enacted to declare that swine running at large are a public nuisance and to allow them to be killed on public and private property. On public property, local animal control officers, law enforcement officers, and anyone with a valid hunting license for any type of game can kill swine running at large. On private property, the property owner or renter or anyone accompanied by or who had the permission of the owner or renter can kill swine running at large.

LEGISLATION TO WATCH

Early Lease Termination for Victims of Domestic Violence

Victims of domestic violence are often vulnerable to repeat violations. When these victims are tied to rental housing by a long-term lease, they are often forced to choose between remaining in a location where they can be easily located or suffering the financial losses associated with breaking a rental agreement. As a result, a bill was recently passed by the Senate that would amend the landlord-tenant act to require a tenant to be released from rental payment obligations if he or she submits notice and documentation of a reasonable apprehension of present danger due to domestic violence, sexual assault or stalking. The bill would not prevent the withholding of security deposits, but would prohibit landlords from revealing the tenant's forwarding address except in certain circumstances. These provisions would apply only to leases entered into, renewed or negotiated after the bill's effective date. The bill has now been referred to the Committee on Intergovernmental and Regional Affairs.

Immunity for Medical Examiners

A bill recently passed by the Senate provides that a county medical examiner or any person acting under his or her statutory authority in the performance of medical examiner duties, including an autopsy, dissection, diagnoses, opinions, or certification of death, may not be liable in a civil action for damages as a result of an act or omission by the person arising out of the performance of medical examiner duties, unless the person's act or omission was the result of his or her gross negligence or willful misconduct.

The bill would also (1) allow a county medical examiner to retain any portion of a dead body he or she believed was necessary to establish the cause of death, the conditions contributing to death, or the manner of death, or as evidence of a crime; (2) require a medical examiner to attempt to notify the decedent's relatives or representatives, if the retained body portion were an entire organ or limb, and offer them an opportunity to request return of the body part; and (3) require the medical examiner to dispose of any remaining body parts in the manner prescribed for medical waste under the Public Health Code. The bill has now been referred to the Committee on Health Policy.

CUMMINGS, McCLOREY, DAVIS & ACHO Office Locations



On Law is a monthly publication from Cummings, McClorey, Davis & Acho, P.L.C.

Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features should be addressed to the attention of Jennifer Sherman.

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To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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