

STATE BAR OF MICHIGAN BUSINESS LAW SECTION

Nonprofit Corporations Committee Report

March 8, 2012

1. Next Scheduled Meeting of the Committee. No meetings of the Committee are currently scheduled, but another meeting will be held in April or early May. Active members will receive a notice confirming the time and location of the meeting and copies of the meeting materials. Others interested in participating should contact one of the Committee Co-Chairs for further information.

2. Council Approval

At its meeting on February 23, the Committee approved proposed amendments to the Nonprofit Corporation Act, the statute on dissolution of charitable purpose corporations and the LLC Act that will be presented to the Council for approval at the March 8 meeting.

3. Membership

The Committee continues to welcome active members who will assist in (i) reviewing and obtaining legislative approval of the amendments to the Nonprofit Corporation Act; (ii) planning and participating in educational and social programs; and (iii) monitoring Michigan tax legislation affecting nonprofit organizations. Interested lawyers should contact one of the Committee Co-Chairs.

4. Accomplishments Toward Committee Objectives

Committee members met on January 6 and on February 23 to review proposed legislation. As indicated above, the updated draft of the Amendments to the Nonprofit Corporation Act and the amendments to related statutes were approved by the Committee. A copy of this proposed legislation and a memo describing some of the more significant changes is being provided to the members of the Council.

The Committee is also responsible for the Summer 2012 issue of the *Michigan Business Law Journal*. Three Committee members are currently preparing articles.

5. Meetings and Programs

See the information about the Committee meetings above.

6. Publications

See above.

7. Legislative/Judicial/Administrative Developments

None.

8. Miscellaneous

None.

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MEMORANDUM

TO: Members of the Council
State Bar of Michigan Business Law Section

FROM: Jane Forbes
Co-Chair, Nonprofit Corporations Committee

RE: Proposed Amendments to the Nonprofit Corporation Act and Related Statutes

DATE: March 1, 2012

This memo, which is a revised version of a memo I provided to the Council in December, provides a relatively short overview of the proposed amendments to the Michigan Nonprofit Corporation Act (the "Nonprofit Act"). The legislation and amendments to related statutes were approved by the Nonprofit Corporations Committee at its meeting on February 23 and will be presented to the Council at the March 8 meeting.

An earlier version of the amendments was approved by the Council in 2008. In 2009, the Council also approved a "short bill" prepared by the Committee in response to changes made to the Nonprofit Act during that year. Those revisions have now been incorporated into the longer bill. The current draft also includes many "plain English" changes that were made in a version of the amendments prepared by the Legislative Service Bureau. Most of those changes are not currently in the Business Corporation Act (the "BCA"). There are a few additional substantive revisions, including sections allowing nonprofit corporations to convert to LLCs (and vice versa), allowing members of membership corporations to have more than one vote, and permitting corporations to restrict member and shareholder access to donor information, member or shareholder lists and other corporate records.

I. Introduction. The Nonprofit Act is modeled on the BCA, but has not undergone any comprehensive revisions since it was enacted in 1982. The proposed amendments have two overall objectives. One is to bring the statute up to date by incorporating many of the changes that have been made in the BCA since 1982. The second goal is to add provisions designed to "legalize" some existing practices of nonprofit corporations and to facilitate their operation. In the interest of getting the bill passed, it does not contain anything the Committee views as being especially controversial.

Members of the Council are likely to be familiar with the current version of the BCA, so this memo focuses on the areas in which the two statutes will be different.

II. Nonprofit Act Changes.

A. Corporate Structure and Governance.

1. **Forms of Nonprofit Corporations.** One way Michigan nonprofit corporations differ from business corporations is that they come in three “flavors,” i.e., stock corporations, membership corporations and directorship corporations. Under the current statute, the only difference between stock corporations and membership corporations is that shareholders ordinarily have one vote for each share of stock held while a member only ever has one vote. That has been changed in the proposed legislation to allow corporations to have provisions in their articles or bylaws providing members additional votes. The amendments also expand the procedural and substantive provisions applicable to directorship corporations (which have no shareholders or voting members). For example, Section 451 specifically permits cumulative voting in the election of directors of a directorship corporation and Section 489 allows a member of the board of a directorship corporation to initiate a derivative action. (Judges are likely to allow such actions on a trust theory in any case.)

2. **Governance.** It is not unusual for groups of nonprofit corporations to have tiered corporate structures in which one or more parent organizations retain the power to approve specified actions of subsidiary boards, such as financings, or to act on behalf of subsidiaries in place of their boards. For example, religious orders sponsoring Catholic hospitals often retain the powers necessary to assure that the hospitals act in accordance with the ethical and religious policies of the Church. In order to provide additional statutory authority for these “reserved powers,” the draft includes new language in Section 209(f) and somewhat revised version of BCA Section 488. The proposed amendments to the Nonprofit Act differ from the present BCA in the following respects:

- The language in the Section 488 of the BCA allowing elimination of the board and director proxies was not included in the Nonprofit Act (because of the risk of misuse).
- The proposed amendments to the Nonprofit Act require that any provisions allowing members or shareholders to act in place of the board be in the articles of incorporation (and move the applicable language from Section 488 to Section 209(f)). That change also has the effect of allowing such provisions to be adopted without the unanimous consent of the members or shareholders.
- Language is being proposed for Section 488 of the Nonprofit Act that would specifically permit restrictions on the voting powers of individual directors. There are situations in which a board member of a private foundation may be able to avoid the inclusion of particular corporate assets in his or her estate (or other undesirable tax consequences) if the director does not have the authority to control the disposition of those assets. The new language is intended to assure that is possible as a matter of corporate law.
- The draft also does not include the changes previously made in Section 106 of the BCA allowing business entities, as well as individuals, to act as directors.

3. Corporate Distributions. The most fundamental difference between nonprofit and business corporations is that nonprofit corporations (other than coops) are generally prohibited from making distributions to their members or shareholders prior to dissolution. Charities are prohibited, both under state law and under federal tax laws, from making all distributions to private individuals. These limitations are currently found in Section 301 of the Nonprofit Act. Most of the proposed changes to that section are intended to make it clearer. An additional exception is being created, however, that would explicitly allow a nonprofit corporation to make distributions to a parent organization having similar purposes (without having to call them “donations”). Language was also added specifically extending the limitations on distributions to payments in connection with mergers and conversions. Similar language was added to Section 489, requiring that courts consider limitations on distributions in establishing any monetary damages in connection with derivative actions brought by members or shareholders.

4. Director Liability. Nonprofit Act allows several different kinds of provisions in the articles limiting the personal liability of directors and other volunteers. These include restrictions on liability for monetary damages in actions brought by shareholders or members comparable to those found in Section 209 of the BCA and provisions for the “assumption” of liabilities to third parties that do not have any counterparts in the BCA. The provisions currently in Section 209 of the Nonprofit Act are narrower than the corresponding language in the BCA in that they only apply to “volunteer directors” and in that they contain an exception for acts constituting “gross negligence.” (The Nonprofit Act does, however, extend the protection to “volunteer officers.”) The proposed changes would conform the language in 209 of the Nonprofit Act with that in the BCA, eliminating the requirement that directors (but not officers) be volunteers and removing the gross negligence exception. No changes are being proposed in the provisions dealing with third party liabilities.

5. Corporate Reorganizations. Most of the new language being proposed in the portions of the Nonprofit Act dealing with mergers and dissolutions are similar to ones already made to the BCA. There are a few differences, however:

a. “Share Exchanges.” The proposed amendments to the Nonprofit Act do not expressly provide for “share exchanges.” This is not because nonprofit corporations might not enter into such transactions, but because they might do so without being aware of the requirements currently in the BCA for approval by the shareholders of the acquiring corporation. One way a nonprofit membership corporation, such as a trade association or a church, might acquire a similar organization is by becoming the sole member of the acquired corporation and allowing the former members of that corporation to join the acquiring organization. Under the current Nonprofit Act, that transaction, which could be done by amendment of the articles of the acquired corporation, would likely require the approval of the members of that corporation, but might not require any action by the members of the acquiring corporation. Adding provisions for share exchanges would mandate additional approvals on behalf of the acquiring corporation that could easily be overlooked.

b. Voting on Mergers, Dissolution, etc. The BCA and the Nonprofit Act currently require approval of mergers, conversions, sales of all or substantially all assets and dissolution by a vote of a majority of the total shares or members entitled to vote. For

some nonprofit corporations with large memberships, that voting requirement can effectively prevent those transactions from taking place. Unlike the BCA, Section 611 of the Nonprofit Act has always allowed article amendments to be approved by a majority of the members or shares actually voting. The proposed amendments to Nonprofit Act contain language in Sections 703a, 753 and 804 that would allow organizations having more than 20 members or shareholders to approve mergers, conversions, assets sales, dissolution and renewal of corporate existence by a similar vote.

c. Assets Sales. Language now in Section 753(1) of the BCA providing that shareholder approval of assets sales is not required when the corporation “retains a continuing business activity” is included in the proposed amendments to the Nonprofit Act and should be very helpful to nonprofit corporations (which might sell a building or another major asset without discontinuing their functions). Under the BCA, the retention of activities involving more than 25% of the assets and contributing more than 25% of the revenues of the organization during the immediately preceding fiscal year are presumed to qualify. Many nonprofit corporations conduct activities that do not generate income or that are supported wholly or in part by donations or grants that may not be specifically associated with a particular function. Therefore, the proposed test under Nonprofit Act is based upon program service expenditures in addition to revenues.

6. Special Issues for Nonprofit Corporations. There are a number of changes being proposed that are designed to meet the special needs of nonprofit corporations, including the following:

a. Voting by Mail and at Polling Places. Some nonprofit corporations have large memberships that are geographically dispersed or that, for other reasons, are unlikely to attend formal membership meetings held at a single place or at a single time. For this reason, some of those organizations currently elect board members and conduct other business through ballots mailed (or sent by e-mail) to members or shareholders. Other organizations, especially clubs, set up polling places at which members can cast ballots during specified periods.

Voting by mail or at polls may be a sensible method to secure widespread participation by members or shareholders, but neither procedure is directly authorized by the current Nonprofit Act. While it may be possible to comply with the present law by characterizing the ballots as proxies or as written consent resolutions, this can be awkward and many organizations do not, in fact, observe all the technicalities necessary to be in full compliance with the statute. Therefore, the proposed amendments include new Sections 408 and 409 allowing nonprofit corporations to provide in their articles or bylaws for membership voting by regular mail, e-mail or at polls. The proposal also addresses related practical issues, such as procedures for placing items on the ballots, record dates and deadlines for receiving ballots.

b. “Master Indenture” Financings. Health systems often financing their activities through tax-exempt or taxable bonds issued under “master trust indentures” that obligate all participating entities in the corporate group to pay all obligations issued under the master indenture. Since these arrangements may require a Michigan nonprofit corporation to discharge indebtedness issued on behalf of an organization in another state (from

which it has received no direct benefit), additional language empowering Michigan nonprofit corporations to incur joint indebtedness and give guarantees has been included in Section 251 of the proposed amendments.

c. Corporate Practice of Medicine and Other Professions.

In the past, there has been active debate about the question of whether nonprofit corporations, such as hospitals and HMOs, were empowered to employ members of the “learned professions,” particularly physicians. This debate was conducted, in part, on substantive issues of health care policy and, in part, on technical readings of the Nonprofit Act. The Attorney General issued a ruling (No. 6770) in 1993 finding that nonprofit corporations (but not business corporations) have this right under existing law. The proposed amendments include language in Section 251 that would make this holding an explicit part of the statute. It should be noted that the practice of law by corporations is governed by a separate statute (MCL 450.681) and is not intended to be affected by the proposed amendments.

d. Informal Activities. Some nonprofit corporations hold membership meetings at which no formal corporate business is conducted (for purposes that might include informing members of a trade association about the organization’s legislative agenda or informing members of a garden club about how best to cultivate roses). Many also use committees in carrying out their functions that do not exercise powers of the board and that include employees and other individuals who are not directors. Sections 404 and 527 of the proposed amendments contain language specifically allowing such activities.

e. Incorporation of Churches under the Nonprofit Act.

While it may not be obvious at first reading, language in Section 251(1) of the proposed amendments would give many churches the option of incorporating directly under the Nonprofit Act instead of under the unrepealed provisions of the General Corporation Act applicable to “ecclesiastical corporations” or under separate statutes designed for churches of particular denominations. The statutes specifically for churches tend to assume that they are controlled by their congregations. Since not all churches use that model, incorporation under the Nonprofit Act would provide other alternatives.

f. Solicitation of Donations. Section 1012 of the proposed amendments specifically indicates that soliciting contributions in Michigan that are paid to a foreign corporation located outside the state does not require the organization to qualify to do business here. This provision is not, however, intended to exempt an out-of-state charity from requirements that it obtain a solicitation license from the Department of Attorney General or from other regulation.

III. Related Legislation.

1. Dissolution of Charitable Purpose Corporations. There is a 1965 statute providing for the involvement of the Department of Attorney General in the dissolution of corporations formed for charitable purposes. The Department has, for many years, taken the position that mergers of charitable corporations are also subject to its approval under this statute. From the point of view of charitable organizations, it is better that a merger or conversion not be characterized as a “dissolution,” since that could affect its eligibility to receive outstanding

bequests or impair title to its assets. The proposed bill provides for the continuing regulation of mergers (and of the conversion of charitable corporations to business corporation or professional service corporations) by the Department without characterizing those transactions as “dissolutions.” The draft legislation incorporates other language changes suggested by the Department.

2. LLC Act. A change in the definition of “corporation” in the LLC statute has been prepared so that it is clear that nonprofit corporations can participate in mergers and conversions with LLCs.

Comments and questions about the proposed legislation, including additional matters that might be included, are still very welcome.

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March 2012 Draft – .Chapters 1 and 2

A bill to amend 1982 PA 162, entitled

“Nonprofit corporation act,”

by amending sections 103, 104, 105, 106, 107, 108, 109, 110, 121, 122, 123, 131, 132, 133, 141, 143, 151, 202, 209, 212, 215, 217, 221, 241, 242, 243, 246, 251, 261, 275, 301, 303, 304, 305, 307, 308, 309, 313, 317, 331, 332, 338, 402, 403, 404, 405, 407, 413, 415, 421, 422, 423, 441, 442, 444, 446, 451, 455, 461, 485, 487, 501, 505, 506, 511, 521, 523, 527, 528, 531, 541, 548, 551, 552, 553, 561, 562, 563, 565, 567, 569, 601, 602, 611, 615, 631, 641, 642, 643, 701, 707, 741, 753, 801, 804, 805, 811, 815, 817, 821, 823, 851, 855, 901, 911, 913, 922, 923, 925, 932, 1001, 1012, 1015, 1016, 1021, 1032, 1035, 1041, 1042, 1051, 1060, 1104, 1107, 1145, and 1162 (MCL 450.2103, 450.2104, 450.2105, 450.2106, 450.2107, 450.2108, 450.2109, 450.2110, 450.2121, 450.2122, 450.2123, 450.2131, 450.2132, 450.2133, 450.2141, 450.2143, 450.2151, 450.2202, 450.2209, 450.2212, 450.2215, 450.2217, 450.2221, 450.2241, 450.2242, 450.2243, 450.2246, 450.2251, 450.2261, 450.2275, 450.2301, 450.2303, 450.2304, 450.2305, 450.2307, 450.2308, 450.2309, 450.2313, 450.2317, 450.2331, 450.2332, 450.2338, 450.2402, 450.2403, 450.2404, 450.2405, 450.2407, 450.2413, 450.2415, 450.2421, 450.2422, 450.2423, 450.2441,

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THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 103. This act shall be liberally construed and applied to promote its underlying purposes and policies which include **all of the following:**

- (a) To simplify, clarify, and modernize the law governing nonprofit corporations.

(b) To provide a general corporate form for the conduct **or promotion** of lawful nonprofit activities **or purposes** with variations and modifications from the form as interested parties in any corporation may agree upon, subject only to overriding interests of this state and of third parties.

Sec. 104. The definitions contained in sections 105 to 110 shall control ~~only in~~ the interpretation of this act, unless the context otherwise requires.

Sec. 105. (1) "Administrator" means the ~~director~~ **chief officer** of ~~commerce~~ **the department** or ~~the head~~ of any other agency or department authorized by law to administer this act, or ~~a~~ **his or her** designated representative ~~of that person~~ .

(2) "Articles of incorporation" includes **any of the following**:

(a) ~~the~~ **The** original articles of incorporation or any other instrument filed or issued under any statute to organize a domestic or foreign corporation, as amended, supplemented, or restated by certificates of amendment, merger, or consolidation, or other certificates or instruments filed or issued under any statute. ~~;~~

(b) ~~a~~ **A** special act or charter creating a domestic or foreign corporation, as amended, supplemented, or restated.

~~(3) "Assets" means the properties and rights entered upon the books of a corporation with generally accepted accounting principles, or the current fair market value of such properties and rights.~~

(3) ~~(4)~~ "Authorized shares" means shares of all classes that a corporation is authorized to issue.

(4) **“Ballot” means an instrument in written or electronic form designed to record the vote or votes of shareholders or members under section 408 or section 409 or at a meeting of the shareholders or members.**

(5) "Board" means ~~the~~ board of directors or trustees or other governing board of a corporation.

(6) "Bonds" includes secured and unsecured bonds, debentures and notes.

(7) "Business corporation" or "domestic business corporation" means a corporation for profit ~~organized~~ **formed** under **the business corporation act**, ~~Act No. 284 of the Public Acts of 1972, as amended, being sections 450.1101 to 450.2099 of the Michigan Compiled Laws,~~ or existing on January 1, 1973 and ~~theretofore~~ **formed before January 1, 1973** under any other statute of this state for a purpose for which a corporation for profit may be organized under that ~~act~~ **statute**.

(8) **“Business corporation act” means the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2099.**

Sec. 106. (1) “Charitable purpose corporation” means a ~~nonprofit~~ **domestic** corporation that meets any of the following:

(a) Is **recognized as** exempt or qualified for exemption under section 501(c)(3) of the internal revenue code, 26 USC 501.

(b) Is a corporation whose purposes, structure, or activities are exclusively those that are described in section 501(c)(3) of the internal revenue code, ~~26 USC 501~~.

(c) Is a corporation organized or held out to be organized exclusively for 1 or more charitable purposes.

(2) "Corporation" or "domestic corporation" means a nonprofit corporation **formed under this act, or formed under any other statute of this state and subject to this act under section 121 or 123 or under any other section of this act.**

(3) "**Department**" means the department of licensing and regulatory affairs.

(4) ~~(3)~~ "Director" means an individual who is a member of the board of a corporation. The term is synonymous with "trustee" of a corporation or other similar designation. **The term includes a volunteer director.**

(5) "**Distribution**" means a direct or indirect transfer of money or other property, except the corporation's shares or memberships, or the incurrence of indebtedness by the corporation to or for the benefit of its shareholders or members in respect to the corporation's shares or memberships. A distribution otherwise permissible under this act may be in the form of a dividend, a purchase, redemption or other acquisition of shares or memberships, an issuance of indebtedness, the conversion of stock or membership in the corporation to bonds or other indebtedness, or any other declaration or payment to or for the benefit of the shareholders or members.

(6) ~~(3)~~ "Electronic transmission" or "electronically transmitted" means any form of communication that meets all of the following:

- (a) It does not directly involve the physical transmission of paper.
- (b) It creates a record that may be retained and retrieved by the recipient.
- (c) It may be directly reproduced in paper form by the recipient through an automated process.

Sec. 107. (1) "Foreign business corporation" means a corporation for profit ~~organized~~ **formed** under laws other than the laws of this state, ~~which~~ **that** includes in its purposes a

purpose for which a corporation may be ~~organized~~ **formed** under **the business corporation act**, Act No. 284 of the Public Acts of 1972, as amended.

(2) "Foreign corporation" means a **nonprofit** corporation ~~organized~~ **formed** under laws other than the laws of this state, ~~conducting affairs in this state for~~ **if its purpose or purposes are** a purpose or purposes for which a corporation may be ~~organized~~ **formed** under this act.

(3) ~~"Insolvent" means being unable to pay debts as they become due in the usual course of a debtor's business.~~ "Internal revenue code" means the united states internal revenue code, 26 USC. A reference to a section of the internal revenue code includes corresponding provisions of any subsequent federal tax legislation.

Sec. 108. (1) "Member" means a person having a membership in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

~~(2) "Nondirector volunteer" means an individual, other than a volunteer director, performing services for a nonprofit corporation who does not receive compensation or any other type of consideration for the services other than reimbursement for expenses actually incurred.~~

~~(3)~~ (2) "Nonprofit corporation" means a corporation incorporated to carry out any lawful purpose or purposes not involving pecuniary profit or gain for its directors, officers, shareholders, or members.

~~(4)~~ (3) "Person" means an individual, a partnership, a **domestic corporation, a domestic business corporation, a foreign corporation, a foreign business corporation, a limited liability company, or any other** association, **corporation, trust,** or ~~any other~~ legal entity.

~~(5)~~ (4) "Predecessor act" means an act or part of an act repealed by this act, or any act or part of any act repealed by an act that this act repeals.

(6) "Private foundations" means a tax exempt corporation described in section 501(c)(3) of the internal revenue code that is classified as a private foundation under section 509(a) of the internal revenue code.

Sec. 109. (1) **"Shareholder" means a person holding shares of a domestic corporation, foreign corporation, domestic business corporation or foreign business corporation.**

(2) **"Shares" means the units unto which interests of shareholders in a domestic corporation, foreign corporation, domestic business corporation, or foreign business corporation are divided.**

Sec. 110. (1) ~~"Treasury shares" means shares which have been issued, have been subsequently acquired by a corporation, and have not been canceled. Treasury shares are issued shares, but not outstanding shares.~~ **"Volunteer" means an individual performing services for a corporation, other than services as a volunteer director, who does not receive compensation or any other type of consideration for the services other than reimbursement for expenses actually incurred.**

(2) **"Volunteer director" means a director who does not receive anything of more than nominal value from the corporation for serving as a director other than reasonable per diem compensation and reimbursement for actual, reasonable, and necessary expenses incurred by a director in his or her capacity as a director.**

Sec. 121. (1) Except as otherwise provided in this act or by other law, this act applies to all of the following:

(a) Every domestic corporation ~~organized~~ **formed** under this act or under a predecessor act, for a purpose or purposes for which a corporation might be ~~organized~~ **formed** under this act.

(b) Every foreign corporation which is authorized to **or does** conduct affairs in this state **except as otherwise provided in this act or by other statute.**

(c) Any other domestic corporation or foreign corporation **not formed under this act** to the extent, **if any,** provided under **section 123 or any other provision of this act or under a provision of** any law governing ~~such~~ **that domestic or foreign** corporation.

(2) A corporation ~~organized~~ **formed** under **or subject to** a predecessor act is subject to this act except to the extent that this act conflicts with the articles and bylaws of the corporation lawfully made ~~pursuant to~~ **under** the predecessor act. The corporation may amend its articles and bylaws to bring itself in conformity with this act.

Sec. 122. (1) A reference in any statute of this state to parts of any act ~~which~~ **that** are repealed by this act is ~~deemed~~ **considered** to be a reference to this act, unless the context requires otherwise.

(2) The following statutes do not apply to a **domestic** corporation ~~, as defined in Section 106 :~~

(a) ~~Chapter 55 of the Revised Statutes of 1846, entitled "general provisions relating to corporations", as amended, being sections 450.504 to 450.525 of the Michigan Compiled Laws~~ **1846 RS 35, MCL 450.504 to 450.525.**

(b) ~~Act No. 156 of the Public Acts of 1955, being sections 450.701 to 450.704 of the Michigan Compiled Laws.~~ **1955 PA 156, MCL 450.701 to 450.704.**

(3) The uniform fraudulent transfer act, 1998 PA 434, being MCL 566.31 to 566.43, does not apply to distributions governed by this act.

Sec. 123. (1) Unless otherwise provided in, and to the extent not inconsistent with, the act under which a corporation is or has been formed, this act applies to a corporation ~~which~~ **that** is or has been ~~organized~~ **formed** under an act other than this act and not repealed by this act.

(2) A corporation covered by subsection (1) includes, but is not limited to, all of the following:

(a) A cooperative corporation classified as a nonprofit corporation under section 98 of 1931 PA 327, MCL 450.98.

(b) A secret society or lodge.

(c) A trustee corporation holding property for charitable, religious, benevolent, educational, or other public benefit purposes.

(d) A church trustee corporation.

(e) An educational corporation that is organized as a trustee corporation or a nonprofit corporation.

(f) An ecclesiastical corporation.

(g) A public building corporation.

(h) A street railway under the nonprofit street railway act, 1867 PA 35, MCL 472.1 to 472.31.

(3) Except as provided in section (h), this act does not apply to insurance ~~or~~ **or** surety **companies**, credit unions, savings and loan associations, fraternal benefit societies, railroad, bridge, or tunnel companies, union depot companies, ~~and~~ **or** banking corporations.

Sec. 131. (1) A document required or permitted to be filed under this act shall be submitted by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator ~~may~~ **shall** establish ~~a procedure~~ **procedures** for accepting delivery of a document submitted under this subsection by facsimile, **by electronic mail, over the internet,** or **by** other electronic transmission. ~~However, by December 31, 2006, the administrator shall establish a procedure of accepting delivery of a document submitted under this subsection by electronic mail or over the internet. Beginning January 1, 2007, the administrator shall accept delivery of documents submitted by electronic mail or over the internet.~~

(2) If a document submitted under subsection (1) substantially conforms with the requirement of this act, the administrator shall endorse upon it the word "filed" with ~~the administrator's~~ **his or her** official title and the dates of receipt and of filing, and shall file and index the document or a reproduction of the document pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, in ~~the administrator's~~ **his or her** office. If requested at the time of the delivery of the document to the administrator's office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (2), other than an annual report, or, at his or her discretion, the original, to the person who submitted the document for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the internet, may provide proof of the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to **domestic and foreign** corporations shall be open to reasonable inspection by the public. The administrator may maintain the records or files either in their original form or in the form of reproductions pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and may destroy the original of the reproduced documents.

(5) The administrator may make ~~copies~~ **reproductions** of any document filed under this act, or any predecessor act, pursuant to the records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and may destroy the original of the reproduced documents.

(6) A document filed under subsection (2) if effective at the time it is endorsed unless a subsequent effective time, not later than 90 days after the date of delivery, is set forth in the document.

(7) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, \$1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, \$500.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day the

day of the request, \$100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete on the same day the day of the request, \$200.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator received the request, \$50.00.

(f) For the filing of any other document concerning an existing domestic corporation or a qualified foreign corporation that a person requests the administrator to complete within 24 hours of the time the administrator received the request, \$100.00.

Sec. 132. (1) A document filed with the administrator shall be in the English language, except that the corporate name need not be in the English language if written in English letters or Arabic or Roman numerals ~~and the articles of incorporation of a foreign corporation need not be in the English language.~~

(2) A document required or permitted to be filed under this act which is also required by this act to be executed on behalf of the **domestic or foreign** corporation ~~shall be signed in ink by the chairperson or vice chairperson of the board or the president or a vice president~~ **an authorized officer or agent of the domestic or foreign corporation. If the board has not yet met, the document shall be signed by the incorporator or the majority of incorporators if there are more than 1.** If the **domestic or foreign** corporation is in the hands of a receiver,

trustee, or other court appointed officer, the document shall be signed ~~in ink~~ by the fiduciary or the majority of ~~them~~ **the fiduciaries**, if there are more than 1. The name of a person signing the document and the capacity in which ~~the person~~ **he or she** signs ~~it~~, shall be stated beneath or opposite ~~the~~ **his or her** signature. The document may, but need not, contain **any of the following**:

- (a) The corporate seal.
- (b) An attestation by the secretary or an assistant secretary of the corporation.
- (c) An acknowledgment or proof.

Sec. 133. If a document relating to a domestic or foreign corporation filed with the administrator under this act ~~is~~ **was at the time of filing** an inaccurate record of the corporation action referred to in the document, or was defectively or erroneously executed, or the document was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the administrator a certificate of correction on behalf of the corporation. A certificate, entitled "certificate of correction of . . . (correct title of document and name of corporation)" shall be signed as provided in this act with respect to the document being corrected and filed with the administrator. The certificate shall set forth the name of the corporation, the date the document to be corrected was filed by the administrator, the provision in the document as ~~corrected or eliminated~~ **it should have originally appeared**, and if the execution was defective, the proper execution. The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was, as a result of the inaccurate portion of the document, adversely affected by the correction.

Sec. 141. When, under this act or the articles of incorporation or bylaws of a corporation or by the terms of an agreement or instrument, a corporation or the board or any committee of the board may take action after notice to any person or after lapse of a prescribed period of time, the action may be taken without notice and without lapse of the period of time, if at any time before or after the action is completed the person entitled to notice or to participate in the action to be taken or, in case of a shareholder or member, by ~~the shareholder or member's~~ **his or her** attorney-in-fact, submits a signed waiver or a waiver by electronic transmission of the requirements.

Sec. 143. (1) ~~When~~ **If** a notice of communication is required or permitted by this act to be given by mail, it shall be mailed, except as otherwise provided in this act, to the person to whom it is directed at the address designated by ~~that person~~ **him or her** for that purpose or, if none is designated, at ~~that person's~~ **his or her** last known address. The notice or communication is given when deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. The mailing shall be registered, certified, or other first-class mail except where otherwise provided in this act.

(2) When a notice is required or permitted by this act to be given in writing, electronic transmission is written notice.

(3) If a corporation is required or permitted to provide its shareholders or members with a written notice or other written report, statement, or communications by this act, the articles of incorporation, or the bylaws, the corporation may provide that notice, report, statement, or communication to all shareholders or members that share a common address by delivering 1 copy of it to the common address if all of the following are met:

(a) The corporation addresses the notice, report, statement, or communication to the shareholders or members who share the common address as a group, individually, or in any other form to which any of those shareholders or members have not objected.

(b) At least 60 days before the first delivery or any delivery to a common address under this subsection, the corporation gives notice to the shareholders or members who share that common address that it intends to provide only 1 copy of notices, reports, statements, or other communications to shareholders or members that share a common address.

(c) The corporation has not received a written objection from any shareholder or member that shares a common address to deliveries under this subsection to that shareholder or member. If it receives a written objection under this subdivision, the corporation within 30 days shall begin providing the objecting shareholder or member with separate copies of any notices, reports, statements, or communications to the shareholders or members, but the corporation may deliver 1 copy of the notices, reports, statements, or communications to all of the shareholders or members at that common address that have not objected.

(4) ~~(3)~~ When a notice or communication is permitted by this act to be transmitted electronically, the notice or communication is given when electronically transmitted to the person entitled to the notice or communication in a manner authorized by the person.

(5) As used in subsection (3), “address” means a street address, post office box, electronic mail address for electronic transmissions by electronic mail, or telephone facsimile number for electronic transmissions by facsimile.

Sec. 151. (1) If the administrator ~~refuses~~ **fails** to promptly file a document, other than an annual report, submitted for filing under this act, the administrator shall within 10 days after receipt ~~from the person submitting the document for filing~~ of a written request ~~for the filing of~~ **to file** the document **from the person submitting the document for filing** give written notice of the refusal to file the document to that person, specifying the reasons for the refusal to file the document. If the document was not originally submitted by electronic transmission, the administrator shall not give the written notice by electronic transmission. The person may seek judicial review of the refusal to file the document pursuant to sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.306.

(2) If the administrator ~~refuses or revokes the authorization~~ **to authorize or revokes the authorization** of a foreign corporation to conduct affairs in this state pursuant to this act, the foreign corporation may seek judicial review pursuant to sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.306.

Sec. 202. The articles of incorporation shall contain **all of the following**:

(a) The name of the corporation.

(b) The purposes for which the corporation is ~~organized~~ **formed**. It ~~shall not be~~ **is not** sufficient to state substantially that the corporation may engage in any activity within the purposes for which a corporation may be ~~organized~~ **formed** under this act. ~~A corporation which proposes to conduct educational purposes shall state such purposes and~~ **If a corporation proposes to organize and operate a school, college or other educational institution described in section 170 of 1931 PA 327, MCL 450.170, other than a public school academy under part 6a of the revised school code, 1976 PA 451, MCL 380.501 to 380.507 or an urban high school academy under part 6c of the revised school code, MCL 380.521 to**

380.529, it shall **state its educational purposes in its articles of incorporation and** comply with all requirements of sections 170 to 177 of ~~Act No. 327 of the Public Acts of 1931, as amended, being sections 450.170 to 450.177 of the Michigan Compiled Laws 1931 PA 327,~~ **MCL 450.170 to 450.177.**

(c) ~~In the case of a~~ **If the** corporation ~~organized~~ **is formed** on a stock basis, the aggregate number of shares which the corporation has authority to issue.

(d) ~~In the case of a~~ **If the** corporation ~~organized~~ **is formed** on a stock basis, **and** if the shares are $\frac{1}{x}$ or are to be $\frac{1}{x}$ divided into classes, ~~to the extent that the designations, numbers, relative rights, preferences, and limitations have been determined;~~ the designation of each class, $\frac{1}{x}$; the number of shares in each class, $\frac{1}{x}$ and a statement of the relative rights, preferences and limitations of the shares of each class, **to the extent that the designations, numbers, relative rights, preferences, and limitations have been determined.**

(e) ~~In the case of a~~ **If the** corporation ~~organized~~ **is formed** on a nonstock basis, a description and statement of the value of any assets of the corporation classified as to real and personal property and the terms of the general scheme of financing the corporation.

(f) ~~In the case of a~~ **If the** corporation ~~organized~~ **is formed** on a nonstock basis, a statement that the corporation is ~~organized~~ **formed** on a membership basis or a statement that the corporation is ~~organized~~ **formed** on a directorship basis.

(g) The street address, and the mailing address if different from the street address, of the corporation's initial registered office and the name of the corporation's initial resident agent at that address.

(h) The names and addresses of all the incorporators ~~, whether or not fewer than all the incorporators sign the articles pursuant to section 201(2).~~ .

(i) The duration of the corporation if other than perpetual.

Sec. 209. (1) The articles of incorporation may contain any provision **that is not inconsistent** ~~consistent~~ with **this act and not expressly prohibited by any other statute of this state, including, but not limited to**, any of the following:

(a) A provision ~~regarding the~~ **for management of the business and conduct of the affairs** of the corporation, or creating, defining, limiting, or regulating the powers of the corporation, its directors, officers, members, or shareholders, or a class of **directors**, shareholders or members.

(b) A provision that **under this act** is required or permitted ~~under this act~~ to be included ~~set forth~~ in the bylaws ~~of the corporation~~.

(c) A provision ~~that eliminates~~ **eliminating or limiting a director's or volunteer officer's** ~~the personal liability of a volunteer director or volunteer officer~~ to the corporation, its shareholders, or its members for ~~monetary~~ **money** damages for ~~a breach of the director's or officer's fiduciary duty. The provision does not eliminate or limit the liability of a director or officer~~ **any action taken or any failure to take any action as a director or volunteer officer, except liability** for any of the following:

(i) ~~A breach of the director's or officer's duty of loyalty to the corporation, its shareholders, or its members.~~ **The amount of a financial benefit received by a director or volunteer officer to which he or she is not entitled.**

(ii) ~~Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law.~~ **Intentional infliction of harm on the corporation, its shareholders or members.**

(iii) A violation of section 551~~(1)~~.

~~(iv) A transaction from which the director or officer derived an improper personal benefit.~~ **An intentional criminal act.**

~~(v) An act or omission occurring before the effective date of the provision granting limited liability.~~ **A liability imposed under section 497(a).**

~~(vi) An act or omission that is grossly negligent.~~

(d) For a ~~tax exempt~~ **charitable purpose** corporation ~~under section 501(c)(3) of the internal revenue code~~, a provision that the corporation assumes all liability to any person other than the corporation, its shareholders, or its members for all acts or omissions of a volunteer director occurring on or after January 1, 1988 incurred in the good faith performance of the volunteer director's duties.

(e) A provision that ~~a nonprofit~~ **the** corporation assumes the liability for all acts or omissions of a volunteer director, volunteer officer, or other volunteer occurring on or after the effective date of the provision granting limited liability if all of the following are met:

(i) The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.

(ii) The volunteer was acting in good faith.

(iii) The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.

(iv) The volunteer's conduct was not an intentional tort.

(v) The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956, being section 500.3135 of the Michigan Compiled Laws~~ **1956 PA 218, MCL 500.3135.**

(f) A provision reserving to 1 or more members, shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors, shareholders or members. A provision authorized by this subsection that limits the discretion or powers of the board shall relieve the directors of, and impose upon the persons or person in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the provision. The person or persons in whom the discretion or powers are vested are treated as a director or directors for the purposes of any limitation or assumption of liability under this section and, except as otherwise provided in the articles of incorporation or bylaws, have the same rights and obligations with respect to indemnification as a director or directors.

(2) If the articles of incorporation contain a provision eliminating the liability of a volunteer director or volunteer officer filed prior to the effective date of the amendatory act that amended subsection (1) and added this subsection, that provision shall be considered to eliminate the liability of a director or volunteer officer as provided in subsection (1)(c).

Sec. 212. (1) The corporate name of a **domestic or foreign** corporation formed or existing under or subject to this act **shall conform to all of the following:**

(a) Shall not contain a word or phrase, or abbreviation or derivative ~~thereof~~ **of a word or phrase**, which indicates or implies that the corporation is ~~organized~~ **formed** for a purpose other than 1 or more of the purposes permitted by its articles of incorporation.

~~(b) Shall not be the same as, or confusingly similar to, the corporate name of a domestic corporation, a domestic business corporation, a foreign corporation authorized to conduct affairs in this state, or a foreign business corporation authorized to transact business in this state; a corporate name currently reserved under this act, a predecessor act, or Act No. 284 of the Public Acts of 1972, as amended; or a name assumed under section 217 or under section 217 of act No. 284 of the Public Acts of 1972, as amended, being section 450.1217 of the Michigan Compiled Laws, unless the written consent of the other domestic corporation, domestic business corporation, foreign corporation, or foreign business corporation or holder of a reserved name, to the adoption of a confusingly similar name, but not the same name, is filed in the office of the administrator, or, in lieu of the consent, there is filed a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.~~ **Shall distinguish the corporate name upon the records in the office of the administrator from all of the following:**

(i) The corporate name of any other domestic corporation or foreign corporation authorized to conduct affairs in this state.

(ii) The corporate name of any domestic business corporation or foreign business corporation authorized to transact business in this state.

(iii) A corporate name currently reserved, registered, or assumed under this act or the business corporation act.

(iv) The name of any domestic limited partnership or foreign limited partnership as filed or registered under the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108, or any name currently reserved or assumed under that act.

(v) **The name of any domestic limited liability company or foreign limited liability company as filed or registered under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, or any name currently reserved or assumed under that act.**

(c) Shall not contain a word or phrase, ~~or~~ an abbreviation, or derivative ~~thereof~~ **of a word or phrase**, the use of which is prohibited or restricted by any other statute of this state, unless ~~the~~ **in compliance with that** restriction ~~has been compiled with~~.

(2) ~~Whenever~~ **If** a foreign corporation is unable to obtain a certificate of authority to conduct affairs in this state because its corporate name does not comply with the provisions of subsection (1), ~~it~~ **the foreign corporation** may apply for authority to conduct affairs in this state by adding to its corporate name in ~~such~~ **the** application a word, abbreviation, or other distinctive and distinguishing element, or alternatively, adopting for use in this state an assumed name otherwise available for use. If in the judgment of the administrator ~~this assumed~~ **that** name would comply with the provisions of subsection (1), that subsection shall not be a bar to ~~the issuance to~~ **issuing** the **foreign** corporation of a certificate of authority to conduct affairs in this state. The certificate issued to the foreign corporation shall be issued in ~~this assumed~~ **the** name **applied for** and the **foreign** corporation shall use ~~this~~ **that** name in all its dealings with the administrator and in the conduct of its affairs in this state.

(3) A **charitable purpose** corporation ~~incorporated for the purpose of receiving and administering funds for perpetuation of the memory of persons, preservation of objects of historical or natural interest, educational, charitable or religious purposes, or public welfare~~ may use the ~~name foundation~~ **word "foundation" in its corporate name or in an assumed name.** **This subsection shall not prohibit a corporation from continuing to use the word "foundation" in its corporate name or in an assumed name if the corporation was in**

existence and used the word “foundation” in its corporate name or in an assumed name before the effective date of the amendatory act that amended this subsection.

(4) The fact that a corporation complies with this section does not create substantive rights to use of a corporate name.

Sec. 215. (1) A person may reserve the right to use of a corporate name by executing and filing an application to reserve the name. If the administrator finds that the name is available for corporate use, ~~the administrator~~ **he or she** shall reserve it for exclusive use of the applicant for a period expiring at the end of the ~~fourth~~ **sixth** full calendar month following the month in which the application is filed.

~~(2) The administrator, for good cause shown, may extend the reservation for periods of not more than 2 calendar months each. Not more than 2 extensions shall be granted.~~

~~(2) (3)~~ The right to exclusive use of a corporate name ~~so~~ reserved **under subsection (1)** may be transferred to another person by filing a notice of the transfer, executed by the applicant for whom the name was reserved, and stating the name and address of the transferee.

Sec. 217. (1) Except as otherwise ~~prohibited by law,~~ **provided in section 212**, a domestic or foreign corporation may conduct its affairs under any assumed name or names other than its corporate name, ~~not precluded from use by section 212,~~ and the same name may be assumed by ~~2 or more corporations participating together in any partnership or joint venture~~ by filing a certificate stating the true name of the corporation and the assumed name under which its affairs are to be conducted. ~~The~~ **A certificate shall of assumed name is** ~~be~~ effective, unless sooner terminated by ~~the~~ filing ~~of~~ a certificate of termination or by the dissolution or withdrawal of the corporation, for a period expiring on December 31 of the fifth full calendar year following the year in which it was filed. ~~It~~ **The certificate of assumed name** may be

extended for additional consecutive periods of 5 full calendar years each by ~~the filing of~~ similar certificates not earlier than 90 days preceding the expiration of ~~any such~~ **the initial or a subsequent 5-year** period. The administrator shall notify the corporation of the impending expiration of the certificate of assumed name ~~no~~ **not** later than 90 days before **the expiration of** the initial or a subsequent 5-year period ~~will expire~~. ~~This~~ **A certificate of assumed name filed under this** section does not create substantive rights to the use of a particular assumed name.

(2) Two or more corporations, or by 1 or more corporations and 1 or more business corporations, limited partnerships, limited liability companies or other enterprises participating together in a partnership or joint venture may assume the same name. Each participant corporation shall file a certificate under this section.

(3) A corporation participating in a merger, or any other entity participating in a merger under section 735 or 736a, may transfer to the surviving entity the use of an assumed name for which a certificate of assumed name is on file with the administrator before the merger, if the transfer is noted in the certificate of merger as provided in section 707(1)(f), 712(1)(c), or 736a(3)(f), or other applicable statute. The use of an assumed name transferred under this subsection may continue for the remaining effective period of the certificate of assumed name on file before the merger, and the surviving entity may terminate or extend the certificate of assumed name in accordance with subsection (1).

(4) A corporation surviving a merger may use as an assumed name the corporate name of a merging corporation, or the name of any other entity participating in the merger under section 735 or 736a, by filing a certificate of assumed name under subsection (1) or by providing for the use of the name as an assumed name in the certificate of merger. The

surviving corporation also may file a certificate of assumed name under subsection (1) or provide in the certificate of merger for the use as an assumed name of an assumed name of a merging entity not transferred under subsection (3). A provision in the certificate of merger under this subsection shall be treated as a new certificate of assumed name.

(5) A business organization into which a corporation has converted under section 745 may use an assumed name of the converting corporation, if the corporation has a certificate of assumed name for that assumed name on file with the administrator before the conversion, by providing for the use of the name as an assumed name in the certificate of conversion. The use of an assumed name under this subsection may continue for the remaining effective period of the certificate of assumed name on file before the conversion, and the surviving business organization may terminate or extend the certificate of assumed name in the manner described in subsection (1).

(6) A corporation into which 1 or more business organizations have converted under section 746 may use as an assumed name the name of any business organization converting into that corporation, or use as an assumed name an assumed name of that business organization, by filing a certificate of assumed name under subsection (1) or by providing for the use of that name or assumed name as an assumed name of the corporation in the certificate of conversion. A provision in the certificate of conversion under this subsection shall be treated as a new certificate of assumed name.

Sec. 221. The corporate existence of a corporation shall begin on the effective date of the articles of incorporation as provided in section 131. Filing of the articles of incorporation is conclusive evidence that all conditions precedent required to be performed under this act have

been fulfilled and that the corporation has been ~~organized~~ **formed** under this act, except in an action or special proceeding by the attorney general.

Sec. 241. Each domestic corporation and each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state **both of the following:**

(a) A registered office ~~which~~ **that** may be the same as its place of business.

(b) A resident agent, ~~which agent may be either an~~ **Any of the following may serve**

as resident agent:

(i) **An** individual resident in this state whose business office **or residence** is identical with the ~~corporation's~~ registered office, ~~a~~

(ii) **A domestic corporation, or a domestic business corporation, or a foreign corporation, or a foreign business corporation, a limited liability company or other entity, if** it is authorized to conduct affairs or transact business in this state and ~~having~~ **it has** a business office identical with the ~~corporation's~~ registered office.

Sec. 242. (1) A domestic corporation or a foreign corporation authorized to conduct affairs in this state may change its registered office or change its resident agent, or both, upon filing a statement **with the department.** ~~which~~ **The statement** may be executed by any of the individuals set forth in section 132 or by the secretary or assistant secretary of the corporation ~~setting forth~~ . **The statement shall provide all of the following information:**

(a) The **corporate** name ~~of the corporation~~ .

(b) The street address of ~~its then~~ **the corporation's** registered office **at the time of filing**, and its mailing address if different from its street address.

(c) If the address of ~~its~~ **the corporation's** registered office is changed, the street address and the mailing address, if different from the street address, to which the registered office is to be changed.

(d) The name of ~~its then~~ **the corporation's** resident agent **at the time of filing.**

(e) If ~~its~~ **the corporation's** resident agent is changed, the name of its successor resident agent.

(f) That the address of ~~its~~ **the corporation's** registered office and the address ~~of the business office~~ of its resident agent, as changed, will be identical.

(g) That ~~such~~ **the** change was authorized by resolution duly adopted by ~~its~~ **the corporation's** board, or, if no board has been appointed, by the incorporators.

(2) If a resident agent changes its business or residence address to another place within this state, the resident agent may change the address of the registered office of any domestic or foreign corporation of which the person is a resident agent by filing a statement as required in subsection (1), except, the statement need only be signed by the resident agent, need not be responsive to subsection (1)(e) or (g), and shall recite that a copy of the statement has been mailed to the corporation.

Sec. 243. A resident agent of a domestic or foreign corporation may resign by filing a written notice of resignation with the president or a ~~vice-president~~ **vice president** of the corporation and with the administrator. ~~The~~ **A** corporation shall promptly appoint a successor resident agent **after is resident agent has resigned.** The appointment of ~~the~~ **a** resigning **resident** agent ~~terminates upon appointment of a successor or upon expiration of~~ **when a successor is appointed** or 30 days after receipt of the notice by the administrator, whichever

first occurs. **When the resignation becomes effective under this section, the business or residence address of the resigned agent is no longer the registered office of the corporation.**

Sec. 246. (1) The resident agent ~~so~~ appointed by a corporation is an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(2) A person, whether a resident or nonresident of this state, ~~by acceptance of~~ **who accepts** election, appointment, or employment as a director or officer of a corporation ~~organized~~ **formed** under this act or in existence on the effective date of this act, by ~~such~~ **the** acceptance is held to have appointed the resident agent of the corporation as ~~the person's~~ **his or her** agent upon whom process may be served while ~~the person~~ **he or she** is a director or officer, in any action commenced in a court of general jurisdiction in this state, arising out of or founded upon any action of ~~such a~~ **the** domestic corporation or of ~~such~~ **a** person as a director or officer of the domestic corporation. Upon accepting service of process, the resident agent shall promptly forward it to the director or officer at the ~~director or officer's~~ **his or her** last known address.

Sec. 251. (1) ~~Except if required by law to incorporate under another statute of this state,~~
~~a~~ A corporation may be formed under this act for any lawful purposes not involving pecuniary gain or profit for its officers, directors, shareholders, or members, **other than a purpose for which a corporation may be formed under any other statute of this state where that statute expressly prohibits formation under this act.**

(2) In time of war or other national emergency, a corporation may ~~conduct~~ **take** any lawful ~~activity~~ **action to provide aid**, including any business activity, ~~in aid thereof~~, notwithstanding the purposes set forth in its articles of incorporation, at the request or direction of a competent governmental authority.

Sec. 261. (1) A corporation, subject to any limitation provided in this act, in any other statute of this state, **or** in its articles of incorporation ~~or otherwise by law~~, has the power in furtherance of its corporate purposes to do ~~all~~ **any** of the following:

- (a) Have perpetual duration.
- (b) Sue and be sued in all courts and participate in actions and proceedings, judicial, administrative, arbitrative, or otherwise, in the same manner as a natural person.
- (c) Have a corporate seal, ~~and~~ alter the seal, and use it by causing it or a facsimile to be affixed, impressed, or reproduced in any other manner.
- (d) Adopt, amend, or repeal bylaws, including emergency bylaws, relating to the purposes of the corporation, the conduct of its affairs, its rights and powers and the rights and powers of its shareholders, members, directors, or officers.
- (e) Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and the compensation of directors, and indemnify corporate directors, officers, employees, and agents.
- (f) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease, or otherwise acquire, own, hold, improve, **administer**, employ, use and otherwise deal in and with, real or personal property, or an interest in real or personal property, wherever situated, either absolutely, ~~or~~ in trust, **or as an endowment or donor restricted fund** and without limitation as to amount or value.
- (g) Sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, or create a security interest in $\frac{1}{2}$ any of its property $\frac{1}{2}$ or an interest in the property, wherever situated.

(h) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use, and otherwise deal in and with, bonds and other obligations, shares or other securities or interests or memberships issued by others, whether engaged in similar or different business, governmental, or other activities, including banking corporations or trust companies. A corporation organized or conducting affairs in this state under this act shall not guarantee or become surety upon a bond or other undertaking securing the deposit of public money.

(i) Make contracts, give guarantees, and incur liabilities, borrow money at ~~such~~ 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 the property, wherever situated. **Without limiting the preceding, these powers includes the powers to give guarantees and to incur joint indebtedness which are necessary or convenient to the conduct, promotion, or attainment of the purposes of any of the following entities, whether or not subject to this act, which guarantees or joint indebtedness shall be considered to be in furtherance of the corporate purpose of the contracting corporation:**

(i) A corporation, foreign corporation, domestic business corporation or foreign business corporation, if all of its outstanding shares are owned, directly or indirectly, or all of the outstanding memberships are owned or controlled, directly or indirectly, by any of the following:

- (a) The contracting corporation.**
- (b) A directorship corporation, whose directors are all elected or appointed, directly or indirectly, by the contracting corporation.**

(c) A domestic or foreign limited liability company, if all of its membership interests are owned or controlled, directly or indirectly, by the contracting corporation.

(ii) A corporation or foreign corporation that owns or controls, directly or indirectly, all of the outstanding shares of the contracting corporation; or that owns or controls, directly or indirectly, all of the outstanding membership interests of the contracting corporation; or that elects or appoints, directly or indirectly, all of the directors of the contracting directorship corporation.

(iii) A corporation, foreign corporation, domestic business corporation or foreign business corporation if all of its outstanding shares are owned or controlled, directly or indirectly, or all of its outstanding memberships are owned or controlled, directly or indirectly, by an affiliate; or a directorship corporation, if all of its directors are elected or appointed, directly or indirectly, by an affiliate; or a domestic or foreign limited liability company if all its outstanding membership interests are owned or controlled, directly or indirectly, by an affiliate. As used in this subsection, "affiliate" means a nonprofit corporation, whether or not subject to this act, or a foreign corporation, that owns or controls, directly or indirectly, all of the outstanding shares of the contracting corporation; or that owns or controls, directly or indirectly, all of the outstanding memberships of the contracting corporation; or that elects or appoints, directly or indirectly, all of the directors of the contracting corporation if it is a directorship corporation.

(j) Lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned, ~~or~~ invested **or reinvested**.

(k) Make donations for **any of the following:** the public welfare ~~or for~~; a community fund ~~or~~ hospital ~~or~~; or a charitable, educational, scientific, civic, or similar ~~purposes, and,~~

purpose. A corporation also has the power to provide aid in time of war or other national emergency ~~in aid of war or other national emergency.~~

(l) Pay pensions, establish and carry out pension, **profit sharing**, savings, thrift, and other retirement, incentive, and benefit plans, trusts, and provisions for any of its directors, officers, and employees.

(m) Purchase, receive, take, otherwise acquire, own, hold, sell, lend, exchange, transfer, otherwise dispose of, pledge, use, and otherwise deal in and with its own shares, bonds, and other securities.

(n) Participate with others in any **domestic corporation, foreign corporation, domestic business corporation, foreign business corporation, partnership, limited partnership, limited liability company, limited liability partnership**, joint venture, or other association of any kind, or ~~participate with others~~ in any transaction, undertaking, or agreement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

(o) Cease its corporate activities and dissolve.

(p) Conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this act in any jurisdiction ~~within or without~~ **in or outside** the United States, and, in the case of a corporation the purpose or purposes of which require the transaction of business, the receipt and payment of money, the care and custody of property, and other incidental business matters, transact ~~such~~ **that** business, receive, collect, and disburse ~~such~~ **that** money, and engage in ~~such~~ **those** other incidental business matters as are naturally or properly within the scope of its articles.

(q) Have and exercise all powers necessary or convenient to effect any purpose for which the corporation is formed.

(2) A corporation subject to the uniform prudent management of institutions funds act, **2009 PA 97, MCL 451.921 to 451.931**, has all powers granted under both this act and that act. However, in the event of an inconsistency between the 2 acts, the uniform prudent management of institutional funds act, **2009 PA 97, MCL 451.921 to 451.931** controls.

(3) ~~The corporate existence of all corporations incorporated before January 1, 1983, without capital stock, for religious, benevolent, social, or fraternal purposes, shall be considered to be in perpetuity. A~~ **If a corporation subject to this act was formed before January 1, 2010, the corporation has perpetual corporate existence. If a corporation was formed after December 31, 2009, a limitation or term fixed in the articles or in the law under which the corporation was originally incorporated shall not be formed is not effective after December 31, 2013 unless the corporation has affirmatively waived its right to perpetual existence after September 18, 1931, by fixing a definite term of existence by amendment to its articles waives its right to perpetual existence by amending its articles of incorporation to establish a definite term of existence for the corporation and filing the amendment before January 1, 2014. A corporation may fix a definite term of existence in articles of incorporation filed after December 31, [2011] and a corporation having perpetual existence may amend its articles of incorporation to establish a definite term of existence and file the amendment at any time after December 31, [2011]. This provision shall not be considered to be inconsistent with the act under which any corporation subject to this act has been formed.**

(4) Any nonprofit power corporation that is authorized to furnish electric service may construct, maintain, and operate its lines along, over, across or under any public places, streets

and highways, and across or under the waters in this state, with all necessary erections and fixtures. A nonprofit power corporation may exercise the power of eminent domain, in the manner provided by the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75. As a condition to the exercise of any of these powers, nonprofit corporations are subject to the jurisdiction of the Michigan public service commission ~~pursuant to~~ **under** 1909 PA 106, MCL 460.551 to 460.559, 1919 PA 419, MCL 460.51 to 460.62, and 1939 PA 3, MCL 460.1 to 460.11.

(5) A corporation organized and operating as a public school academy under part 6a of the revised school code, 1976 PA 451, MCL 380.501 to 380.507, or as an urban high school academy under part 6c of the revised school code, 1976 PA 451, MCL 380.521 to 380.529, is a public body corporate and a governmental agency and shall have all powers granted under this act and under the revised school code, 1976 PA 451, MCL 380.1 to 380.1853. However, in the event of an inconsistency between this act and 1976 PA 451, MCL 380.1 to 380.1853, 1976 PA 451, MCL 380.1 to 380.1853 shall control.

(6) Subject to the limitations on the practice of law by corporations contained in 1917 PA 354, MCL 450.681, a domestic corporation may be formed and a foreign corporation may be authorized to conduct affairs in this state for the purpose of providing professional services which may only be performed by one or more of the learned professions and may employ and enter into other arrangements with duly licensed or authorized individuals who shall furnish those services on behalf of the corporation.

(7) Except as provided in section 209(1)(d) or section 209(1)(e), any duly licensed or authorized individual employed by a corporation described in subsection (6) is personally and fully liable and accountable for any negligent or wrongful acts or misconduct

committed by him or her, or by any individual under his or her direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. However, the corporation employing that duly licensed or authorized individual may indemnify him or her for any resulting liabilities and expenses as provided in this act and under other applicable law.

(8) A domestic or foreign corporation formed for religious purposes may own and operate 1 or more cemeteries.

Sec. 275. A domestic **corporation** or foreign corporation, whether or not formed at the request of a lender **or in furtherance of a business enterprise**, may by agreement in writing, and not otherwise, agree to pay a rate of interest in excess of the legal rate and ~~in such case~~ the defense of usury ~~is~~ **shall be** prohibited.

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March 2012 Draft – Chapters 3 and 4.

Sec. 301. (1) A payment or distribution of any part of the assets, income, or profit of a corporation shall be ~~in conformity with~~ **conform to** the purposes of the corporation.

(2) A corporation may confer benefits on its shareholders or members ~~in conformity with~~ **that conform to** the purposes of the corporation.

(3) A corporation shall not make a direct or indirect transfer of money or other property or incur indebtedness to or for the benefit of its directors or officers without adequate consideration. The preceding shall not prevent a corporation from paying compensation to its directors and officers in reasonable amounts for services rendered to the corporation or from entering into transactions with officers and directors in accordance with sections 545a and 548.

(4) ~~(3)~~ A corporation shall not pay dividends or ~~distribute~~ **make distributions of** any part of its assets, income, or profit to its shareholders ~~or~~ **or** members ~~or directors or officers~~ except as follows:

(a) A corporation may pay compensation in ~~a reasonable amount~~ **amounts** to shareholders ~~or~~ **or** members ~~or directors or officers~~ for services rendered to the corporation.

(b) ~~Upon dissolution as permitted by this act, a~~ **If a corporation dissolves, the** corporation may make distributions of assets, other than assets held for charitable purposes, to shareholders or members **as permitted by this act and the corporation may distribute assets held for charitable purposes to 1 or more member or shareholder domestic corporation, foreign corporations, trusts or similar entities organized and operated exclusively for**

charitable purposes not inconsistent with the charitable purposes for which the corporation holds the assets.

(c) The articles of incorporation or bylaws of a corporation whose **lawful** purposes include providing a benefit to its member or shareholder corporation may provide that the corporation may pay dividends or distribute its income or profit to its member or shareholder corporation.

(d) ~~As permitted in subsection (4).~~ **A corporation whose lawful purposes include selling services or products to its shareholders or members may make distributions of profit to its shareholders or members, if both of the following are met:**

(i) **The profit is derived solely from the charging of fees or prices to its shareholders or members for its services or products.**

(ii) **The profit is distributed to the shareholders or members on the basis of, or in proportion to, the fees or prices paid by the shareholders or members to the corporation for its services or products.**

(e) ~~If provisions for redemption of shares is made pursuant to section 361 to 365.~~ **A corporation may make distributions to shareholders or members that are domestic or foreign corporations, trusts or similar entities organized and operated exclusively for charitable purposes not inconsistent with the purposes of the corporation.**

(f) **A corporation may make distributions to shareholders or members that are domestic corporations or foreign corporations organized and operated exclusively for purposes consistent with the purposes of the corporation.**

(g) **A corporation may make distributions of stock or memberships in another domestic or foreign corporation to its shareholders or members if its shareholders or**

members will have no greater rights to receive distributions from the domestic corporation or foreign corporation whose stock or memberships are being distributed than the shareholders or members have with respect to the corporation making the distribution.

(5) ~~(4)~~ A corporation whose lawful activities include the charging of fees or prices for its services or products may receive the income and may make a profit as a result of its receipt. ~~All~~ **Except as authorized in subsections (2), (3) and (4), the corporation shall apply all** such resulting profit ~~shall be applied~~ to the maintenance, expansion, or operation of the lawful activities of the corporation, ~~and shall not be distributed to shareholders, members, directors, or officers of the corporation. However, profit derived solely from the charging of fees or prices by a corporation to its shareholders or members for its services or products may be distributed to the shareholders or members on the basis of, or in proportion to, the fees or prices paid by shareholders or members to the corporation for its services or products.~~

(6) ~~(5)~~ This act shall not be ~~deemed to permit~~ **interpreted in a way that permits** assets held by a corporation for charitable purposes to be used, conveyed or distributed for noncharitable purposes.

Sec. 303. (1) A corporation organized ~~upon~~ **on** a stock basis may issue the number of shares authorized in its articles of incorporation. ~~Except as otherwise provided in this act, the articles of incorporation or bylaws may prescribe the qualifications, liquidation rights, preferences, and limitations, and other rights, preferences, and limitations of or upon the shareholders of the corporation.~~ **All of the following apply to shares issued by the corporation:**

(a) **The shares may be all of 1 class or may be divided into 2 or more classes. Each class shall consist of shares having the designations and relative voting, distribution,**

liquidation, and other rights, preferences, and limitations, consistent with this act, stated in the articles of incorporation or bylaws.

(b) The articles of incorporation or bylaws may deny, limit, or otherwise prescribe the distribution or liquidation rights of shares of any class. Approval by the shareholders and each affected class of shareholders, if any, voting as a class, is required to adopt, amend, or repeal any bylaw denying, limiting, or otherwise prescribing the voting rights of shareholders or the affected class of shareholders.

(c) If the shares are divided into 2 or more classes, the shares of each class shall be designated to distinguish them from the shares of the other classes.

(d) Each share shall be equal to every other share of the same class.

~~(2) The articles of incorporation may provide that the shares of a corporation shall be all or 1 class or shall be divided into 2 or more classes. If the shares are divided into 2 or more classes, the shares of each class shall be designated to distinguish them from the shares of the other classes. Except as otherwise provided in this act, each class shall consist of shares of the designation and number stated in the articles of incorporation, and having relative qualifications, liquidation rights, preferences, and limitations, and other rights, preferences, and limitations as may be stated in the articles of incorporation or the bylaws. Each share shall be equal to every other share of the same class.~~

~~(3) Each shareholder shall have 1 vote for each share of stock held by that shareholder on each matter submitted to a vote of shareholders, unless the articles or bylaws provide that each shareholder shall have 1 vote regardless of shares held by that shareholder or unless the articles or bylaws deny, limit, or otherwise prescribe the voting rights of shares of any class. The shareholders and each affected class of shareholders, if any, shall adopt, amend, or repeal any~~

bylaw denying, limiting, or otherwise prescribing the voting rights of shareholders or any class of shareholders.

(e) ~~(4)~~ Except as otherwise provided by the articles or bylaws, shares of stock ~~shall not be~~ **are not** transferable and shall be canceled upon the death or resignation of the owner of the shares.

(f) Any of the voting, distribution, liquidation, or other rights, preferences, or limitations of a class may be made dependent upon facts or events ascertainable outside of the articles of incorporation or the bylaws, if the manner in which the facts or events operate on the rights, preferences, or imitations is set forth in the articles of incorporation or the bylaws.

(2) ~~(5)~~ A corporation may adopt rules of qualification and government of its shareholders pursuant to its articles and bylaws. Adopted rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all shareholders **of the same class**. A corporation may provide for the cancellation of the stock of a shareholder who fails to comply with adopted rules without liability for an accounting.

Sec. 303a. The board of a corporation organized on a stock basis by resolution may adopt and file an amendment of the articles of incorporation deleting any reference to par value.

Sec. 303b. (1) If provided in the articles of incorporation, and subject to the restrictions in sections 301 and 303c, a corporation may issue shares convertible at the option of the holder or the corporation or upon the happening of a specified event, into shares of any class or into bonds. A corporation may convert shares into bonds only if the corporation could at the time of conversion have purchased, redeemed, or otherwise

acquired the shares by issuing the bonds under the restrictions of section 345. Authorized shares, issued or unissued, may be made convertible as provided in this subsection within the period and upon terms and conditions authorized in the articles of incorporation.

(2) Unless otherwise provided in the articles of incorporation, and subject to the restrictions in sections 301 and 303c, a corporation may issue bonds convertible at the option of the holder into other bonds or into shares of the corporation within the period and upon terms and conditions as fixed by the board.

(3) If the shareholders approve the issue of bonds or shares convertible into shares of the corporation, the approval may provide that the board is authorized by amendment of the articles of incorporation to increase the authorized shares of any class to the number that will be sufficient, when added to the previously authorized but unissued shares of the class, to satisfy the conversion privileges of any bonds or shares convertible into shares of the class.

303c. (1) A corporation shall not issue bonds convertible into shares or shares convertible into other shares of a corporation unless 1 of the following conditions is satisfied:

(a) A sufficient number of authorized but unissued shares of the appropriate class are reserved by the board to be issued only in satisfaction of the conversion privileges of the convertible bonds or shares when issued.

(b) The aggregate conversion privileges of the convertible bonds or shares when issued do not exceed the aggregate of any shares reserved under subdivision (a) and any additional shares which may be authorized by the board under subsection (3) of section 303b(3).

(2) **The corporation shall cancel, bonds which have been converted. Unless otherwise provided in the articles of incorporation, shares that have been converted shall be restored to the status of authorized but unissued shares.**

303d. The articles of incorporation may provide for 1 or more classes of shares that are redeemable, in whole or in part, at the option of the shareholder, or the corporation, or if a specified event occurs. Subject to restrictions imposed in sections 301 and 345, the shares may be redeemable in cash, bonds, securities, or other property at prices, within the periods, and under conditions stated in the articles of incorporation.

Sec. 304. Except as otherwise provided in this act, the articles of incorporation or bylaws of a corporation organized ~~upon~~ **on** a membership basis may prescribe the number, **voting rights**, qualifications, liquidation rights, preferences, and limitations, and other rights, preferences, and limitations of or upon the members of the corporation.

(2) A corporation organized ~~upon~~ **on** a membership basis may have 1 or more classes of members. Except as otherwise provided in this act, any provisions for classes of members and the relative number, **voting rights**, qualifications, liquidation rights, preferences, and limitations, and other rights, preferences and limitation of or upon such class shall be set forth in the articles of incorporation or the bylaws. Each member of any class of members shall have equal rights with all members of that class.

(3) ~~Each~~ **Except as provided in the articles of incorporation or bylaws, each** member of a corporation, regardless of class, shall be entitled to 1 vote on each matter submitted to a vote of members, unless the articles **of incorporation** or bylaws deny, limit, or otherwise prescribe the voting rights of any class of members. The members of each affected class of **members of a corporation organized on a membership basis**, if any, shall adopt, amend, or

repeal any bylaw denying, limiting, or otherwise prescribing the voting rights or any class of members.

(4) Members of a condominium association ~~formed~~ **organized** for the purposes of administering the affairs of a condominium project are entitled to voting rights designated by the master deed of the condominium.

(5) The articles of incorporation or the bylaws may provide that members of a homeowners or property owner association are entitled to voting rights predicated on the number of lots owned by each member.

(6) Except as otherwise provided in this act, the articles of incorporation or the bylaws, membership shall not be transferrable and shall be terminated by death, resignation, expulsion, or expiration of a term of membership.

(7) A corporation may adopt rules of qualification and government of the members, including rules of admission to, retention or, and expulsion from members, pursuant to its articles ~~and~~ **of incorporation or** bylaws. Such rules shall be germane to the purposes of the corporation, and equally enforced as to all members.

(8) The articles of incorporation of a corporation organized ~~upon~~ **on** a membership basis may provide that membership ~~shall be~~ **is** limited to persons who are members in good standing in other corporation. The articles of incorporation may provided that the failure to remain a member in good standing in the other corporation constitutes grounds for expulsion of a member if the **articles of incorporation or** bylaws of the corporation prescribe the nature of the evidence and the procedures for expulsions ~~which~~ **that** shall be followed.

Sec. 305. (1) A corporation organized ~~upon~~ **on** a directorship basis may or may not have members. If a corporation organized upon a directorship basis has members, the members

~~shall not be~~ **are not** entitled to vote **on any matter, including but not limited to any action denying, limiting or otherwise prescribing their rights as members or excluding them from membership.**

(2) Unless the context of a provision of this act otherwise requires, all matters ~~which~~ **that** are subject to membership vote or other action in this act in the case of a membership corporation ~~shall be~~ **are** subject to duly authorized action by the board of directors of a directorship corporation.

Sec. 307. (1) A subscription for shares or membership made before or after ~~organization of~~ a corporation **is formed** is not enforceable unless in writing and signed by the subscriber.

(2) A subscription for shares of or membership in a corporation to be ~~organized may~~ **formed** is irrevocable and may be accepted by the corporation for a period of 6 months, unless **otherwise provided by the subscription agreement or unless** all the subscribers consent to its revocation.

(3) A contract with a corporation to purchase its shares to be issued ~~or its treasury shares~~ is a subscription agreement and not an executory contract to purchase shares, unless otherwise provided in the contract.

Sec. 308. (1) Unless otherwise provided in the subscription agreement:

(a) A subscription for shares or for membership made before or after ~~organization~~ **formation** of a corporation ; shall be paid in full at ~~such~~ **the** time, or in ~~such~~ installments and at ~~such~~ **the** times, as ~~shall be determined by~~ the board **determines**.

(b) A call made by the board for payment on subscriptions shall be ratable as to all shares or members of the same class.

(c) A corporation may retain a **security interest in** any shares or **memberships** as security for performance by the subscriber of ~~the subscriber's~~ **his or her** obligations under a subscription agreement and subject to the power of sale or rescission upon default provided in section 309.

Sec. 309. (1) ~~In case of default~~ **If a subscriber defaults** in payment of an installment or call or other amount due under a subscription agreement, including an amount ~~which~~ **that** may become due as a result of a default in performance of any provision ~~thereof~~ **of a subscription agreement**, the corporation has the following rights and duties:

(a) It may collect the amount due in the same manner as any other debt owing to it.

~~(b)~~ **If the a corporation is organized on a stock basis and if the** articles of incorporation or bylaws of a corporation ~~organized on a stock basis~~ permit the transfer of shares ~~it may~~, **the corporation may at any time before full satisfaction of the claim or a judgment**, sell the shares in any reasonable manner consistent **with the articles of incorporation and bylaws**. ~~therewith at any time before full satisfaction of the claim or judgment therefore. Notice~~ **The corporation shall give notice** of the time and place of a public sale or of the time after which a private sale may ~~be had~~ **occur**, ~~together with a~~ **and a written** statement of the amount due upon each share, ~~shall be given in writing~~ to the subscriber personally or by registered or certified mail at least 20 days before ~~any such~~ **the** time stated in the notice. ~~Any~~ **The corporation shall pay any** excess of net proceeds realized over the amount due plus interest ~~shall be paid~~ to the subscriber. If the sale is made in good faith, in a reasonable manner, and ~~upon such notice~~ **after the notice required in this subdivision**, the corporation may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value acquires title to the sold shares free of any right of the subscriber

even ~~though~~ if the corporation fails to comply with 1 or more of the requirements of this subdivision.

(b) ~~(e)~~ It may rescind the subscription, with the effect provided in section 310, and may recover damages for breach of contract. In the case of transferable shares of a corporation organized ~~upon~~ **on** a stock basis, unless special circumstances show proximate damages of a different amount, the measure of damages ~~shall be~~ **is** the difference between the **fair** market ~~price~~ **value** at the time and place of tender of the shares and the unpaid contract price. Liquidated damages may be provided for in the subscription agreement. ~~In any amount which is reasonable, including the difficulties of proof of loss.~~ **A subscription agreement may also provide for liquidated damages in any reasonable amount.** The subscriber may have restitution of the amount by which the sum of his or her payments exceeds the corporation's damages for breach of contract, whether fixed by agreement or judgment.

(2) The rights and duties set forth in this section ~~shall be interpreted as~~ **are** cumulative so far as is consistent with entitling the corporation to a full and single recovery of the amount due or its damages. ~~The~~ **A** subscription agreement may limit the rights and remedies of the corporation set forth in this section, and may add to them so far as is consistent with this subsection.

Sec. 313. (1) Except as otherwise provided in the articles of incorporation or the bylaws, corporations, **foreign corporations**, business corporations, **foreign business corporations**, **limited liability companies**, unincorporated associations, and partnerships and any other person, without limitation, may be a shareholder or member of a corporation.

(2) If a corporation ~~or~~ , **foreign corporation**, business corporation, or **foreign business corporation** is a shareholder or member in a corporation, its officers or directors may serve as a

director of the corporation of which it is a shareholder or member. A corporation ~~or~~, **foreign corporation**, business corporation, **foreign business corporation**, **limited liability company**, **unincorporated association**, **partnership or other person** shall possess and exercise all the rights, powers, privileges and liabilities of individual shareholders or members.

Sec. 314. (1) The powers granted in this section to the board may be reserved to the shareholders by the articles of incorporation.

(2) The board may authorize shares to be issued by a corporation organized on a stock basis for no consideration or for consideration consisting of any tangible or intangible property or benefit to the corporation, including but not limited to cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) A determination by the board that any consideration received or to be received for shares to be issued is adequate is conclusive insofar as the nature and amount of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board authorized the issuance of shares, the shares issued are fully paid and nonassessable and the subscriber has all the rights and privileges of a holder of the shares.

Sec. 317. (1) ~~A holder of or subscriber for shares or membership of a corporation is under no obligation to the corporation or its creditors to pay for the shares or membership other than the obligation to pay to the corporation the unpaid portion of the consideration for which the shares were issued or to be issued or the membership was granted to be granted.~~ A person who purchases shares of a corporation from the corporation or purchases a membership in the

corporation is not liable to the corporation or its creditors with respect to the shares or membership except to pay the consideration for the issuance of the shares or membership.

(2) A person holding stock or membership in a fiduciary or representative capacity is not personally liable to the corporation as the holder of or subscriber for shares or membership of a corporation, but the estate and funds in ~~the person's~~ **his or her** hands are ~~so~~ **liable to the corporation.**

(3) A person becoming an assignee, transferee, or pledgee of shares or membership or of a subscription for shares or membership in good faith and without knowledge or notice that the full consideration ~~therefor~~ has not been paid is not liable to the corporation or its creditors for any unpaid portion of the consideration, but the original holder or subscriber and any assignee or transferee before an assignment or transfer to a person taking in good faith and without knowledge or notice remains liable ~~therefor~~ **for that amount.**

(4) Unless otherwise provided in the articles of incorporation, a shareholder or member of a corporation is not personally liable for the acts or debts of the corporation except that he or she may become personally liable by reason of his or her own acts or conduct.

Sec. 331. **Except as provided in section 336, the** ~~The~~ shares of a corporation shall be represented by certificates **which shall be** signed by the chairperson of the board, vice-chairperson of the board, president, ~~or a vice-president, treasurer, or other officer authorized by the bylaws or a resolution of the board,~~ **and which also may be signed by another officer of the corporation.** ~~and~~ **The corporation may seal the certificate** ~~may be sealed~~ with the seal of the corporation or a facsimile ~~thereof~~ **of the seal.** The signatures of the officers may be facsimiles ~~if the certificate is countersigned by a transfer agent or registered by a registrar other~~

than the corporation itself or its employee. ~~In case~~ **If** an officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if ~~the person~~ **he or she** were ~~an~~ **the** officer ~~at~~ **on** the date of issue.

Sec. 332. (1) A certificate representing shares shall state ~~upon~~ **on** its face **all of the following:**

(a) That the corporation is a nonprofit corporation formed under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares which the certificate represents.

(d) A statement that the shares are not transferable, unless the articles or bylaws provide that shares ~~shall be~~ **are** transferable. ~~, in which case~~ **If the shares are transferrable**, the certificate shall state any conditions or limitations on transferability of the shares.

(e) The act under which the corporation was formed.

(2) A certificate representing shares issued by a corporation ~~which~~ **that** is authorized to issue shares of more than 1 class shall set forth on its face or back or state **on its face or back** that the corporation will furnish to a shareholder upon request and without charge a full statement of the designation, relative rights, preferences, and limitations of the shares of each class **the corporation is** authorized to ~~be issued~~ **issue**.

Sec. 336. (1) **Unless the articles of incorporation or bylaws provide otherwise, the board of a corporation may authorize the issuance of some or all of the shares of any or all of its classes of shares without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.**

(2) Within a reasonable time after the issuance or transfer of shares without certificates under this section, the corporation shall send the shareholder a written statement of the information required on certificates under section 332 and, if applicable, sections 472 and 488.

Sec. 338. (1) A corporation may issue ~~certificates for fractions of a share where necessary to effect share transfer, share distributions, or a reclassification, merger, consolidation, or reorganization, which shall entitle the holder~~ **fractions of a share and may do any 1 or more of the following:**

(a) Issue certificates for fractions of shares that entitle the holders to exercise voting rights and receive distributions permitted under section 301 in proportion to their fractional holdings ~~, to exercise voting rights and participate in liquidating distributions .~~

~~(2) (b) As an alternative, a corporation may pay~~ **Pay** in cash the fair value of fractions of ~~a share~~ **shares** as of the time when those entitled to receive the fractions are determined.

~~(3) (c) As an alternative, a corporation may issue~~ **Issue** scrip in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as ~~therein~~ **provided in the scrip** for full shares. ~~, but such~~ **The** scrip shall not entitle the holder to any right of a shareholder except as ~~therein~~ **provided in the scrip**. The scrip shall be issued subject to the condition that is become void if not exchanged for certificates representing full shares before a specified date. The scrip may be subject to the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds of the sale distributed to the holders of the scrip, or subject to any other condition ~~which~~ **that** the board may determine.

~~(4)~~ (2) A corporation may provide reasonable opportunity for persons entitled to fractions of a share or scrip to sell them or to purchase additional fractions of a share or scrip needed to acquire a full share.

Sec. 341a. (1) Unless the articles of incorporation provide otherwise, a corporation may issue shares pro rata and without consideration to the corporation's shareholders or to the shareholders of 1 or more classes. An issuance of shares under this subsection is a share dividend.

(2) A corporation may not issue shares of 1 class as a share dividend in respect of shares of another class unless the articles authorize the issuance, the issuance is consistent with the limitations in section 301 and either a majority of the votes entitled to be cast by the class to be issued approve the issue or there are no outstanding shares of the class to be issued.

Sec. 343. (1) The shareholders of a corporation organized on a stock basis do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation or by agreement between the corporation and 1 or more shareholders.

(2) A statement included in the articles or an agreement that the corporation elects to have preemptive rights, or words of similar import, means that the following principles apply except to the extent the articles of incorporation or agreement expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board to provide a fair and reasonable

opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares if the board decides to issue them.

(b) A shareholder may waive his or her preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to any of the following:

(i) Shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation.

(ii) Shares that were not issued for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(4) The preemptive rights, if any, whether created by statute or common law, of shareholders of a corporation formed before January 1, 1973, are not affected by subsections (1) and (2). A corporation may alter or abolish its shareholders' preemptive rights by an amendment of its articles of incorporation.

Sec. 344. (1) Subject to restrictions imposed by this act or the articles of incorporation, a corporation organized on a stock or membership basis may acquire its own shares or memberships. Except as provided in subsection (4), those shares or memberships constitute authorized but unissued shares or memberships.

(2) If the articles prohibit reissue of any shares or memberships acquired pursuant to subsection (1), the board by resolution shall adopt and file any necessary amendment of the articles of incorporation reducing the number of authorized shares or memberships accordingly.

(3) A corporation shall not acquire its own shares or memberships by purchase, redemption, or otherwise unless after the acquisition there remain outstanding shares or memberships possessing, collectively, voting rights or unless the articles of incorporation have been amended to provide that the corporation is organized on a directorship basis after the acquisition.

(4) A corporation that acquires its own shares or memberships may grant a security interest in the shares or memberships as security for the payment of the purchase price of the shares or memberships. Any shares or memberships acquired by the corporation in which it has granted a security interest are not cancelled and do not constitute authorized but unissued shares or memberships until the corporation pays the purchase price. If a corporation has granted a security interest in its own shares or memberships, the shares or

memberships shall not be voted directly or indirectly and shall not be counted in determining the total number of issued shares or members entitled to vote at any given time, except to the extent provided by the agreement creating the security interest in the event of default. When the purchase price is paid, the shares or memberships are canceled and constitute authorized but unissued shares or memberships. If the articles of incorporation prohibit reissue of cancelled shares or memberships, then the board by resolution shall adopt and file any amendment of the articles of incorporation required under subsection (2).

Sec. 345. (1) A board may authorize and the corporation may make distributions to its shareholders or members that are permitted in section 301, subject to any restriction in the articles of incorporation and the limitation in subsection (3).

(2) If the board does not fix the record date for determining shareholders or members entitled to a distribution, other than a distribution involving a purchase, redemption, or acquisition of the corporation's shares or memberships, the record date is the date the board authorizes the distribution.

(3) A corporation shall not make a distribution if after giving it effect the corporation would not be able to pay its debts as the debts become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders or members whose preferential rights are superior to those receiving the distribution.

(4) The board may base a determination that a distribution is not prohibited under subsection (3) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances, on a fair valuation, or on other method that is reasonable.

(5) The effect of a distribution under subsection (3) is measured at the following times:

(a) Except as provided in subsection (7), in the case of distributions by purchase, redemption, or other acquisition of the corporation's shares or memberships, as of the earlier of the date money or other property is transferred or debt incurred by the corporation, or the date the shareholder or member ceases to be a shareholder or member with respect to the acquired shares or ceases to be a member.

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder or member incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors, except as otherwise agreed.

(7) If the corporation acquires its shares or memberships in exchange for an obligation to make future payments, and distribution of an obligation would otherwise be

prohibited under subsection (3) at the time it is made, the corporation may issue the obligation and all of the following apply:

(a) The portion of the obligation that could have been distribute without violating subsection (3) shall be treated as indebtedness as described in subsection (6).

(b) All of the following apply to the portion of the obligation that exceeds the amount treated as indebtedness under subdivision (a):

(i) At any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(ii) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (6) to the extent that a distribution may be made at that time under this section.

(iii) Unless otherwise provided in the agreement for the acquisition of the shares, the obligation is a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made with respect to shares having preferential rights superior to those of shares acquired in exchange for the obligation.

(8) The enforceability of a guaranty or other undertaking by a third party relating to a distribution is not affected by the prohibition of the distribution under subsection (3).

(9) If a claim is made to recover a distribution made contrary to subsection (3) or if a violation of subsection (3) is raised as a defense to a claim based upon a distribution, nothing in this section prevents the person receiving the distribution from asserting a right of rescission or other legal or equitable rights.

Sec. 392. This chapter shall not apply to distributions in dissolution under chapter

8.

Sec. 402. ~~An~~ **A corporation shall hold** annual meeting of shareholders or members for election of directors and for ~~such~~ **any** other business ~~as~~ **that** may come before the meeting shall be held at a time ~~as provided~~ **on a date designated** in the bylaws, unless ~~such action is taken~~ **the shareholders or members act** by written consent as provided in section 407 **or by ballot as provided in section 408 or 409**. Failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or any adjournment of the meeting, does not affect otherwise valid corporate acts or work a forfeiture or give cause for dissolution of the corporation, except as provided in section 823. If the annual meeting is not held on the date designated ~~therefor~~ **for the meeting**, the board shall cause the meeting to be held as soon thereafter as convenient. If the annual meeting is not held for 90 days after the date designated ~~therefor~~ **for the meeting**, or if no date ~~has been~~ **is** designated for 15 months after ~~organization~~ **formation** of the corporation or after its last annual meeting, the circuit court for the county in which the **principal place of business or** registered office of the corporation is located, upon application of a shareholder or member, may summarily order the meeting or the election, or both, ~~to be~~ held at ~~such~~ **the** time and place, upon ~~such~~ **the** notice, and for the transaction of ~~such~~ **the** business ~~as may be~~ designated in the order. At any ~~such~~ meeting ordered to be called by the court, the shareholders or members present in person or by proxy and having voting powers $\frac{1}{3}$ constitute a quorum for transaction of the business designated in the order.

Sec. 403. ~~A~~ **The Board may call a** special meeting of shareholders or members ~~may be called by the board, or by~~ **or** officers, directors, shareholders, or members **may call a special**

meeting as provided in the bylaws. Notwithstanding any ~~such~~ provision **in the bylaws**, upon application of the holders of not less than 10% of all the shares or of not less than 10% of all the members entitled to vote at a meeting, the circuit court for the county in which the **principal place of business or** registered office is located, for good cause shown, may order a special meeting of shareholders or members ~~to be~~ called and held at ~~such~~ **the** time and place, upon ~~such~~ **the** notice and for the transaction of ~~such~~ **the** business ~~as may be~~ designated in the order. At any ~~such~~ meeting ordered to be called by the court, the shareholders or members present in person or by proxy and having voting powers constitute a quorum for transaction of the business designated in the order.

Sec. 404. (1) Except as otherwise provided in this act, **written** notice of the time, place, if any, and purposes of a meeting of shareholders or members shall be given in any of the following manners:

(a) ~~By written notice, given personally~~ **Personally**, by mail, or by electronic transmission, not less than 10 nor more than 60 days before the date of the meeting to each shareholder or member of record entitled to vote at the meeting.

(b) By including the notice, prominently displayed, in a newspaper or other periodical regularly published at least semiannually by or on behalf of the corporation and addressed and mailed, postage prepaid, to ~~a~~ **each** member or shareholder entitled to vote at the meeting not less than 10 nor more than 60 days before the meeting.

(2) **Notice of the purposes of a meeting shall include notice of shareholder or member proposals that are proper subjects for shareholder or member action and are intended to be presented by shareholders or members who have notified the corporation in writing of their intention to present the proposals at the meeting. The bylaws may establish**

reasonable procedures for the submission of proposals to the corporation in advance of the meeting.

(3) ~~(2)~~ If a meeting of the shareholders or members is adjourned to another time or place, it is not necessary, unless the bylaws otherwise provide, to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. If after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder or member of record on the new record date entitled to notice under subsection (1).

(4) ~~(3)~~ If a meeting of shareholders or members is adjourned under subsection (2), only business that might have been transacted at the original meeting may be transacted at the adjourned meeting if a notice of the adjourned meeting is not given. **A shareholder, member, or proxy holder may be present and vote at the adjourned meeting by a means of remote communication if he or she was permitted to be present and vote by that means of remote communication in the original meeting notice.**

(5) ~~(4)~~ ~~Attendance in person at a meeting of shareholders or members, in person or by proxy, constitute a waiver.~~ **A shareholder's or member's attendance at a meeting, in person or by proxy, will result in both of the following:**

(a) **Waiver** of objection to lack of notice or defective notice of the meeting, unless the shareholder or member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(b) **Waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder or member objects to considering the matter when it is presented.**

(5) If a shareholder, ~~or~~ member, **or proxy holder** is permitted to participate in and vote at a meeting by remote communication under section 405, the notice described in subsections (1) shall include a description of the means of remote communication by which a shareholder, ~~or~~ member **or proxy holder** may participate.

(6) **This section does not prohibit a corporation from conducting a meeting of its shareholders or members without notice or with the notice prescribed in the articles of incorporation or bylaws, if the meeting is for a purpose or purposes that do not involve the election of directors or the taking other actions involving control or governance of the corporation for which a vote of the shareholders or members is required under this act, the articles of incorporation, the bylaws, or an agreement under Section 488.**

Sec. 405. (1) ~~A corporation may provide in its articles of incorporation or in its bylaws for a shareholder's or member's participation.~~ **Unless otherwise restricted by the articles of incorporation or bylaws, a shareholder, member or proxy holder may participate** in a meeting of shareholders or members by a conference telephone or other means of remote communication ~~by which~~ **that permits** all persons participating in the meeting ~~may hear each other if all~~ **to communicate with all the other participants. All participants** ~~are~~ **shall be** advised of the means of remote communication in use and the names of the participants in the meeting ~~are divulged~~ **shall be disclosed** to all participants.

(2) Participation in a meeting pursuant to this section constitutes presence in person at the meeting.

(3) Unless otherwise restricted by any provisions of the articles of incorporation or bylaws, the board of directors may hold a meeting of shareholders or members conducted solely by means of remote communication.

(4) Subject to any guidelines and procedures adopted by the board of directors, ~~shareholders, or~~ **members and proxy holders** not physically present at a meeting of shareholders or members may participate in the meeting by means of remote communication and are considered present in person and may vote at the meeting if all of the following are met:

(a) The corporation implements reasonable measures to verify that each person considered present and permitted to vote at the meeting by means of remote communication is a ~~shareholder, or~~ **member, or proxy holder**.

(b) The corporation implements reasonable measures to provide each ~~shareholder, or~~ **member, or proxy holder** a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders or members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

(c) If any ~~shareholder, or~~ **member, or proxy holder** votes or takes other action at the meeting by means of remote communication, a record of the vote or other action is maintained by the corporation.

~~(d) A shareholder or member may be present and vote at an adjourned meeting of the shareholders or members by a means of remote communication if he or she was permitted to be present and vote by that means of remote communication in the original meeting notice given under section 404.~~

Sec. 406. (1) At each meeting of shareholders or members, a chairperson shall preside. The chairperson shall be appointed as provided in the bylaws or, in the absence of a provision in the bylaws, by the board of directors.

(2) Unless the articles of incorporation or bylaws provide otherwise, the chairperson presiding at a meeting of the shareholders or members shall determine the

order of business and has the authority to establish rules for the conduct of the meeting. Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders or members.

(3) The chairperson of the meeting shall announce at the meeting when the polls close for each vote of the shareholders or members. If no announcement is made, the polls shall close on the final adjournment of the meeting. After the polls close, ballots, proxies, and votes and any revocations or changes to ballots, proxies, or votes, shall not be accepted.

Sec. 407. (1) The articles of incorporation may provide that any action ~~the shareholders or members are~~ required or permitted by this act to ~~be taken~~ **take** at an annual or special meeting ~~of shareholders or members~~ may be taken without a meeting, without prior notice, and without a vote, if **written** consents ~~in writing~~, setting forth the action taken, are signed and dated by the holders of outstanding ~~stock~~ **shares** or members having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares or members entitled to vote on the action were present and voted. ~~Prompt~~ **The corporation shall give prompt** notice of ~~the taking of the~~ **any** corporate action **taken** without a meeting by less than unanimous written consent ~~shall be given~~ to shareholders or members who have not consented **to the action** in writing.

(2) If **the shareholders or members take** an action ~~consented to~~ **by written consent** under ~~this section~~ **subsection (1) that** would ~~have required~~ **require** filing of a certificate under any other section of this act if the action had been ~~voted upon by shareholders or members~~ **taken** at a meeting of the shareholders or members, the certificate filed under that other section shall state, in lieu of any statement required by that section concerning a vote of shareholders or

members, that both written consent and written notice have been given as provided in ~~this section~~ **subsection (1)**.

(3) Any action **the shareholders or members are** required or permitted by this act to ~~be taken~~ **take** at an annual or special meeting ~~of shareholders or members~~ may be taken without a meeting, without prior notice, and without a vote, if **before or after the action** all the shareholders or members entitled to vote on the action consent to the action in writing. **If the shareholders or members take an action by written consent under this subsection that requires filing of a certificate under any other section of this act if the action had been taken at a meeting, the certification filed under the other section shall state, in lieu of any statement required by that section concerning a vote of the shareholders or members, that written consent has been given as provided in this subsection.**

(4) An electronic transmission consenting to an action transmitted by a shareholder, ~~or~~ member, **or proxy holder**, or by a person authorized to act for the shareholder, ~~or~~ member, **or proxy holder**, is written, signed, and dated for the purposes of this section if the electronic transmission is delivered with information from which the corporation can determine that the electronic transmission was transmitted by the shareholder, ~~or~~ member, **or proxy holder**, or by a person authorized to act for the shareholder, ~~or~~ member, **or proxy holder**, and the date on which the electronic transmission was transmitted. The date on which an electronic transmission is transmitted is the date on which the consent was signed for purposes of this section. A consent given by electronic transmission is not delivered until reproduced in paper form and the paper form delivered to the corporation by delivery to its registered office in this state, its principal office in this state, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders or members are recorded. Delivery to a corporation's

registered office shall be made by hand or by certified or registered mail, return receipt requested. Delivery to a corporation's principal office in this state or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders or members are recorded shall be made by hand, by certified or registered mail, return receipt requested, or in any other manner provided in the articles of incorporation or bylaws or by resolution of the board of directors of the corporation.

Sec. 408. (1) A corporation may provide in its articles of incorporation or in bylaws approved by the shareholders or members that any action the shareholders or members are required or permitted to take at an annual or special meeting, including the election of directors, may be taken without a meeting if the corporation provides a ballot to each shareholder or member entitled to vote on the action in the manner provided in section 404 for providing notice of meetings of shareholders or members. A provision in the articles of incorporation or bylaws authorizing shareholder or member action by ballot shall not preclude calling or holding annual or special meetings of shareholders or members.

(2) The ballot provided to shareholders or members under subsection (1) shall meet all of the following:

(a) Set forth each proposed action.

(b) Provide an opportunity for the shareholders or members to vote for or against each proposed action.

(c) Specify a time by which the corporation must receive a ballot in order to be counted as a vote of the shareholder or member. The time specified shall be not less than 20 or more than 90 days after the date the corporation provides the ballot to the shareholders or members.

(3) An action shall be considered to have been approved by the shareholders or members by ballot if the total number of shareholders or members voting or the total number of shareholder or member votes cast in ballots received by the corporation by the time specified in the ballots equals or exceeds the quorum required to be present at a meeting taking the action, and the number of favorable votes equals or exceeds the number of votes that would be required to approve the action at a meeting at which the number of votes cast by shareholders or members present was the same as the number of votes cast by ballot. Except as otherwise provided in the articles of incorporation, an invalid ballot, an abstention, or the submission of a ballot marked "abstain" with respect to any action does not constitute a vote cast on that action.

(4) Except as otherwise provided in the articles of incorporation or bylaws, a shareholder or member may not revoke a ballot received by the corporation.

(5) Subject to subsection (6), a corporation that provides in its articles of incorporation or bylaws for shareholder or member action by ballot may establish procedures enabling shareholders or members or a specified number or percentage of shareholders or members to include proposed actions in a ballot.

(6) If holders of at least 10% of all the voting shares or of at least 10% of the member votes submit a proposal for action by the shareholders or members, a corporation that provides in its articles of incorporation or bylaws for membership action by ballot shall include a proposed action in a ballot and submit such ballot to the shareholders or members as provided in this section.

(7) If any other section of this act requires the filing of a certificate with the department if the action is approved by vote of the shareholders or members at a meeting,

the action may be approved by ballot under subsection (1) and, in lieu of any statement required by the section concerning the vote of the shareholders or members at a meeting, the certificate shall state that the action was approved by ballot under this section.

Sec. 409. (1) A corporation may provide in its articles of incorporation or in bylaws approved by the shareholders or members that any action the shareholders or members required or permitted take at an annual or special meeting, including the election of directors, may be taken without a meeting if the corporation provides a ballot to each shareholder or member entitled to vote that allows the shareholder or member to vote at a polling place or at polling places established by the corporation that are reasonably accessible to the shareholders or members. The corporation shall provide notice to each shareholder or member entitled to a cast ballot at a shareholder or member vote held at a polling place or at polling places under this subsection within the same time and in the same manner provided for notice of meetings of shareholders or members under this act. The notice shall describe each proposed action to be included on the ballot, the location of the polling place or places, and the times during which the polling places are to be open. A provision in the articles of incorporation or bylaws authorizing shareholder or member action by ballot cast at a polling place or at polling places does not preclude calling or holding annual or special meetings of shareholders or members.

(2) The ballot to be cast at a polling place shall set forth each proposed action and provide an opportunity for the shareholders or members to vote for or against the action.

(3) An action shall be considered to have been approved by the shareholders or members by ballot cast at a polling place or at polling places if the total number of shareholders or members voting or the total number of votes cast by shareholders or

members at the polling place or polling places during the period when the polls were open equals or exceeds the quorum required to be present at a meeting taking the action, and the number of favorable votes equals or exceeds the number of votes that would be required to take the action at a meeting at which the number of votes cast by shareholders or members present was the same as the number of votes cast by ballot. Except as otherwise provided in the articles of incorporation an invalid ballot, an abstention or the submission of a ballot marked "abstain" with respect to any action does not constitute a vote cast on that action.

(4) Except as otherwise provided in the articles of incorporation or bylaws, a shareholder or member may not revoke a ballot cast at a polling place.

(5) Subject to subsection (6), a corporation that provides in its articles of incorporation or bylaws for shareholder or member action by ballot cast at a polling place or at polling places may establish procedures enabling shareholders or members or a specified number or percentage of shareholders or members to include proposed actions in a ballot.

(6) If holders of at least 10% of all the voting shares or of at least 10% of the member votes submit a proposed by the shareholders or members, a corporation that provides in its articles of incorporation or bylaws for membership action by ballot cast at a polling place or at polling places shall include a proposed action in a ballot and submit such ballot to the shareholders or members as provided in this section.

(7) If any other section of this act requires the filing of a certificate with the department if the action is approved by vote of the shareholders or members at a meeting, the action may be approved by ballot under subsection (1) and, in lieu of any statement

required by the section concerning the vote of the shareholders or members at a meeting, the certificate shall state that the action was approved by ballot under this section.

Sec. 412. (1) Except as provided in this subsection, for the purpose of determining shareholders or members entitled to notice of and to vote at a meeting of shareholders or members or an adjournment of a meeting or to cast a ballot at a polling place, and for the purpose of determining the shareholders or members entitled to receive and to cast a ballot under section 408, the bylaws may provide for fixing, or in the absence of a provision the board shall by resolution establish a record date. If the bylaws establish a record date, the board shall comply with the bylaws in establishing the record date. The record date shall not precede the date on which the resolution fixing the record date is adopted by the board. The record date shall not be more than 60 or less than 10 days before the date of the meeting or the first day on which a shareholder or member may cast a ballot at a polling place under section 409. In the case of ballots under section 408, the record date shall be not more than 60 or less than 20 days before the last date on which ballots must be received by the corporation in order to be counted. If a record date is not fixed, the record date for determination of shareholders or members entitled to notice of or to vote at a meeting of shareholders or members or to cast a ballot at a polling place shall be the close of business on the day next preceding the day on which notice is given, or if no notice is given, the day next preceding the day on which the meeting is held or the day next preceding the first day on which a shareholder or member may cast a ballot at a polling place under section 409. In the case of a ballot under section 408, if a record date is not fixed, the record date for determination of the shareholders or members entitled to receive and cast a ballot is the close of business of the day next preceding the day on which the corporation provides the

ballot to the shareholders or members under section 408(1). When a determination of shareholders or members of record entitled to notice of or to vote at a meeting of shareholders or members has been made as provided in this section, the determination applies to any adjournment of the meeting, unless the board establishes a new record date under this section for the adjourned meeting.

(2) For the purpose of determining shareholders or members entitled to express consent to or to dissent from a proposal without a meeting under section 407, the bylaws may provide for fixing a record date. The record date shall not be more than 60 days before the proposed effective date of the shareholder or member action. If the bylaws do not establish a record date, the board may establish a record date that does not precede the date the board adopts the resolution establishing the record date and is not more than 10 days after the board resolution. If a record date is not established and prior action by the board is required with respect to the corporate action to be taken without a meeting under section 407, the record date is the close of business on the day on which the resolution of the board is adopted. If a record date is not fixed and prior action by the board is not required, the record date is the first date on which a signed written consent is delivered to the corporation as provided in section 407.

(3) For the purpose of determining shareholders or members entitled to receive payment of a share dividend, distribution or allotment of a right or for the purpose of any other action, the bylaws may provide for establishing, or in the absence of a provision the board may establish a record date. The record date shall not precede the date on which the resolution establishing the record date is adopted by the board. The date shall not be more than 60 days before the payment of the share dividend, distribution, or allotment of a right

or other action. If a record date is not established, the record date is the close of business on the day on which the resolution of the board relating to the corporate action is adopted.

Sec. 413. (1) The officer or agent ~~having charge of~~ **responsible for** the shareholder or membership records of a corporation shall make and certify a complete list of the shareholders or members entitled to vote at a ~~shareholders' or members'~~ meeting or any adjourned shareholders' or ~~members' meeting.~~ **The list shall meet all of the following- adjourned meeting of the shareholders or members. All of the following apply to the list:**

(a) ~~Be arranged~~ **The officer or agent shall arrange the list** alphabetically within each class, with the address of each member or shareholder and the number of shares held by each shareholder.

(b) ~~Be produced~~ **The officer or agent shall produce the list** at the time and place of the meeting.

(c) ~~Be~~ **The list is** open to examination by any shareholder or member during the entire meeting. If the meeting is held solely by means of remote communication, then the list shall be open to the examination of any shareholder or member during the entire meeting by posting the list on a reasonably accessible electronic network and the information required to access the list shall be provided with the notice of the meeting.

(d) ~~Be~~ **The list is** prima facie evidence as to who are the shareholders or members entitled to examine the list or to vote at the meeting.

(2) If the requirements of this section have not been complied with, and a shareholder or member present in person or by proxy in good faith challenges the existence of sufficient votes to carry any action at the meeting, the meeting shall be adjourned until the requirements are complied with. Failure to comply with the requirements of this section does not affect the

validity of an action taken at the meeting before ~~the making of~~ a challenge under this subsection.

Sec. 415. (1) Unless a greater or lesser quorum is provided in the articles of incorporation, in a bylaw adopted by the shareholders, ~~or~~ **members or incorporators**, or in this act, shares or members entitled to cast a majority of the votes at a meeting constitute a quorum at the meeting. ~~The~~ **If the withdrawal of shareholders or members leaves less than a quorum before adjournment, the remaining** shareholders or members present in person or by proxy at ~~such~~ **the** meeting may continue to do business until adjournment ~~, notwithstanding the withdrawal of enough shareholders or members to leave less than a quorum.~~ Whether or not a quorum is present, ~~the~~ a meeting may be adjourned by a vote of the shareholders or members present.

(2) When the holders of a class of shares or members of a class are entitled to vote separately on an item of business, this section applies in determining the presence of a quorum of the class for transaction of the item of business.

Sec. 421. (1) Except as otherwise provided **by statute**, in the articles of incorporation or in a bylaw adopted by the shareholders or members **of a corporation organized on a stock or membership basis**, a shareholder or member entitled to vote at a meeting of shareholders or members, **to cast a ballot under section 408 or 409**, or to express consent or dissent without a meeting **and a person entitled to vote in the election of directors of a directorship corporation** may authorize other persons to act for ~~the shareholder or member~~ **him or her** by proxy. **A director or other person entitled to vote in the election of directors of a corporation organized on a directorship basis may authorize another person or persons to act for him or her with respect to the election of directors by proxy.**

(2) ~~A proxy shall be signed by the shareholder or member or an authorized agent or representative.~~ A proxy is not valid after the expiration of 3 years from its date unless otherwise provided in the proxy.

(3) A proxy is revocable at the pleasure of the ~~shareholder or member~~ **person** executing it, except as otherwise provided in this section and sections 422 and 423.

(4) The authority of the holder of a proxy to act is not revoked by the incompetence or death of the ~~shareholder or member~~ **person** who executed the proxy unless, before the authority is exercised, written notice of the adjudication of the incompetence or death is received by the corporate officer responsible for maintaining the list of shareholders, ~~or members or persons~~ **entitled to vote in the election of directors of a directorship corporation.**

(5) Without limiting the manner in which a shareholder, ~~or member or person~~ **entitled to vote in the election of directors of a directorship corporation** may authorize another person or persons to act for him or her as proxy ~~pursuant to~~ **under** subsection (1), each of the following methods constitute a valid means by which a shareholder, ~~or member or person~~ **entitled to vote in the election of directors of a directorship corporation** may grant authority to another person to act as proxy:

(a) Delivering a writing to the person authorizing that person to act for the shareholder, ~~or member or person~~ **entitled to vote in the election of directors of a directorship corporation** as proxy. ~~Execution may be accomplished~~ **Execution may be accomplished** by the shareholder, ~~or member or person~~ **entitled to vote in the election of directors of a directorship corporation** or by an authorized officer, director, employee, or agent of the shareholder, ~~or member or person~~ **entitled to vote in the election of directors of a directorship corporation**, by signing

the writing or causing his or her signature to be affixed to the writing by any reasonable means, including, but not limited to facsimile signature.

(b) Transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will hold the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent fully authorized by the person who will hold the proxy to receive that transmission. Any telegram, cablegram, or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder, ~~or~~ member **or person entitled to vote in the election of directors of a directorship corporation.** If a telegram, cablegram, or other electronic transmission is determined to be valid, the inspectors, or, if there are no inspectors, the persons making the determination shall specify the information upon which they relied.

(6) A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created under subsection (5) may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete reproduction of the entire original writing or transmission.

Sec. 422. A proxy ~~which~~ **that** is entitled "irrevocable proxy", and ~~which~~ **that** states that it is irrevocable, is irrevocable when it is held by any of the following or a nominee of any of the following:

(a) In the case of shares or memberships ~~which~~ **that** are transferable, a ~~pledgee~~ **holder of a pledge or other a security interest in the shares or membership.**

(b) In the case of shares or memberships ~~which~~ **that** are transferable, a person who has purchased or agreed to purchase the shares or ~~members~~ **membership**.

(c) A creditor of the corporation ~~who~~ **that** extends or continues credit to the corporation in consideration of the proxy.

(d) A person who has contracted to perform services as a director, officer, or employee of the corporation, if a proxy is required by the contract of employment.

(e) ~~A holder of any other proxy coupled with an interest.~~ **A person designated by or under an agreement under section 461.**

(f) ~~A person designated by or under an agreement under section 461.~~ **A holder of any other proxy coupled with an interest.**

Sec. 423. (1) A proxy **described in section 422** becomes revocable, notwithstanding a provision making it irrevocable, after the pledge is redeemed, **or the security interest is terminated**, ~~or~~ the debt of the corporation is paid, ~~or~~ the period of employment provided for in the contract of employment has terminated, or the agreement under section 461 has terminated. ~~In a case provided for~~ **A proxy described** in section 422(c) or (d) ~~, the proxy~~ is revocable 3 years after the date of the proxy or at the end of ~~the~~ **any** period ~~, if any,~~ specified ~~therein,~~ **in the proxy**, whichever period is less, unless the period of irrevocability is renewed by execution of a new irrevocable proxy. This subsection does not affect the duration of a proxy under section 421(2).

(2) A proxy is revocable, notwithstanding a provision making it irrevocable, by a purchaser of shares ~~without knowledge~~ **who did not know at the time of purchase of the** existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the face or back of the certificate representing the shares.

Sec. 432. (1) A corporation may establish a procedure by which the beneficial owner of shares or memberships that are registered in the name of a nominee is recognized by the corporation as the shareholder or member. The procedure established may determine the extent of this recognition.

(2) The procedure established under subsection (1) may set forth any of the following:

- (a) The type of nominees to which it applies.**
- (b) The rights or privileges that the corporation recognizes in the beneficial owner.**
- (c) The manner in which the procedure is selected by the nominee.**
- (d) The information that must be provided when the procedure is selected.**
- (e) The period for which selection of the procedure is effective.**
- (f) Other aspects of the rights and duties created.**

Sec. 441. (1) Each outstanding share or member is entitled to 1 vote on each matter submitted to a vote, unless otherwise provided ~~pursuant to~~ **under section 303 or 304. A vote may be cast **at a meeting of the shareholders or members** either orally or in writing, unless otherwise provided in the bylaws. ~~In addition, the bylaws may provide for voting by electronic transmission.~~**

(2) ~~When~~ If an action other than the election of directors is to be taken by vote of the shareholders or members, it shall be authorized by a majority of the votes cast by the holders of shares or members entitled to vote on ~~that~~ **the action, unless a ~~greater plurality~~ **higher vote** is required ~~by~~ **in** the articles of incorporation or **a higher or lower vote is required** by another section of this act. **Unless otherwise provided by the articles of incorporation, abstaining from a vote or submitting a ballot marked "abstain" with respect to an action is not a vote****

cast on that action. Except as otherwise provided ~~by~~ **in** the articles of incorporation, directors shall be elected by a plurality of the votes cast at an election.

Sec. 442. (1) The articles of incorporation **or bylaws** may provide that a class of shares or members shall vote as a class to authorize any action, including amendment to the articles of incorporation. ~~Such voting~~ **A vote** as a class ~~shall be~~ **under this section** is in addition to any other vote required by this act. ~~Where~~ **If** voting as a class is provided in the articles of incorporation **or bylaws**, it shall be by the proportionate vote provided in the articles of incorporation **or bylaws** or, if a proportionate vote is not so provided, then for any action other than the election of directors, by a majority of the votes cast by the holders of shares or members of ~~such~~ **the** class entitled to vote ~~thereon~~ **on the action.**

(2) ~~Where~~ **If** voting as a class is required by this act to authorize an action, the action shall be authorized by a majority of the votes cast by the ~~holders of shares~~ **shareholders** or members of each class entitled to vote ~~thereon~~ **on that action**, unless a ~~greater~~ **higher** vote is required ~~by~~ **in** the articles of incorporation or another section of this act. ~~The voting~~ **The vote** as a class ~~shall be~~ **under this subsection** is in addition to any other vote required by this act.

(3) **Unless otherwise provided in the articles of incorporation, abstaining from a vote or submitting a ballot marked "abstain" with respect to an action that requires authorization by a class of shareholders or members is not a vote cast on that action.**

Sec. 444. (1) ~~The vote of a shareholder or member which is a~~ **Shares or memberships held by another** domestic corporation, ~~or~~ domestic business corporation, ~~or~~ foreign corporation, or foreign business corporation, whether or not the corporation or business corporation is subject to this act, may be ~~cast~~ **voted** by an officer or agent, or by a proxy

appointed by an officer or agent or by some other person, who by action of its board or pursuant to its bylaws ~~shall be~~ is appointed to ~~cast such~~ vote **the shares or membership**.

(2) A shareholders whose shares are pledged is entitled to vote the shares until they have been transferred into the name of the pledgee or a nominee of the pledgee.

Sec. 446. ~~The vote of shares or a membership~~ **Shares or a membership** held by 2 or more persons as joint tenants or as tenants in common may be ~~cast or~~ voted at a meeting of shareholders or members **or by ballot under section 408 or section 409** by any ~~of these~~ persons **joint tenant or tenant in common**, unless another joint tenant or tenant in common seeks to vote **the shares or membership** in person or by proxy. In the latter event, the written agreement, if any, ~~which~~ **that** governs the manner in which the shares or membership ~~shall be~~ **are** voted, controls if presented at the meeting either physically or by means of electronic transmission **or if presented to the corporation either physically or by means of electronic transmission before the time for casting a ballot under section 408 or section 409 expires**. If an agreement **governing votes** is not presented at the meeting, the majority in interest of the joint tenants or tenants in common present ~~shall control~~ **determines** the manner of voting. In the case of a stock corporation **or a membership carrying more than 1 vote**, if there is no majority in interest of the joint tenants or tenants in common present, the shares **or member votes**, for the purpose of voting, shall be divided among those joint tenants or tenants in common **present in person** in accordance with their interest in the shares **or membership**.

Sec. 447a. **Unless specifically otherwise provided in the articles of incorporation or bylaws, absent an order of a court of competent jurisdiction based upon a determination that special circumstances exist and the best interests of the corporation would be served, the shares or memberships of a corporation shall not be voted on any matter or considered**

to be outstanding shares or memberships for any purpose related to voting if they are owned, directly or indirectly, by another corporation, foreign corporation, business corporation, or foreign business corporation, and the first corporation owns, directly or indirectly, a majority of the shares or memberships entitled to vote for directors of the second corporation.

Sec. 451. (1) The articles of incorporation **of a corporation organized on a stock basis** may provide that a shareholder or member entitled to vote at an election for directors may vote, in person, **or by proxy, ~~or by electronic transmission,~~ or by ballot as provided in section 408 or 409** for as many persons as there are directors to be elected and for whose election the shareholder or member has a right to vote, or to cumulate votes by giving 1 candidate as many votes as the number of ~~these~~ **directors to be elected** multiplied by the number of ~~shares~~ **votes** held by the shareholder or member, or by distributing the votes of the shareholder or member on the same principle among any number of the candidates.

(2) **The articles of incorporation of a corporation organized on a directorship basis may provide that a person entitled to vote at an election for directors may vote, in person, by proxy, or by electronic transmission for as many persons as there are directors to be elected and for whose election the person has a right to vote, or to cumulate votes by giving 1 candidate as many votes and the number of such directors to be elected multiplied by the number of votes held by the person, or by distributing the votes of the person on the same principle among any number of the candidates.**

Sec. 455. ~~When, with~~ **With** respect to an action to be taken by the shareholders or members, **if** the articles of incorporation require the vote or concurrence of **the** holders of a greater proportion of the shares or a greater proportion of members or of a class ~~thereof,~~ **of**

shares or members, than required by this act with respect to the action, the articles of **incorporation** shall control. An amendment of the articles of **incorporation that** ~~which adds,~~ changes ~~or~~ or deletes ~~such a~~ **that** provision shall be authorized by the vote required to amend the articles of **incorporation** ~~pursuant to~~ **under** section 611, or by the same vote as would be required to take action under ~~such~~ **that** provision, whichever is greater. **The failure to include a provision of the kind described in this section in the articles of incorporation does not invalidate any bylaw or agreement which would otherwise be considered valid.**

Sec. 461. An agreement between 2 or more shareholders or members, if in writing and signed by the parties, ~~thereto,~~ may provide that in exercising voting rights, they shall cast their votes as provided in the agreement, or as they may agree, or as determined in accordance with a procedure agreed upon by them. **A voting agreement executed under this section, whether or not proxies are executed pursuant to the agreement, is not subject to sections 466 to through 468. A voting agreement under this section is specifically enforceable.**

Sec. 466. If shares or memberships of a corporation are transferable, a shareholder or member may confer upon a trustee the right to vote or otherwise represent his or her shares for not to exceed 10 years, by entering into a written voting trust agreement setting forth the terms and conditions of the voting trust, by filing an executed counterpart of the agreement at the registered office of the corporation, and by transferring his or her shares or membership to the trustee for purposes of the agreement. After filing of the agreement, any certificates for shares or memberships so transferred shall be surrendered and canceled and new certificates for the shares or memberships issued to the trustee stating that they are issued under the agreement. In the entry of such ownership in the records of the corporation the fact shall also be noted, and the trustee may vote the transferred shares

or memberships during the term of the agreement. A trustee holding memberships transferred under an agreement executed under this section shall have the same voting and other rights as the beneficiaries would have if the memberships were not in trust. The filed copy of the voting trust agreement is subject to inspection at any reasonable time by a shareholder, member or a holder of a beneficial interest in the voting trust, in person or by agent or attorney. Voting trust certificates shall be issued to evidence beneficial interests in the voting trust.

Sec. 467. (1) A trustee who votes shares or memberships subject to a voting trust is not liable as a shareholder, member, trustee or otherwise, except for his or her malfeasance.

(2) If 2 or more persons are designated as voting trustees, and the right and method of voting shares or memberships in their names are not fixed by the agreement appointing the trustees, the right to vote and manner of voting the shares or memberships shall be determined by a majority of the trustees. If the trustees are equally divided as to how the shares shall be voted, the votes shall be divided equally among the trustees.

Sec. 468. (1) At any time within 12 months before expiration of the original term of a voting trust agreement or an extension of a voting trust agreement under this section, 1 or more beneficiaries of the voting trust, by written agreement and with written consent of the voting trustees, may extend the duration of the voting trust agreement with regard to the shares or memberships subject to their beneficial interest for an additional period that does not exceed 10 years. Before expiration of the original term of a voting trust agreement or an extension of a voting trust agreement under this section, if the voting trustees file in the registered office of the corporation an executed counterpart of the extension agreement

and of their consent to the extension, the term of the voting trust agreement is extended for the period described in the extension agreement. An extension agreement does not affect the rights or obligations of persons not parties to the extension agreement.

(2) If an extension agreement described in subsection (1) or a voting trust agreement that otherwise meets the requires of this act contains a term of more than 10 years, the voting trust agreement or extension agreement is valid for a period of 10 years from the date of its commencement and becomes inoperative at the end of that 10 year period unless extended under subsection (1).

Sec. 472. (1) The articles of incorporation, the bylaws or an agreement among any number of holders of bonds, shares or memberships or among the holders and the corporation may contain a restriction on the transfer or registration of a bond, share or membership of a corporation that is otherwise transferable. A restriction described in this subsection is not binding with respect to bonds, shares or memberships issued before adoption of the restriction unless the holders are parties to an agreement or voted in favor of the restriction.

(2) A written restriction on the transfer or registration of a bond, share or membership of a corporation that is otherwise transferable, if permitted by this section or section 473 and noted conspicuously on the face or back of the instrument or on the information statement required under section 336, may be enforced against the holder of the restricted instrument or a successor or transferee of the holder of the restricted instrument including, but not limited to, a personal representative, administrator, trustee, guardian, or other fiduciary entrusted with similar responsibility for the person or estate of the holder. If the existence of the restriction is not noted conspicuously on the face or back

of the instrument or on the information statement required under section 336, the restriction, even if permitted by this section or section 473, is ineffective except against any person who does not have actual knowledge of the restriction.

Sec. 473. Without limiting the general authority under section 472(1) to impose restrictions on the transfer or registration of bonds, shares or memberships of a corporation that are otherwise transferable, a restriction of the transfer or registration of transfer of bonds, shares or memberships of a corporation that is consistent with section 301 is permitted if it does any of the following:

(a) Obligates the holders of the restricted instruments to offer to the corporation or to any other holders of bonds, shares or memberships of the corporation, to any other person, or to any combination of those persons, a prior opportunity to acquire the restricted instruments.

(b) Obligates the corporation or a holder of bonds, shares, or memberships of the corporation, any other person, or any combination of those persons, to purchase the instruments which are the subject of an agreement respecting the purchase and sale of the restricted instruments.

(c) Requires the corporation or the holders of a class of bonds, shares, or memberships of the corporation to consent to a proposed transfer of the restricted instruments or to approve the proposed transferee of the restricted instruments.

(d) Prohibits the transfer of the restricted instruments to designated persons or classes of persons, and the designation is not contrary to public policy.

(e) Exists for the purpose of maintaining the status of the corporation under section 115, section 501, section 521, section 527 or section 528 of the internal revenue code.

Sec. 485. A corporation shall keep books and records of account and minutes of the proceedings of its shareholders or members, board, and executive committee, if any. Unless otherwise provided in the bylaws, the books, records, and minutes may be kept outside this state. The corporation shall keep at its registered office, or at the office of its transfer agent ~~within or without~~ **in or outside** this state, records containing the names and addresses of all shareholders or members, the number and class of shares held by each shareholder or the class or classes of membership held by each member, and the dates when they respectively became ~~holders~~ **shareholders** of record ~~thereof~~ or members. Any of ~~such~~ **the** books, records, or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. A corporation shall convert into written form without charge any ~~such~~ record not in ~~such~~ **written** form, ~~upon written request of~~ **unless otherwise requested** by a person entitled to inspect ~~them~~ **the record**.

Sec. 487. (1) ~~Upon written request of~~ **If requested in writing** by a shareholder or member, a corporation shall mail to the shareholder or member its balance sheet as at the end of the preceding fiscal year; its statement of income for ~~such~~ **that** fiscal year; and, if prepared by the corporation, its statement of source and application of funds for ~~such~~ **that** fiscal year.

(2) ~~A person who is a shareholder or member of record of a corporation, upon at least 10 days' written demand, may examine for any proper purpose in person or by agent or attorney, during usual business hours, its minutes of shareholders' or members' meetings and record of shareholders or members and make extracts therefrom, at the places where they are kept pursuant to section 485.~~ **Except as provided in subsection (7), any shareholder or member of record of a corporation organized on a stock or membership basis, in person or by attorney or other agent, may during regular business hours inspect for any proper purpose the**

corporation's stock ledger, a list of its shareholders or members, and its other books and records, if the shareholder or member gives the corporation written demand describing with reasonable particularity his or her purpose and the records he or she desires to inspect, and the records sought are directly connected with the purpose. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder or member. The demand shall be delivered to the corporation at its registered office in this state or at its principal place of business. If an attorney or other agent is the person seeking to inspect, the demand must include a power of attorney or other writing that authorizes the attorney or other agent to act on behalf of the shareholder or member.

(3) ~~Upon proof by a shareholder or member of a proper purpose, the circuit court may compel production for examination by the shareholder or member of the books and records of account, minutes, and record of shareholders or member of a corporation, and may allow the shareholder or member to make extracts therefrom.~~ **If the corporation does not permit an inspection required under subsection (2) within 5 business days after a demand has been received under subsection (2), or imposes unreasonable conditions upon the inspection, the shareholder or member may apply to the circuit court of the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. If the shareholder or member seeks to inspect the books and records other than its stock ledger or list of shareholders or members, he or she must establish that he or she has complied with this section concerning the form and manner of making demand for inspection of the documents, that the inspection he or she seeks is for a proper purpose, and that the documents sought are directly connected with the purpose. If the shareholder or member seeks to inspect the corporation's stock ledger or list of shareholders or**

members and establishes that he or she has complied with this section respecting the form and manner of making demand for the inspection of the documents, the corporation has the burden of proof to establish that the inspection that is sought is for an improper purpose or that the records sought are not directly connected with the person's purpose. In its discretion, the court may order the corporation to permit the shareholder or member to inspect the corporation's stock ledger, a list of shareholders or members, and its other books and records, prescribe conditions and limitations on the inspection, and award other or further relief that the court considers just and proper. The court may order books, documents and records, pertinent extracts, or duly authenticated copies, to be brought within this state and kept in this state and prescribe terms and conditions on those obligations.

(4) A director may examine any of the corporation's books and records for a purpose reasonably related to his or her position as a director. The director may apply to the circuit court of the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. In its discretion, the court may order the corporation to permit the director to inspect any and all books and records, prescribe conditions and limitations on the inspection, and award other and further relief that the court considers just and proper.

(5) If the court orders inspection of the records demanded under subsection (3) or (4), it shall also order the corporation to pay the shareholder's, member's, or director's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it failed to permit the inspection in good faith because it had a

reasonable basis to doubt the right of the shareholder, member, or director to inspect the records demanded.

(6) A holder of a voting trust certificate representing shares of, or membership in, the corporation is considered to be a shareholder or member for purposes of this section and section 485.

(7) (a) Notwithstanding any other provisions of the act, the articles of incorporation, the bylaws or a resolution of the board of directors may provide that the shareholders or members and attorneys or agents for shareholders or members do not have the right to inspect the corporation's stock ledger, lists of shareholder or members, lists of donors or donations or its other books and records, if the incorporators, shareholders, members or directors approving a limitation under this subsection make a good faith determinate that 1 or more of the following apply:

(i) Opening the stock ledger, lists of shareholder or members, lists of donors or donations or its other books and records for inspection would impair the rights of privacy or free association of the shareholders or members.

(ii) Opening the stock ledger, lists of shareholder or members, lists of donors or donations or its other books and records for inspection would impair the lawful purposes of the corporation.

(iii) Opening lists of donors or donations for inspection is not in the best interests of the corporation or its donors.

(b) A corporation that limits inspection of lists of its shareholders or members under this subsection shall provide a reasonable way for shareholders or members to communicate with all other shareholders or members concerning election of directors and

other affairs of the corporation. A corporation described in this subdivision may require a shareholder or member wishing to communicate with other shareholders or members under this subdivision to pay the reasonable costs to cover the cost of labor and materials and third party charges incurred by the corporation in doing so.

(8) As used in this section:

(a) "Proper purpose" means a purpose reasonably related to a person's interest as a shareholder or member of a corporation.

(b) "Right to inspect records" includes the right to copy and make extracts from the records of a corporation and, if reasonable, the right to require the corporation to supply copies made by photographic, xerographic, or other means. To cover the cost of labor and material, the corporation may require a shareholder or member to pay a reasonable charge for copies of the documents provided to the shareholder or member.

Sec. 488. (1) Subject to the limitations in subsection (11), an agreement among the members of a corporation organized on a membership basis, among the shareholders of a corporation organized on a stock basis or among the directors of a corporation organized on a directorship basis that complies with this section is effective among the members, shareholders or such directors and the corporation even though it is inconsistent with this act in 1 or more of the following ways:

(a) It restricts the discretion or powers of the board.

(b) It governs the authorization or making of distributions permitted under section 301 whether or not in proportion to the membership interest or shares held, subject to limitations in sections 345 and 855a pertaining to the protection of creditors.

(c) It establishes who shall be directors or officers of the corporation, or the terms of office or manner of selection or removal of directors or officers of the corporation.

(d) In general or in regard to specific matters, it governs the exercise or division of voting power by or between the members or shareholders and directors or by or among any of the members, shareholders or directors, including, but not limited to, use of weighted voting rights or restrictions on the voting rights of particular members, shareholders or directors.

(e) It establishes the terms and conditions of any agreement for the transfer or use of property or the provisions of services between the corporation and any member, shareholder, director, officer, or employee of the corporation or among the members, shareholders, directors, officers or employees of the corporation.

(f) It transfers to 1 or more members, shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including, but not limited to, the resolution of any issue about which there exists a deadlock among directors, members or shareholders.

(g) It requires dissolution of the corporation at the request of 1 or more of the members, shareholders or directors or upon the occurrence of a specified event or contingency.

(h) It otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the members, the directors, and the corporation, or among any of the shareholders, members or directors, and is not contrary to public policy.

(2) An agreement authorized by this section shall meet both of the following requirements:

(a) It set forth in either of the following:

(i) A provision of the articles of incorporation or bylaws approved by all members or shareholders or all directors of a corporation that is organized on a directorship basis at the time of the agreement.

(ii) A written agreement that is signed by all members or shareholders or all directors of a corporation that is organized on a directorship basis at the time of the agreement and that is disclosed to the corporation.

(b) Is subject to amendment only by all members or shareholders or by all directors of a corporation that is organized on a directorship basis at the time of the amendment, unless the agreement provides otherwise.

(3) The corporation shall conspicuously note the existence of an agreement authorized by this section on the face or back of any certificate of membership or for shares issued by the corporation or on the information statement required by section 336. If at the time of the agreement the corporation has memberships or shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to the agreement.

(4) Any person who becomes a member of a corporation organized on a membership basis, a shareholder of a corporation organized on a stock basis or a director of a corporation organized on a directorship basis and did not have knowledge of the

existence of an agreement authorized by this section at the time he or she became a member, shareholder or director, may elect to resign as a member, shareholder or director, may elect to rescind the transfer of any membership or shares, or may elect to maintain an action to terminate the agreement. For purposes of this subsection, a person is considered to have knowledge of an agreement authorized by this section if at the time he or she becomes a member, shareholder, or director, the agreement is set forth in the articles of incorporation or bylaws, the agreement's existence is noted on the certificate or information statement provided under subsection 3, or a copy or a written summary of the agreement is furnished to the person before the person becomes a member, shareholder or director. An action to enforce the right of rescission or to terminate the agreement must be commenced within 90 days after discovery of the existence of the agreement or 2 years after the person becomes a shareholder, member or director, whichever is earlier. In an action or suit to terminate the agreement, the court in which the action is brought shall terminate the agreement if the court determines that the agreement is materially inconsistent with or detrimental to carrying out the purposes of the corporation, materially impairs rights or interests the person bringing the action or suit would reasonably have expected to have acquired in becoming a member, shareholder or director or is inconsistent with 1 or more of the limitations in subsection (11).

(5) If an agreement authorized in this section ceases to be effective for any reason and is contained or referred to in the corporation's articles of incorporation or bylaws, the board may without shareholder or member action adopt an amendment to the articles of incorporation or bylaws to delete the agreement and any references to it.

(6) An agreement authorized by this section that limits the discretion or powers of the board shall relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement. The person or persons in whom the discretion or powers are vested are treated as a director or directors for purposes of any indemnification and any limitation on liability under section 209.

(7) The existence or performance of an agreement authorized by this section is not grounds for imposing personal liability on any member, shareholder, or other person for the acts or debts of the corporation or for treating the corporation as if it were a partnership or unincorporated entity, even if the agreement or its performance results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(8) Filing a certificate of dissolution under Section 805 is required to implement a dissolution pursuant to an agreement authorized in subsection (1)(g).

(9) Incorporators or subscribers for memberships or shares may act as members or shareholders with respect to an agreement authorized by this section if the corporation has not issued memberships or shares at the time the agreement is made.

(10) A failure to satisfy the unanimity requirement of subsection (2) with respect to an agreement authorized by this section does not invalidate any agreement or any provision of the articles of incorporation or bylaws that would otherwise be valid.

(11) An agreement under this section is not effective:

(a) To authorize distributions that are not permitted under section 301.

(b) To allow property held for charitable or other public purposes to be used for private benefit, through the payment or excessive compensation for goods or services or in any other manner.

(c) To allow corporate property to be used in a manner materially inconsistent with the purposes of the corporation or a valid restriction imposed by donors.

Sec. 489. (1) A director of a corporation organized on a directorship basis, a shareholder of a corporation organized on a stock basis or a member of a corporation organized on a membership basis 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, shareholders, members, or others in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation, or to the director, member, or shareholder. If the director, member or shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate including, but not limited to, an order providing for any of the following:

(a) The dissolution and liquidation of the assets and affairs of the corporation.

(b) The cancellation or alteration of a provision contained in the articles of incorporation, an amendment of the articles of incorporation or the bylaws of the corporation.

(c) The cancellation, alteration, or injunction against a resolution or other act of the corporation.

(d) The direction or prohibition of an act of the corporation or of shareholders, members, directors, officers, or other persons who are parties to the action.

(e) The purchase at fair value of the shares of a shareholder or the membership of a member, either by the corporation or by the officers, directors, or other shareholders or members responsible for the wrongful acts. In establishing the fair value of the shares or membership for purposes of this subsection, the shareholder or member is not considered to have any interest in charitable or other assets of the corporation that would not be distributable to shareholders or members of the corporation in a dissolution under section 855.

(f) An award of damages to the corporation or a shareholder or member. A person must commence an action seeking an award of damages within 3 years after the cause of action under this section has accrued, or within 2 years after the shareholder or member discovers or reasonably should have discovered the cause of action under this section, whichever occurs first. In awarding damages under this subsection to a shareholder or member, the shareholder or member is not considered to have any interest in charitable or other assets of the corporation that would not be distributable to shareholders or members of the corporation in a dissolution under section 855.

(2) As used in this section, "willfully unfair and oppressive conduct" with respect to a member or shareholder means a continuing course of conduct or a significant action or series of actions that substantially interferes with the rights or interests of the member or shareholder as a member or 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.

Sec. 491a. As used in this section and sections 492a to 497:

(a) "Derivative proceeding" means a civil suit in the right of a domestic corporation or a foreign corporation that is authorized to or does conduct affairs in this state.

(b) "Director" includes a person who was serving on the board of a corporation organized on a directorship basis at the time of the act or omission complained of and a person who becomes a member of the board of that corporation after the act or omission.

(c) "Disinterested director" means a person who is currently serving on the board of a corporation who is not a party to a derivative proceeding, or a person who is currently serving on the board of a corporation who is a party to a derivative proceeding if the corporation demonstrates that the claim asserted against the director is frivolous or insubstantial.

(d) "Member" means a record or beneficial owner of a membership in a corporation organized on a membership basis and includes a beneficial owner whose membership is held in a voting trust or held by a nominee on the owner's behalf.

(e) "Shareholder" means a record or beneficial owner of shares of a corporation organized on a stock basis and includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf.

Sec. 492a. A shareholder or member may not commence or maintain a derivative proceeding unless the shareholder or member meets all of the following criteria:

(a) The shareholder or member was a shareholder or member of the corporation at the time of the act or omission complained of or became a shareholder or member through a permitted transfer by operation of law from one who was a shareholder or member at that time.

(b) The shareholder or member fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

(c) The shareholder or member continues to be a shareholder or member until the time of judgment, unless the failure to continue to be a shareholder or member is the result of corporate action in which the former shareholder or member did not acquiesce and the derivative proceeding was commenced prior to the termination of the former shareholder's or member's status as a shareholder or member.

Sec. 493a. A shareholder, member, or director may not commence a derivative proceeding until all of the following have occurred:

(a) A written demand is made upon the corporation to take suitable action.

(b) Ninety days have expired from the date the demand was made unless the shareholder, member or director is notified that the corporation has rejected the demand or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

Sec. 494. If the corporation commences an investigation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period as the court considers appropriate.

Sec. 495. (1) On motion by the corporation, the court shall dismiss a derivative proceeding if the court finds that 1 of the groups specified in subsection (2) has made a determination in good faith after conducting a reasonable investigation on which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation. If the determination is made under subsection (2)(a) or (b), the corporation shall have the burden of proving the good faith of the group making the

determination and the reasonableness of the investigation. If the determination is made pursuant to subsection (2)(c) or (d), the plaintiff has the burden of proving that the determination was not made in good faith or that the investigation was not reasonable.

(2) A determination under subsection (1) may be made by any 1 of the following:

(a) By a majority vote of the disinterested directors, if the disinterested directors constitute a quorum at a meeting of the board.

(b) By a majority vote of a committee consisting of 2 or more disinterested directors appointed by a majority vote of disinterested directors present at a meeting of the board, whether or not the disinterested directors constitute a quorum at the meeting.

(c) By a panel of 1 or more disinterested persons appointed by the court upon motion by the corporation.

(d) By all disinterested directors.

Sec. 496. A derivative proceeding shall not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or members or a class of shareholders or members, the court shall direct that notice be given to the shareholders or members affected and the court may determine whether 1 or more of the parties to the action shall bear the expense of giving the notice, in the amount as the court determines and finds to be reasonable under the circumstances. The court shall award the cost of the notice as special costs of the action, recoverable in the same manner as statutory taxable costs.

Sec. 497. On termination of the derivative proceeding, the court may order 1 of the following:

(a) The plaintiff to pay any of the defendant's reasonable expenses, including reasonable attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained in bad faith or without reasonable cause.

(b) The corporation to pay the plaintiff's reasonable expenses, including reasonable attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation. The court shall direct the plaintiff to account to the corporation for any proceeds received by the plaintiff in excess of expenses awarded by the court, unless the judgment is rendered for the benefit of an injured shareholder or member only and limited to a recovery of the loss or damage sustained by him or her.

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Sec. 501. (1) The business and affairs of a corporation shall be managed by **or under the direction of** its board, except as otherwise provided in this act **or in its articles of incorporation**. A director ~~need not~~ **is not required to** be a shareholder or member of the corporation unless the articles **of incorporation** or bylaws so require. The articles **of incorporation** or bylaws may prescribe qualifications for directors.

(2) The board of a corporation that is subject to the uniform prudent management of institutional funds act, **2009 PA 87, MCL 451.921 to 451.931**, has the powers granted under both that act and this act. ~~However in~~ **In** the event of an inconsistency between the 2 acts, the uniform prudent management of institutional funds act, **2009 PA 87, MCL 451.921 to 451.931**, controls.

Sec. 505. (1) ~~Except as provided in subsection (5), the board shall consist of 3 or more directors.~~ The bylaws shall fix the number of directors or establish the manner for fixing the number, unless the articles of incorporation fix the number – **except:**

(a) **The board of a private foundation and board of a corporation formed to provide care to a dentally underserved population under section 16625 of the public health code, 1978 PA 327, MCL 333.16625, shall consider of 1 or more directors.**

(b) **The board of a corporation that is not described in subsection (1) shall consist of 3 or more directors.**

(2) The articles of incorporation or a bylaw adopted by the shareholders, members or incorporators of a corporation organized on a stock or membership basis may specify the term of

office and the manner of election or appointment of directors. If the articles of incorporation or bylaws do not ~~so~~ specify the term of office or manner of election or appointment of directors, the first board of directors shall hold office until the first annual meeting of shareholders or members. At the first annual meeting of shareholders or members and at each subsequent annual meeting, the shareholders or members shall elect directors to hold office until the succeeding annual meeting, except in case of the classification of directors permitted under this act.

(3) The articles of incorporation or a bylaw of a corporation organized on a directorship basis shall specify the term of office and the manner of election or appointment of directors.

(4) A director shall hold office for the term for which he or she is elected or appointed and until his or her successor is elected or appointed and qualified, or until his or her resignation or removal. A director may resign by written notice to the corporation. A resignation of a director is effective when it is received by the corporation or a later time as set forth in the notice of resignation.

~~(5) Beginning 180 days after the effective date of the amendatory act that added this subsection, the board of a corporation that is in existence on the effective date of the amendatory act that added this subsection shall consist of 3 or more directors.~~

Sec. 506. (1) The articles of incorporation or a bylaw adopted by the shareholders, or members **or incorporators** of a corporation organized ~~upon~~ **on** a stock or membership basis may provide that in lieu of annual election of all directors the directors be divided into ~~2 or more~~ **up to 5** classes, **each to be as nearly equal in number as possible**, to be elected or appointed for such terms and in such manner as ~~therein~~ **in the articles of incorporation or bylaws**. If the articles of incorporation or the bylaws do not so specify the term of office for the classes of directors, the term of office of directors in the first class shall expire at the first annual

meeting of shareholders or members after their election, and that of each succeeding class shall expire at the next annual meeting after their election, corresponding with the number of their class. At each annual meeting after ~~such classification~~ **classes are established**, a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the next annual meeting corresponding with the number of their class.

(2) A corporation ~~having~~ **that has** more than 1 class of shares or membership may provide in its articles of incorporation or a bylaw adopted by each class of shareholders or members for the election of 1 or more directors by shareholders or members of a class, to the exclusion of other shareholders or members.

(3) The articles **of incorporation** or bylaws of a corporation organized ~~upon~~ **on** a directorship basis may provide that the directors be divided into ~~2 or more~~ **up to 5** classes, to be elected or appointed for such terms and in such manner as ~~therein~~ **specified in the articles of incorporation or bylaws**.

Sec. 511. (1) ~~Unless otherwise provided in the articles of incorporation or bylaws, a director or the entire board may be removed.~~ **The shareholders or members of a corporation organized on a stock or membership basis may remove 1 or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares or members entitled to vote at an election of directors except that the articles of incorporation may require a higher vote for removal without cause. This subsection does not invalidate any bylaw adopted before the effective date of the amendatory act which added this sentence insofar as the bylaw applies to removal without cause.**

~~(a) With or without cause, by vote of the holders of a majority of the shares or by majority vote of members entitled to vote at an election of directors.~~

~~(b) With cause, by the vote of a majority of the directors then in office in the case of a corporation organized upon a directorship basis.~~

(2) The directors of a corporation organized on a directorship basis may remove 1 or more directors with cause. The vote for removal shall be by a majority of the directors then in office. If authorized in the articles of incorporation or bylaws, a director of a corporation organized on a directorship basis who is appointed or elected by a person or persons other than the board of directors of the corporation may also be removed, with or without cause, by the person or persons who appointed or elected that director.

(3) ~~(2)~~ In the case of If a corporation ~~having~~ has cumulative voting, ~~if~~ and less than the entire board is to be removed, no 1 of the directors may be removed if the votes cast against the director's ~~his or her~~ removal would be sufficient to elect ~~the director~~ **him or her if ~~then~~ cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which ~~the director~~ **he or she** is a part.**

(4) ~~(3)~~ When shareholders If holders of a class of stock or of bonds or members of a class are entitled by the articles of incorporation or a bylaw adopted ~~pursuant to~~ under section 506(2) to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares ~~or~~ **of that class of stock, the holders of those bonds or the members of that class ~~and not to the vote of the outstanding shares or membership as a whole.~~**

Sec. 514. (1) The circuit court of the county in which the principal place of business or registered office of the corporation is located may remove a director of the corporation

from office in a proceeding commenced by the corporation, by its shareholders holding at least 10% of the outstanding shares of any class, or by 10% of the members if the court finds that the director engaged in fraudulent, illegal, or dishonest conduct or gross abuse of authority or discretion with respect to the corporation, and removal is in the best interest of the corporation.

(2) The court that removes a director may bar him or her from serving as a director of the corporation for a period prescribed by the court.

(3) If shareholders or members commence a proceeding under subsection (1), they shall make the corporation a party defendant.

Sec. 515a. (1) Unless otherwise limited by the articles of incorporation or bylaws, if a vacancy, including a vacancy resulting from an increase in the number of directors, occurs in a board, the corporation may fill the vacancy in any of the following manners:

(a) The shareholders of a corporation organized on a stock basis or the members of a corporation organized on a membership basis may fill the vacancy.

(b) The board may fill the vacancy.

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless otherwise provided in the articles of incorporation or bylaws, if the holders of any class or classes of stock or the members of any class or classes are entitled to elect 1 or more directors to the exclusion of other shareholders or members, vacancies of that class or classes may be filled only by 1 of the following:

(a) By a majority of the directors elected by the holders of that class or classes of stock or the members of that class or classes then in office, whether or not those directors constitute a quorum of the board.

(b) By the holders of shares of that class or classes of shares or the members of that class or classes.

(3) Unless otherwise limited by the articles of incorporation or bylaws, in the case of a corporation the directors of which are divided into classes, any director chosen to fill a vacancy shall hold office until the next election of the class for which the director was chosen, and until his or her successor is elected and qualified.

(4) If because of death, resignation, or other cause, a corporation has no directors in office, an officer, a shareholder, a member of a corporation organized on a membership basis, a personal representative, administrator, trustee, or guardian of a shareholder or member, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder or member, may call a special meeting of shareholders or members in accordance with the articles or the bylaws.

(5) A corporation may fill a vacancy that will occur at a specific date, by reason of a resignation effective at a later date under section 505 or otherwise, before the vacancy occurs, but a director elected or appointed under this subsection may not take office until the vacancy occurs.

Sec. 521. (1) ~~Regular~~ A board may hold regular or special meetings of ~~a~~ the board ~~may be held~~ either in or outside this state.

(2) A board may hold a regular meeting ~~may be held~~ with or without notice as prescribed in the bylaws. A board may hold a special meeting ~~shall be held upon~~ after the

notice as prescribed in the bylaws. ~~Attendance of a director at a meeting constitutes a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither~~ **A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting. Unless required by the bylaws, notice or a waiver of notice of a meeting does not have to specify the business to be transacted at, nor or the purpose of, a the regular or special meeting need be specified in the notice or waiver of notice of the meeting unless required by the bylaws.**

(3) Unless otherwise restricted by the articles of incorporation or bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or other means of remote communication ~~by which~~ **if all persons participating in the meeting can communicate with each other the other participants.** Participation in a meeting pursuant to this subsection constitutes ~~presence~~ **attendance** in person at the meeting.

Sec. 523. (1) A majority of the members of the board then in office, or of the members of a committee ~~thereof~~ **of the board**, constitutes a quorum for transaction of business, ~~provided that the articles of incorporation or bylaws may provide for a larger number, and provided further that in any corporation where there are more than 7 directors, the articles of incorporation or bylaws may provide that less than a majority, but in no event less than 1/3 of the directors, may constitute a quorum of the board.~~ **unless the articles of incorporation or bylaws, or in the case of a committee, the board resolution establishing the committee, provide for a larger**

or smaller number. However, a quorum of the board may not be less than 1/3 of the members of the board then in office and a quorum of an executive committee acting on behalf of the board under section 527 may be not less than 1/3 of members of the the executive committee. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee, unless the vote of a larger number is required by this act, the articles of incorporation, or the bylaws, or in the case of a committee, the board resolution establishing the committee.

(2) Amendment of the bylaws by the board requires the vote of not less than a majority of the members of the board then in office, unless the articles of incorporation or bylaws provide for a larger number.

Sec. 527. (1) Unless otherwise provided in the articles of incorporation or bylaws, the board may designate 1 or more executive committees, each executive committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate member of ~~a~~ an executive committee who may replace an absent or disqualified member at a meeting of the executive committee. The bylaws may provide that in the absence or disqualification of a member of ~~a~~ an executive committee, the members ~~thereof~~ present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the board to act at the meeting in place of ~~such an~~ the absent or disqualified member.

(2) ~~A~~ An executive committee designated ~~pursuant to~~ under subsection (1), and each member ~~thereof, shall serve~~ of an executive committee serves at the pleasure of the board.

(3) The articles of incorporation or bylaws may provide for the election or appointment of 1 or more **executive** committees ~~to~~ **that** consist of 1 or more shareholders or members, ~~or~~ 1 or more directors or a combinations of shareholder or members and directors.

(4) **Unless otherwise prohibited in the articles of incorporation or bylaws, the board or an individual or individuals designated in the bylaws or by the board may appoint 1 or more committees that are not executive committees to assist in the conduct of its affairs and may provide of the creation of one or more subcommittees of any committee appointed under this subsection. The bylaws or a resolution establishing the committee approved by the board in the absence of a bylaw provision shall set forth the purposes of the committees appointed under this subsection, the terms and qualifications of committee members, and the ways in which members of the committees are selected and removed. The board or authorized individuals may designate 1 or more persons as alternate members of a committee appointed under this subsection who may replace an absent or disqualified committee member in a meeting of the committee. Some or all of the members of a committees appointed under this subsection may be individuals who are directors, officers, members or shareholders of the corporation and some or all of the members of committees appointed under this subsection may be individuals who are not directors, officers, members or shareholders of the corporation, as provided in the bylaws or in the action or resolution or resolutions of the board establishing the committee. A committee appointed under this subsection is not an executive committee and may not execute the power or authority of the board in the management of the business and affairs of the corporation, but may perform such functions under the direction of the board as set forth in the bylaws or determined from time to time by the board.**

Sec. 528. (1) ~~A~~ **An executive** committee designated ~~pursuant to~~ **under subsection (1) or subsection (3) of section 527**, to the extent provided in the resolution of the board, ~~in the case of a committee designated in section 527(1), or to the extent provided~~ in the articles of **incorporation** or in the bylaws, ~~in the case of a committee designated in section 527(3),~~ may exercise all powers and authority of the board in management of the business and affairs of the corporation. ~~However, such a~~ **An executive** committee does not have power or authority to **do any of the following:**

- (a) Amend the articles of incorporation.
- (b) Adopt an agreement of merger ~~or consolidation~~ .
- (c) Recommend to shareholders or members the sale, lease, or exchange of all or substantially all of the corporation's property and assets.
- (d) Recommend to shareholders or members a dissolution of the corporation or a revocation of a dissolution.
- (e) Amend the bylaws of the corporation.
- (f) Fill vacancies in the board.
- (g) Fix compensation of the directors for serving on the board or on a committee.
- (h) Cancel ~~stock~~ **shares** or terminate ~~membership~~ **memberships**.

(2) Unless the resolution, articles, or bylaws expressly provide the power or authority, an executive committee does not have power or authority to declare a distribution authorized under section 301 or to authorize the issuance of shares or memberships.

(3) Unless other provided in the resolution, articles of incorporation or bylaws, an executive committee may create 1 or more subcommittees. Each subcommittee shall

consist of 1 or members of the committee. An executive committee or the board may delegate to a subcommittee any or all of the powers and authority of the committee.

Sec. 531. (1) The officers of a corporation shall consist of a president, secretary, treasurer, and, if desired, a chairperson of the board, 1 or more ~~vice-presidents~~ **vice presidents**, and ~~such~~ **any** other officers as ~~may be~~ prescribed ~~by~~ **in** the bylaws or determined by the board. Unless otherwise provided in the articles of incorporation or bylaws, the ~~officer shall be elected or appointed by~~ the board **shall elect or appoint the officers.**

(2) ~~Two~~ **The same person may hold 2** or more offices, ~~may be held by the same person~~ but an officer shall not execute, acknowledge, or verify an instrument in more than 1 capacity if the instrument is required by law or the articles **of incorporation** or bylaws to be executed, acknowledged, or verified by 2 or more officers.

(3) An officer ~~elected or appointed as herein provided~~ shall hold office for the term for which ~~the officer~~ **he or she** is elected or appointed and until ~~a~~ **his or her** successor is elected or appointed and qualified, or until ~~the~~ **his or her** resignation or removal ~~of the officer.~~

(4) An officer, as between ~~that officer,~~ **himself or herself**, other officers, and the corporation, has ~~such~~ **the** authority and shall perform ~~such~~ **the** duties in the management of the corporation ~~as may be~~ provided in the bylaws, or ~~as may be~~ determined ~~by~~ **in accordance with a resolution or resolutions** of the board not inconsistent with the bylaws.

Sec. 541. (1) ~~A director or an officer shall discharge the duties of that position in good faith and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, a director or an officer, when acting in good faith, may rely upon the opinion of counsel for the corporation, upon the report of an independent appraiser selected with reasonable care by the board, or upon~~

~~financial statements of the corporation represented to the director or officer as correct by the president of the officer of the corporation who has charge of its books or account, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the corporation.~~ **A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:**

(a) In good faith.

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In a manner he or she reasonably believes to be in the best interests of the corporation.

(2) In discharging his or her duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

(a) One or more directors, officers, or employees of the corporation, or of a domestic or foreign corporation or a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented.

(b) Legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence.

(c) A committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence.

(3) A director or officer is not entitled to rely on the information set forth in subsection (2) if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) ~~(2)~~ A director or officer of a corporation subject to the uniform prudent management of institutional funds act, **2009 PA 87, MCL 451.921 to 451.931**, ~~shall be~~ is considered to be in compliance with this section if ~~the director or officer~~ **he or she** complies with the uniform prudent management of institutional funds act, **1969 PA 87, MCL 451.921 to 451.931**, in the administration of the powers specified in that act.

(5) ~~(3)~~ If the corporation's articles of incorporation contain a provision authorized under section ~~209(e)~~ **209(1)(c)**, a ~~volunteer~~ director of the corporation is only personally liable for monetary damages for a breach of fiduciary duty as a director to the corporation, its shareholders, or its members to the extent set forth in the provision.

(6) ~~(4)~~ If the corporation's articles of incorporation contain a provision authorized under section ~~209(d)~~ **209(1)(d)**, a claim for monetary damages for a breach of a volunteer director's duty to any person other than the corporation, its shareholders, or its members shall not be brought or maintained against the volunteer director. ~~The claim shall~~ **However, that claim may** be brought or maintained ~~instead~~ against the corporation, ~~which~~ **and the corporation** shall be liable for any breach of the volunteer director's duty.

(7) ~~(5)~~ An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered ~~or~~ or should reasonably have been discovered, by the complainant, whichever occurs first.

Sec. 545a. (1) A transaction in which a director or officer is determined to have an interest shall not, be enjoined, set aside, or give rise to an award of damages or other sanctions because of the interest, in a proceeding by a shareholder, a member or a director of a corporation organized on a directorship basis or by or in the right of the corporation, if the person interested in the transaction establishes any of the following:

(a) The transaction was fair to the corporation at the time entered into.

(b) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board or an executive committee of the board and the board or executive committee authorized, approved, or ratified the transaction.

(c) The material facts of the transaction and the director's or officer's interest were disclosed or known to the shareholders or members entitled to vote and they authorized, approved, or ratified the transaction.

(2) For purposes of subsection (1)(b), a transaction is authorized, approved, or ratified if it received the affirmative vote of the majority of the directors on the board or the executive committee who had no interest in the transaction, though less than a quorum. The presence of, or a vote cast by, a director with an interest in the transaction does not affect the validity of the action taken under subsection (1)(b).

(3) For purposes of subsection (1)(c), a transaction is authorized, approved, or ratified if it received the majority of votes cast by the holders of shares or members who did not have an interest in the transaction. A majority of the votes held by shareholders or members who did not have an interest in the transaction constitutes a quorum for the purpose of taking action under subsection (1)(c).

(4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a director or officer is determined to have an interest. Those claims shall be evaluated under principles applicable to a transaction in which a director or officer does not have an interest.

(5) Unless such compensation is prohibited by the articles of incorporation or the bylaws, the board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may, subject to any limitations in the articles of incorporation or bylaws, establish reasonable compensation of directors for services to the corporation as directors or officers, but approval of the shareholders or members is required if the articles of incorporation, bylaws, or other provisions of this act require that approval. Transactions pertaining to the compensation of directors for services to the corporation as directors or officers shall not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or member or by or in the right of the corporation unless it is shown that the compensation was unreasonable at the time established or exceeded amounts permitted under the articles of incorporation or bylaws.

Sec. 548. (1) ~~Except as provided in subsection (4) and unless~~ **Unless** otherwise prohibited by law **or prohibited by the articles or incorporation or bylaws**, a corporation may lend money to, ~~or~~ guarantee an obligation of, or otherwise assist an officer or employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, ~~if~~, in the judgment of the board, the loan, guaranty, or assistance is reasonably expected to benefit the corporation, **or the loan, guaranty or assistance is pursuant to a plan**

authorizing loans, guaranties, or assistance that the board has reasonably determined will benefit the corporation.

(2) A loan, guaranty, or assistance described in subsection (1) may be with or without interest, and may be unsecured, or secured in a manner as the board approves, **including a pledge of shares of stock of a corporation organized on a stock basis or pledge of a membership in a corporation organized on a membership basis.**

(3) This section does not deny, limit, or restrict the powers of guaranty or warranty of a corporation at common law or under any statute.

~~(4) If a corporation is a charitable purpose corporation, the corporation shall not provide loans to or guarantee an obligation of an officer or director of the corporation or a subsidiary of a corporation unless the officer or director is also a client of the corporation and the loan or guaranty is necessary to carry out the corporation's charitable purposes.~~

Sec. 551. (1) ~~In addition to any other liability imposed by this act or other law upon directors of a corporation, directors~~ **Directors** who vote for $\frac{1}{3}$ or concur in $\frac{1}{3}$ any of the following corporate actions are jointly and severally liable to the corporation **for its benefit or** for the benefit of its creditors, shareholders, or members, ~~to the extent of~~ **for** any legally recoverable injury suffered by ~~such persons~~ **the corporation or those creditors, shareholders, or members** as a result of the action ~~but not to exceed the~~ **in an amount that does not exceed difference between the amount paid or distributed and the amount that lawfully could have been** ~~amount unlawfully~~ paid or distributed:

(a) ~~Distribution of assets~~ **Declaring a share dividend or distribution** to shareholders or members contrary to this act or contrary to any restriction in the articles of incorporation or bylaws.

~~(b) Purchase of shares or memberships of the corporation contrary to this act or contrary to any restriction in the articles or bylaws.~~

(b) ~~(c) Distribution of assets~~ **Making a distribution** to shareholders or members during or after dissolution of the corporation without paying ~~or adequately~~ providing for ~~all known~~ debts, obligations, and liabilities of the corporation **as required in section 855.**

(c) ~~(d) Making of a loan to~~ **a director, an officer, director, or employee** of the corporation or ~~of a subsidiary thereof~~ **of the corporation** contrary to this act.

(2) A director is not liable under this section if ~~the director~~ **he or she** has complied with section 541.

(3) A shareholder or member who accepts or receives a **share dividend or** distribution with knowledge of facts indicating it is ~~not authorized by~~ **contrary to this act, or any restriction in the articles of incorporation or bylaws**, is liable to the corporation in the amount accepted or received ~~by the shareholder or member~~ **in excess of the shareholder's or member's share of the amount that the corporation could lawfully distribute.**

Sec. 552. (1) A director against whom a claim is successfully asserted under section 551 is entitled to contribution from the other directors who voted for, or concurred in, the action upon which the claim is asserted.

(2) A director against whom a claim is successfully asserted under section 551 is entitled, to the extent of the amounts paid by ~~the director~~ **him or her** to the corporation as a result of ~~such~~ **the claims, to all of the following:**

(a) ~~Upon payment to~~ **If the director pays** the corporation ~~of~~ any amount of an improper **share dividend or** distribution, to be subrogated to the rights of the corporation against

shareholders or members who received the **share dividend or** distribution in proportion to the amounts received by them ~~respectively~~.

(b) ~~Upon payment to~~ **If the director pays** the corporation ~~of~~ any amount of the purchase price of an improper purchase of shares or memberships, ~~;(i)~~ to have the corporation rescind the purchase and recover for ~~the director's~~ **his or her** benefit, but at ~~the director's~~ **his or her** expense, the amount of the purchase price from any seller who sold ~~such~~ **the** shares or memberships with knowledge of facts indicating that ~~such~~ **the** purchase of shares or memberships by the corporation was not authorized by this act, ~~;~~ ~~or (ii)~~ **or** to have the corporation assign to ~~such~~ **the** director any claim against the seller and, if consistent with its articles of incorporation and bylaws, ~~such~~ **the** shares or memberships.

(c) ~~Upon payment to~~ **If the director pays** the corporation ~~of~~ the claim of a creditor because of a violation of section ~~551(1)(e)~~ **551(1)(b)**, to be subrogated to the rights of the corporation against shareholders or members who received an improper distribution of assets.

(d) ~~Upon payment to~~ **If the director pays** the corporation ~~of~~ the amount of a loan made improperly to **a director**, ~~an~~ officer, ~~director~~, or employee, to be subrogated to the rights of the corporation against **a director**, ~~an~~ officer, ~~director~~, or employee who received the improper loan.

Sec. 553. (1) ~~A~~ **If a director** ~~who~~ is present at a meeting of the board, or ~~a~~ **an** **executive** committee ~~thereof~~ of which ~~the director~~ **he or she** is a member, ~~at which~~ **and** action on a corporate matter ~~referred to~~ **described** in section 551 is taken **at that meeting**, **the director** is presumed to have concurred in that action unless ~~a~~ **his or her** dissent is entered in the minutes of the meeting or unless ~~the director~~ **he or she** files ~~a~~ **his or her** written dissent to the action with the person acting as secretary of the meeting before or promptly after the

adjournment ~~thereof~~ **of the meeting**. The right to dissent does not apply to a director who voted in favor of the action.

(2) ~~—A~~ **If a** director who is absent from a meeting of the board, or ~~a~~ **an executive** committee ~~thereof~~ of which ~~the director~~ **he or she** is a member, ~~at which any such action is taken~~ **and action on a corporate matter described in section 551 is taken at that meeting**, **the director** is presumed to have concurred in the action unless ~~the director~~ **he or she** files ~~a~~ **his or her** dissent with the secretary of the corporation within a reasonable time after ~~obtaining~~ **he or she has** knowledge of the action.

Sec. 561. Unless otherwise provided by law or ~~its~~ **the** articles of incorporation or bylaws **of the corporation**, a corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to ~~any~~ **a** threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that ~~the person~~ **he or she** is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, ~~for profit, against~~ **for** expenses, including attorney's fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by ~~the person~~ **him or her** in connection with the action, suit, or proceeding, if the person acted in good faith and in a manner ~~the person~~ **he or she** reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members, and with respect to ~~any~~ **a** criminal action or proceeding, if the person had no reasonable cause to believe ~~that~~ **his or her** conduct was

unlawful. The termination of ~~any~~ **an** action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, ~~shall~~ **does** not, of itself, create a presumption that the person did not act in good faith and in a manner ~~which the person~~ **that he or she** reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members, and, with respect to any criminal action or proceeding, had reasonable cause to believe that ~~the~~ **his or her** conduct was unlawful.

Sec. 562. Unless otherwise provided by law or its articles of incorporation or bylaws of **the corporation**, a corporation has the power to indemnify a person who was or is a party ~~to~~ or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that ~~the person~~ **he or she** is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, ~~against~~ **for** expenses, including ~~actual and reasonable~~ attorneys' fees, and amounts paid in settlement **actually and reasonably** incurred by the person in connection with the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members. ~~However,~~ ~~indemnification shall not be made~~ **A corporation shall not indemnify a person** for a claim, issue, or matter in which the person has been found liable to the corporation ~~unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person~~

is fairly and reasonably entitled to indemnification for expenses which the court considers proper **except to the extent authorized in section 564c.**

Sec. 563. ~~(1)~~ Unless otherwise provided by law or ~~its~~ **the** articles of incorporation or bylaws **of the corporation**, to the extent that a director, officer, ~~employee,~~ **or** nondirector volunteer ~~, or agent~~ of a corporation ~~has been~~ **is** successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in section 561 or 562, or in defense of a claim, issue, or matter in the action, suit, or proceeding, ~~the successful party shall be indemnified against~~ **or has established that the corporation is required to assume his or her liabilities under section 209(1)(d) or section 209(1)(e), the corporation shall indemnify him or her for actual and reasonable** expenses, including ~~actual and reasonable~~ attorneys' fees, incurred **by him or her** in connection with the action, suit, or proceeding and ~~in any~~ **an** action, suit, or proceeding brought to enforce the mandatory indemnification provided in this ~~subsection~~ **section.**

~~(2)~~ An indemnification under section 561 or 562, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, nondirector volunteer, or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in sections 561 and 562. This determination shall be made in any of the following ways:

~~(a)~~ By a majority vote of a quorum of the board consisting of directors who were not parties to the action, suit, or proceeding.

~~(b)~~ If the quorum described in subdivision (a) is not obtainable, then by a majority vote of a committee of directors who are not parties to the action. The committee shall consist of not less than 2 disinterested directors.

~~(c) By independent legal counsel in a written opinion.~~

~~(d) By the shareholders or members.~~

~~(3) If a person is entitled to indemnification under section 561 or 562 for a portion of expenses including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement but not for the total amount thereof, the corporation may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.~~

Sec. 564a. (1) Except as otherwise provided in subsection (5), unless ordered by the court, a corporation shall indemnify a director, officer, employee, nondirector volunteer or agent under section 561 or 562, only if authorized in the specific case upon a determination that indemnification of the director, officer, employee, nondirector volunteer, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in sections 561 and 562 and upon an evaluation that the expenses and amounts paid in settlement are reasonable. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If the board is unable to obtain a quorum under subdivision (a), by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion. The corporation must select counsel to prepare the opinion in 1 of the following ways:

(i) By the board or a committee of directors in the manner prescribed in subdivision (a) or (b).

(ii) If the board is unable to obtain a quorum under subdivision (a) and the board is unable to designate a committee under subdivision (b), by the board.

(d) By the shareholders or members, but shares or memberships held by directors, officers, employees, nondirector volunteers or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(2) All directors may participate in designating a committee under subsection (1)(b) or in selecting independent legal counsel under subsection (1)(c)(ii).

(3) If a person is entitled to indemnification under section 561 or 562 for a portion of expenses, including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the corporation may indemnify the person for the portion of the expenses, judgments, penalties, fines or amounts paid in settlement for which the person is entitled to be indemnified.

(4) A corporation shall authorize payment of indemnification under this section in any of the following ways:

(a) By the board in 1 of the following ways:

(i) If there are 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all directors who are not parties or threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(ii) By a majority of the members of a committee of 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(iii) If there are less than 2 directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by the vote necessary for action by the board in accordance with section 523. All directors may participate in authorization under this subparagraph.

(b) By the shareholders or members, but shares or memberships held by directors, officers, employees, nondirector volunteers, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted on the authorization.

(5) To the extent that the articles of incorporation eliminate or limit the liability of a director under section 209(1)(c), a corporation may indemnify a director for the expenses and liabilities described in this subsection without a determination that the director has met the standard of conduct set forth in sections 561 and 562, but shall not indemnify the director for obligations imposed under section 497(a) or, except to the extent authorized in section 564c, if the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders or members, violated section 551, or intentionally committed a criminal act. In connection with an action or suit by or in the right of the corporation described in section 562, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred. In connection with an action, suit or proceeding other than an action, suit, or proceeding by or in the right of the corporation, described in section 561, a corporation may indemnify a director under this subsection for expenses, including attorneys' fees, actually and reasonably incurred, and for judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee, nondirector volunteer, or agent who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the person furnishes the corporation a written agreement, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) The agreement required by subsection (1) must be an unlimited general obligation of the director, officer, employee, nondirector volunteer or agent, but may be unsecured. A corporation accept an agreement required by subsection (1) without reference to the financial ability of the person to make repayment.

(3) A corporation shall evaluate the reasonableness of advances under this section in the manner described in section 564a(1) for evaluating the reasonableness of expenses and an authorization shall be made in the manner specified in section 564a(4) unless an advance is mandatory. A corporation may authorize advances with respect to a proceeding and determine the reasonableness of advances or approve a method for determining the reasonableness of advances in a single resolution covering the entire proceeding. However, unless the action or resolution provides otherwise, an authorizing or determining authority of the corporation may subsequently terminate or amend the authorization or determination with respect to advances not yet made.

(4) A provision in the articles of incorporation or bylaws, a resolution of the board or shareholders or members, or an agreement making indemnification mandatory shall

also makes the advancement of expenses mandatory unless the provision, resolution, or agreement specifically provides otherwise.

Sec. 564c. A director, officer, employee, nondirector volunteer, or agent of the corporation who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. After receiving an application, the court after giving any notice it considers necessary may order indemnification if it determines all of the following are met:

(a) Indemnification is not prohibited under section 497(a) and is consistent with other applicable law and with any restrictions in the articles of incorporation or the bylaws.

(b) The person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in sections 561 or 562 or was adjudged liable as described in section 562. However, if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

Sec. 565. (1) ~~The~~ An indemnification or ~~advancement~~ **advance** of expenses provided under sections 561 to ~~564~~ **564c** is not exclusive of other rights to which a person seeking indemnification or ~~advancement~~ **advance** of expenses may be entitled under the articles of incorporation, bylaws, or a contractual agreement. ~~However, the~~ **The** total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or ~~advancement~~ **advance** of expenses.

(2) ~~The indemnification provided in~~ **Indemnification under** sections 561 to ~~564 and~~
~~this section~~ **565** continues as to a person who ceases to be a director, officer, employee,
nondirector volunteer, or agent and ~~shall insure~~ **insures** to the benefit of the heirs, ~~executors,~~
personal representatives, and administrators of the person.

Sec. 567. (1) A corporation ~~shall have power to~~ **may** purchase and maintain insurance
on behalf of any person who is or was a director, officer, employee, nondirector volunteer, or
agent of the corporation, or **who** is or was serving at the request of the corporation as a director,
officer, **partner, trustee**, employee, nondirector volunteer, or agent of another **foreign or**
domestic corporation, **foreign or domestic** business corporation, **limited liability company**,
partnership, joint venture, trust, or other enterprise **for profit or nonprofit** against any liability
asserted against ~~the person~~ **him or her** and incurred by ~~the person~~ **him or her** in ~~any such~~
that capacity or arising out of ~~the person's~~ **his or her** status as such, whether or not the
corporation ~~would have~~ **has** power to indemnify ~~the person~~ **him or her** against ~~such~~ liability
under sections 561 to 565.

(2) **If the articles of incorporation include a provision eliminating or limiting the**
liability of a director under section 209(1)(c), the corporation may purchase insurance on
behalf of a director under subsection (1) from an insurer owned by the corporation, but
insurance purchased from that insurer may insure a director against monetary liability to
the corporation or its shareholders or members only to the extent to which the corporation
could indemnify the director under section 564a(5).

Sec. 569. For purposes of sections 561 to 567, "corporation" includes all constituent
corporations absorbed in a consolidation or merger and the resulting or surviving corporation or
business corporation, so that a person who is or was a director, officer, employee, nondirector

volunteer, or agent of the constituent corporation or is or was serving at the request of the constituent corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, **foreign or domestic** business corporation, **limited liability company**, partnership, joint venture, trust, or other **profit or nonprofit** enterprise ~~whether for profit or not~~ shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation or business corporation as the person would if ~~the person~~ **he or she** had served the resulting or surviving corporation or business corporation in the same capacity.

Sec. 571. As used in sections 561 to 567:

(a) **"Fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan.**

(b) **"Other enterprises" includes employee benefit plans.**

(c) **"Serving at the request of the corporation" shall include any service as a director, officer, employee, nondirector volunteer, or agent of the corporation that imposes duties on, or involves services by, the director, officer, employee, nondirector volunteer, or agent with respect to an employee benefit plan, its participants, or its beneficiaries.**

(d) **A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan is considered to have acted in a manner "not opposed to the best interests of the corporation or its shareholders or members" as referred to in sections 561 and 562.**

Sec. 601. (1) A corporation may amend its articles of incorporation if the amendment contains only ~~such~~ provisions ~~as might lawfully be contained in~~ **that** original articles of incorporation filed at the time ~~of making~~ the amendment **is made might lawfully contain.**

(2) Subject to section ~~301(5)~~ **301(6)**, a corporation may amend its articles of incorporation to become a business corporation by adopting restated articles of incorporation ~~in accordance with~~ **under** section 641 ~~which shall so amend the articles that they shall~~ **if the restated articles of incorporation** contain only ~~such~~ **those** provisions ~~as might be lawfully contained in~~ **that** original articles of incorporation of a business corporation ~~organized~~ **formed** under Act No. 284 of the Public Acts of 1972, as amended, being sections 450.1101 to 450.2099 of the Michigan Compiled Laws ~~the business corporation act might contain~~. **The adoption and filing of restated articles of incorporation under this subsection does not constitute a dissolution of the corporation.**

(3) Subject to section **301(6)**, a corporation may amend its articles of incorporation to become a professional service corporation by adopting restated articles of incorporation **under section 641** if the restated articles of incorporation contain only those provisions that original articles of incorporation of a professional service corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235, might contain. **The adoption and filing of restated articles of incorporation under this subsection does not constitute a dissolution of the corporation.**

Sec. 602. Without ~~limitation upon~~ **limiting** the general power of amendment granted by section 601, a corporation may amend its articles of incorporation **to do any of the following:**

- (a) ~~To change~~ **Change** its corporate name.
- (b) ~~To enlarge,~~ **Enlarge,** limit, or otherwise change its corporate purposes or powers.
- (c) ~~To change~~ **Change** the duration of the corporation.
- (d) ~~To increase~~ **Increase** or decrease the aggregate number of shares, or shares of any class ~~which~~ **that** the corporation has authority to issue.

(e) ~~To exchange~~ **Exchange**, classify, reclassify, or cancel any of its issued or unissued shares.

(f) ~~To change~~ **Change** the designation of any of its issued or unissued shares, ~~and to~~ or change the qualifications, preferences, limitations, and relative rights ~~in respect~~ of any of its issued or unissued shares or of its members.

(g) ~~To change~~ **Change** the issued or unissued shares of any class into a different number of shares of the same class or into the same or a different number of shares of other classes.

(h) ~~To create~~ **Create** new classes of shares or members ~~having that~~ **have** rights and preferences superior ~~to,~~ or inferior to, or equal with, the issued or unissued shares or the ~~members~~ **memberships** of any class then authorized.

(i) **Cancel or otherwise affect the right of the holders of the shares or memberships of any class to receive distributions which have accrued but have not been declared.**

(j) **Limit, deny, or grant to shareholders or members of a class the preemptive right to acquire shares or memberships of the corporation.**

(k) ~~(i) To change~~ **Change** its registered office or change its resident agent.

(l) ~~(j) To strike~~ **Strike** out, change, or add any provision for management of ~~the~~ business and conduct of the affairs of the corporation, or creating, defining, limiting, and regulating the powers of the corporation, its ~~director and~~ **directors**, shareholders, ~~or~~ members or any class of shareholders or members, including any provision ~~which~~ **that** under this act is required or permitted to be set forth in the bylaws.

(m) ~~(k) To change~~ **Change** its ~~basis~~ **form** of organization to a stock corporation or a nonstock corporation organized ~~upon~~ **on** a membership or directorship basis, ~~in which event~~

~~the amendment shall~~ **An amendment under this subsection** must comply with section 202(c) and (d) or section ~~202(e)~~ **202(f)** and ~~(f)~~ **(g)**, as applicable.

Sec. 611. (1) Before the first meeting of the board, the incorporators may amend the articles of incorporation by ~~complying with section 631(1)~~ **unanimous consent of the incorporators.**

(2) Unless the articles of incorporation provide otherwise, the board of a corporation organized on a stock or membership basis may adopt 1 or more of the following amendments to its articles of incorporation without shareholder or member action:

(a) Extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

(b) Delete the names and addresses of the initial directors.

(c) Delete the name and address of a prior resident agent, if a statement of change is on file with the administrator.

(d) Delete descriptions of the property of the corporation or its value.

(e) Change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

(f) Change the corporate name by adding, deleting or changing the word “corporation,” “incorporated,” “company,” “limited,” “association” or “society” or the abbreviation “corp.,” “inc.,” “co.,” “Ltd.,” or “assn.,” or a similar word or abbreviation in the corporate name, or by adding deleting or changing a geographical attribution for the corporate name.

(g) Any other change expressly permitted by this act to be made without shareholder or member approval.

~~(2)~~ **(3)** Except for an amendment described in ~~subsection~~ **subsections (1) and (2)** and except as otherwise provided in this act, a corporation must adopt any amendment to the articles of incorporation in 1 of the following manners as provided in this ~~section~~ **subsection**:

(a) If the corporation is organized on a membership basis, by a vote of the members entitled to vote on the amendment.

(b) If the corporation is organized on a stock basis, by a vote of the shareholders entitled to vote on the amendment.

(c) If the corporation is organized on a directorship basis, unless the articles of incorporation specify a different manner, by a vote of the directors.

~~(3)~~ **(4)** A corporation **or a member, shareholder or director proposing an amendment to the articles of incorporation** shall give notice of a meeting to consider an amendment to the articles of incorporation to each member, shareholder, or director entitled to vote on the amendment, as applicable. The notice shall contain the proposed amendment or a summary of the changes that will occur in the amendment is adopted. The corporation **or a member, shareholder, or director proposing an amendment to the articles of incorporation** shall provide the notice with the time and in the manner provided in this act for giving notice of meetings of shareholders, members, or directors except that, **in the case of a** ~~the~~ corporation **organized on a directorship basis, shall give** the notice of the meeting **shall be given** to each director then in office not less than 10 days before the meeting.

~~(4)~~ **(5)** At a meeting to consider an amendment to the articles of incorporation, a vote of shareholders, members, or directors entitled to vote shall be taken on the proposed amendment.

The proposed amendment is ~~adopted~~ **approved** if ~~it receives the affirmative vote of~~ a majority of the ~~outstanding shares~~ **votes held by shareholders** or members entitled to vote on the proposed amendment **are cast in favor of the amendment or, in the case of a corporation organized on a directorship basis, if it receives the affirmative vote of** a majority of the directors then in office. If any class of shares or members is entitled to vote on the proposed amendment as a class, ~~the affirmative vote of a majority of the outstanding shares~~ **votes held by shareholders** or members of that class ~~is also required~~ **must also be cast in favor of the amendment to adopt the amendment approve it.** The voting requirements of this section are subject to greater requirements as prescribed by this act for specific amendments, or as provided in the articles of incorporation or bylaws. In addition, unless a greater vote is required in the articles of incorporation, or in a bylaw adopted by the shareholders, members, or directors **of a corporation organized on a directorship basis**, the proposed amendment is ~~adopted~~ **approved** if ~~it receives an affirmative vote of~~ a majority of **the votes cast by** members or ~~shares of~~ shareholders present in person, by proxy, or by electronic transmission at the meeting **are cast in favor of the amendment and, if any class or shares or members is entitled to vote on the proposed amendment as a class, a majority of the votes held by shareholders or members of each such class present in person, by proxy, or by electronic transmission at the meeting are cast in favor of the amendment, or a majority of a quorum of the board of directors of a corporation organized on a directorship basis vote in favor of the amendment,** if due notice of the time, place, and object of the meeting was given by mail, at the last known address, to each shareholder, member or director entitled to vote ~~thereon~~ at least 20 days before the date of the meeting or by publication in a publication distributed by the

corporation to its shareholders or members at least 20 days ~~prior to~~ **before** the date of the meeting.

~~(5)~~ **(6)** The shareholders, members, or director may act on any number of amendments at 1 meeting.

~~(6)~~ **(7)** If an amendment to the articles of incorporation is adopted, the corporation shall file a certificate of amendment as provided in section 631.

Sec. 615. **(1)** The holders **of a class** of ~~the~~ outstanding shares **of a corporation organized on a stock basis** or the ~~member~~ **members** of a class **of a corporation organized on a membership basis** may vote as a class ~~upon~~ **on** a proposed amendment, whether or not entitled to vote ~~thereon~~ **on the amendment** by the articles of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of the class or alter or change the powers, preferences, or special rights of the shares or members of the class or other classes so as to affect the class adversely.

(2) This section does not confer voting rights on members of a corporation organized on a directorship basis.

Sec. 631. **(1)** If ~~the~~ **an amendment to the articles of incorporation** is ~~made~~ **approved** as provided in section 611(1), **a majority of the incorporators shall sign and file** a certificate of amendment ~~shall be signed by all the incorporators and filed~~ on behalf of the corporation, setting forth the amendment and certifying that the amendment ~~is~~ **was** adopted by unanimous consent of the incorporators before the first meeting of the board.

(2) If an amendment to the articles of incorporation is approved under section 611(2), a certificate of amendment shall be executed and filed on behalf of the corporation setting forth the amendment and certifying that it was adopted by the board of directors.

~~(2)~~ **(3)** ~~In case of any other amendment, except~~ **Except for an amendment to the articles of incorporation described in subsection (1) or (2) or as otherwise provided in this act, if an amendment is approved,** a certificate of amendment shall be executed and filed on behalf of the corporation, setting forth the amendment and certifying that the amendment ~~has been~~ **was** adopted in accordance with section ~~611(2)~~ **611(3)**.

(4) If a corporation amends an article in its articles of incorporate that is divided into separately identified sections, the certificate of amendment may only set forth the section of the article that was amended. Otherwise, the certificate of amendment must set forth the entire article that was amended.

Sec. 641. (1) A corporation may integrate into a single instrument the provisions of its articles of incorporation ~~which~~ **that** are then in effect and operative, as ~~theretofore~~ amended, and at the same time may also further amend its articles of incorporation by adopting restated articles of incorporation.

(2) All of the incorporators may adopt restated articles of incorporation before the first meeting of the board by complying with the provisions of sections 642 and 643(1).

~~(2)~~ **(3)** If the restated articles of incorporation merely restate and integrate, but do not further amend the articles **of incorporation** as ~~theretofore~~ **previously** amended **or if the restated articles of incorporation contain only those amendments that may be approved by the board under section 611(2),** ~~they~~ **the restated articles of incorporation** may be adopted by the board without a vote of the shareholders or members, or by the shareholders or members, in which case the procedure and vote required by section ~~611(2)~~ **611(3)** is applicable. If the restated articles of incorporation restate and integrate and also further amend in any material respect the articles of incorporation, as ~~theretofore~~ **previously** amended, ~~they shall be adopted~~

by a vote of the incorporators under subsection (2) or a vote of the shareholders, members, or directors pursuant to ~~under~~ section ~~611(2)~~ **611(3) is required to adopt restated articles of incorporation.**

~~(3)~~ **(4)** An amendment ~~effected~~ **adopted** in connection with the restatement ~~and integration~~ of the articles of incorporation is subject to any other provision of this act, not inconsistent with this section, ~~which~~ **that** would apply if a certificate of amendment were filed to effect ~~such~~ **that** amendment.

Sec. 642. (1) ~~Restated~~ **The heading of restated** articles of incorporation shall ~~be~~ specifically ~~designated~~ **designate them** as such, ~~in the heading thereof.~~ They shall state, either in the heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, all of its former names and the date of filing of its original articles of **incorporation.** Restated articles **of incorporation** shall state that they were duly adopted by **the incorporators,** directors, shareholders, or members in accordance with ~~this~~ section **641.**

(2) If adopted by the incorporators under section 641(2), restated articles of incorporation shall state that they were duly adopted by unanimous consent of the incorporators before the first meeting of the board. If adopted by the board without a vote of the shareholders ~~or~~ **or** members ~~or directors,~~ according to the procedure and vote required by section ~~641(2),~~ **641(4)** ~~they~~ **the restated articles of incorporation** shall state that they only restate and integrate and do not further amend the **existing** articles as ~~theretofore~~ **previously** amended, and, **except as permitted in section 611(2),** that there is no material discrepancy between those provisions and the provisions of the restated articles **of incorporation.** Restated articles of incorporation may omit ~~such~~ **any** provisions of the original, **amended or previously restated** articles ~~which~~ **of incorporation that** named the incorporators, the initial board, or

original subscribers for shares or original members **or describe or value corporate property,**
and the omission ~~is~~ **shall not ~~be deemed~~ be considered** a further amendment.

Sec. 643. (1) **A majority of incorporators shall sign and file restated articles of incorporation adopted under section 641(3) in accordance with section 131.**

(2) ~~Restated~~ **Except as provided in subsection (1), a corporation shall execute and file restated** articles of incorporation ~~shall be executed~~ in accordance with section 131.

(3) When ~~such~~ a filing **of restated articles of incorporation** becomes effective, the corporation's original articles of incorporation ~~, as amended,~~ **and previous amendments** are superseded, ~~;~~ and ~~thenceforth~~ the restated articles **of incorporation,** including any ~~further~~ amendments ~~made thereby,~~ **included in the restated articles of incorporation,** shall be the articles of incorporation of the corporation.

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Sec. 701. (1) Two or more domestic corporations may merge into 1 of the corporations ~~or consolidate into a new corporation~~ pursuant to a plan of merger ~~or consolidation~~ approved in the manner provided in this act.

(2) The board of each corporation proposing to participate in a merger ~~or consolidation~~ shall adopt a plan of merger, ~~or consolidation, setting forth~~ **that sets forth all of the following:**

(a) The name of each constituent corporation and the name of the **constituent corporation that will be the** surviving ~~or consolidated~~ corporation.

(b) ~~As to~~ **For** each constituent corporation ~~which~~ **that** is a stock corporation, the designation and number of outstanding shares of each class, specifying the classes entitled to vote; ~~and~~ each class ~~if any,~~ entitled to vote as a class; and, if the number of ~~any such~~ shares is subject to change before the effective date of the merger, ~~or consolidation,~~ the manner in which the change may occur.

(c) ~~As to~~ **For** each constituent corporation ~~which~~ **that** is a ~~nonstock~~ **membership** corporation, a description of the members, ~~in the case of a membership corporation,~~ including the number, classification, and voting rights of members, ~~or~~

(d) **For each constituent corporation that is a directorship corporation,** a description of the organization of the board, ~~in the case of a directorship corporation,~~ including the number, classification, and voting rights of directors.

(e) ~~(d)~~ The terms and conditions of the proposed merger, ~~or consolidation,~~ including the manner and basis of converting the shares of or membership or other interest in each constituent corporation into shares, ~~bonds~~ **obligations**, or other securities **of** or membership or

other interest in the surviving ~~or consolidated~~ corporation, or into cash or other consideration, which **if any, that** may include shares, bonds, rights, or other property or securities of **or membership or other interests in** a corporation whether or not a party to the merger, or into a combination ~~thereof~~ **of those securities, interests, and property.**

~~(f) (e) In a merger, a~~ A statement of ~~an~~ **any** amendment to the articles of incorporation of the surviving corporation to ~~be effected by~~ **result from** the merger or ~~a~~ **any** restatement of the articles of incorporation ~~as provided in~~ **under** section 641(1), ~~which shall be~~ in the form of **for** restated articles of incorporation ~~as provided~~ **required** in section 642 ~~and in a consolidation, all statements required to be included in articles of incorporation formed under this act.~~

~~(g) (f)~~ Other provisions with respect to the proposed merger ~~or consolidation as~~ **that** the board considers necessary or desirable.

(3) Notwithstanding the provisions of this section and other provisions of this act, a corporation shall make distributions to shareholders or members of any corporation or to any other person in connection with a merger only in conformity with section 301 and with limitations on distributions in the articles of incorporation of that corporation.

Sec. 703a. (1) Except as provided in subsections 2(e) and (f), a plan of merger adopted by the board of each constituent corporation that is organized on a stock or membership basis shall, except as provided in subsection 2(e) and (f), be submitted for approval at a meeting of the shareholders or members.

(2) For a plan of merger to be approved under subsection (1), all of the following shall apply:

(a) The board must recommend the plan of merger to the shareholders or members, unless the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders or members with the plan.

(b) The board may condition its submission of the proposed merger on any basis.

(c) The corporation shall give notice of the shareholder or membership meeting to each shareholder or member of record, whether or not entitled to vote at the meeting, within the time and in the manner provided in this act for giving notice of meetings of shareholders or members. The notice shall include or be accompanied by a copy or summary of the plan of merger. If a summary of the plan is given, the notice shall state that a copy of the plan is available upon request.

(d) At the meeting of the shareholders or members, the shareholders or members shall vote on the proposed plan of merger. Subject to subdivision (e) the plan is approved if all of the following are met:

(i) A majority of the votes held by shareholders or members of the corporation entitled to vote on the plan are cast in favor of the plan.

(ii) If a class of members or shareholders is entitled to vote on the plan as a class, a majority of the votes held by shareholders or members of the class are cast in favor of the plan. A class of shares or of members is entitled to vote as a class in the case of a merger, if the plan of merger contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class of shares or members to vote as a class.

(e) Notwithstanding subdivision (d), unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, if there are more than 20 shareholders or members entitled to vote at the meeting, the plan of merger is adopted if a majority of the votes held by shareholders or the members present in person or by proxy at such meeting are cast in favor of the plan and, if a class of shareholders or members is entitled to vote on the proposed merger as a class, a majority of the votes held by shareholders or members of each such class present in person or by proxy at the meeting are cast in favor of the plan.

(f) Except as provided in section 754 or unless required by the articles of incorporation or bylaws, action on a plan of merger by the shareholders or members of a surviving corporation that is organized on a stock or membership basis is not required if all of the following apply:

(i) The articles of incorporation of the surviving corporation will not differ from its articles of incorporation before the merger.

(ii) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, voting rights, preferences, limitations, and relative rights, immediately after the merger or each member of the surviving corporation whose membership was outstanding immediately before the effective date of the merger will be a member with identical designations, voting rights, preferences, limitations, and relative rights, immediately after the merger.

(g) A plan of merger may provide for differing forms of consideration for holders of shares or memberships within the same class based upon the election of the holders or members, the amount of shares or memberships held, or another reasonable basis.

(3) If any merging corporation is organized on a directorship basis, the board shall approve the plan of merger by an affirmative vote of a majority of the directors then in office or a higher number of directors if specified in the articles of incorporation or bylaws. The corporation shall give notice of the meeting to authorize the merger to each director then in office not less than 20 days before the meeting. The notice shall include or be accompanied by a copy or a summary of the plan of merger.

Sec. 706. (1) If a domestic corporation has not commenced business, has not issued any shares or memberships, and has not elected a board, the corporation may merge with any domestic or foreign corporation by unanimous consent of its incorporators.

(2) If incorporators unanimously consent to a merger under subsection (1), a majority of incorporators shall execute a certificate of merger in accordance with section 707.

(3) The other domestic or foreign corporations participating in the merger with a domestic corporation described in subsection (1) shall comply with the provisions of this act dealing with mergers that are applicable to them.

Sec. 707. (1) After ~~approval of~~ a plan of merger ~~or consolidation~~, is approved under this act, each constituent corporation shall sign and file a certificate of merger ~~or a certificate of consolidation shall be executed and filed~~ on behalf of ~~each~~ that corporation. The certificate shall set forth ~~the plan of merger or the plan of consolidation and either~~ all of the following:

(a) ~~A statement that the plan of merger or consolidation has been adopted by the board and approved by the shareholders or members in accordance with section 701 to 703 (1) and (2).~~

The statements required by section 701(2)(a), (b), and (d), and the manner and basis of converting the shares or memberships of each constituent corporation organized on a stock or membership basis as set forth in the plan of merger.

(b) ~~A statement that the plan of merger or consolidation has been adopted by the board in accordance with section 703(3).~~ **A statement that the boards have adopted the plan of merger in accordance with section 701.**

(c) **A statement that the surviving corporation will furnish the plan of merger, on request and without cost, to any shareholder or member of any constituent corporation.**

(d) **If approval of the shareholders or members of 1 or more corporations party to the merger was required, a statement that the plan was approved by the shareholders or members in accordance with section 703a.**

(e) **If the merger is governed by section 706, a statement that the merging corporation has not commenced business, has not issued any shares or memberships, and has not elected a board and that the plan of merger was approved by the unanimous consent of the incorporators.**

(f) **A statement of any assumed names of merging corporations transferred to the surviving corporation as authorized by section 217(3), specifying each transferred assumed name and the name of the corporation from which it is transferred. The certificate may include a statement of corporate names or assumed names of merging corporations that are to be treated as newly filed assumed names of the surviving corporation under section 217(4).**

(2) ~~The~~ A certificate of merger ~~or consolidation shall become~~ **becomes** effective in accordance with section 131.

Sec. 711. (1) A domestic corporation may merge 1 or more subsidiary corporations into itself, or may merge itself, or itself and any 1 or more subsidiary corporations into any other subsidiary corporation, without approval of the shareholders or members of any of the corporations, except as provided in section 713. The board of the parent corporation shall approve a plan of merger setting forth those matters required to be set forth in a plan of merger under section 701. Approval by the board of any such subsidiary corporation is not required.

(2) If the parent corporation owns less than 100% of the outstanding shares or memberships of any subsidiary corporation that is a constituent corporation, the parent corporation shall promptly after the filing of the certificate of merger mail a copy or summary of the plan of merger to each minority shareholder or member of record of each such subsidiary corporation, unless the shareholder or member waives the requirement in writing.

(3) The authority of a corporation to merge under this section does not prevent the corporation for using other provisions of this act to complete a merger.

(4) As used in this section and in sections 712 and 713:

(a) “Constituent corporation” means a corporation that is a party to the merger described in subsection (1).

(b) A domestic corporation is a “subsidiary corporation” if another domestic corporation holds at least 90% of its shareholder or member votes.

Sec. 712. (1) After a plan of merger is adopted as provided in section 711, the parent corporation shall execute and file a certificate of merger that sets forth all of the following:

(a) The statements required by section 701(2)(a) and (d), and the manner and basis of converting shares or memberships of each constituent corporation as set forth in the plan of merger.

(b) The number of outstanding shares or memberships of each class of each subsidiary corporation that is a party to the merger and the number of shares or memberships of each class owned by the parent corporation.

(c) A statement of any assumed names of merging corporations transferred to the surviving corporation as authorized in section 217(3), specifying each transferred assumed name and the name of the corporation from which it is transferred. The certificate may include a statement of corporate names or assumed names of merging corporations that are to be treated as newly filed assumed names of the surviving corporation under section 217(4).

(2) The merger shall become effective in accordance with section 131.

Sec. 713. (1) A subsidiary corporation that is a constituent corporation in a merger under section 711 shall obtain the approval of its shareholder or members if its articles of incorporation require approval of a merger by the affirmative vote of holders of more than the percentage of shareholder or member votes of any class of the corporation then held by the parent corporation.

(2) A parent corporation shall obtain approval of its shareholders or members for a merger under section 711 if either of the following applies:

(a) If its articles or incorporation require shareholder or member approval of the merger.

(b) Pursuant to section 703a, if the plan of merger contains a provision that would amend any part of the articles of incorporation of the parent corporation into which a subsidiary corporation is being merged, or a subsidiary corporation is to be the surviving corporation of the merger.

Sec. 724 All of the following apply when a merger takes effect:

(a) Every other corporation that is a party to the merger merges into the surviving corporation and the separate existence of every corporation that is a party to the merger except the surviving corporation ceases. A merger in which a domestic corporation is the surviving corporation is not considered a dissolution of any constituent domestic corporation or domestic business corporation.

(b) The title to all real estate and other property and rights owned by each corporation that is a party to the merger are vested in the surviving corporation without reversion or impairment.

(c) The surviving corporation may use the corporate name and the assumed names of any merging corporation, if the filings required under section 217(3) and (4) are made.

(d) The surviving corporation has all liabilities of each corporation that is a party to the merger.

(e) A person may continue any proceeding pending against any corporation that is a party to the merger as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

(f) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

(g) The shares or memberships of each corporation party to the merger that are to be converted into shares, obligations, or other securities of or membership or other interests in the surviving or any other corporation or into cash or other property are converted.

Sec. 735. (1) One or more domestic business corporations, foreign corporations or foreign business corporations may merge with 1 or more domestic corporations if all of the following are met:

(a) In a merger involving a foreign corporation or a foreign business corporation, the merger is permitted by the law of the state or country under whose law each foreign corporation and each foreign business corporation is incorporated and each foreign corporation or foreign business corporation complies with that law in effecting the merger. If the parent corporation in a merger conducted under section 711 is a foreign corporation or a foreign business corporation, it shall comply, notwithstanding the provisions of the laws of its jurisdiction of incorporation, with all of the following:

(i) Section 711(2) with respect to notice to shareholders or members of a domestic subsidiary corporation that is a party to the merger.

(ii) Section 712 with respect to the certificate of merger.

(b) If a foreign corporation authorized to conduct affairs or transact business in this state is a party to a merger, it shall comply with the applicable provision of Section 1021 and 1035.

(c) In a merger involving 1 or more domestic business corporations, the merger is permitted by the business corporation act, and each domestic business corporation complies with that law in effecting the merger. However, if the parent corporation in a merger conducted under section 711 is a domestic business corporation, it shall also comply with section all of the following:

(i) Section 711(2) with respect to notice to shareholders or members of a domestic subsidiary corporation that is a party to the merger.

(ii) Section 712 with respect to the certificate of merger.

(d) Each domestic corporation complies with the applicable provisions of sections 701 through 713.

(2) If the surviving corporation of a merger is a foreign corporation to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of this act with respect to foreign corporations if it is to conduct affairs in this state. If the surviving corporation in a merger is a foreign business corporation to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of the business corporation act with respect to foreign business corporations if it is to transact business in this state.

(3) The surviving corporation in a merger is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is party to the merger.

(4) This section does not limit the power of a domestic business corporation, foreign corporation or a foreign business corporation to acquire all or part of the shares or

memberships of 1 or more classes of a domestic corporation through a voluntary exchange or otherwise.

(5) Notwithstanding the provision of this section or any other provisions of this act, distributions to shareholders or members of any corporation or to any other person in connection with a merger with a domestic business corporation, foreign corporation, or foreign business corporation shall be made only in conformity with Section 301 and with any limitations on distributions in the articles of the corporation.

Sec. 736a. (1) Except as provided in subsection (2) and subject to subsection (8), 1 or more domestic corporations may merge with 1 or more business organizations if all of the following requirements are met:

(a) The merger is permitted by the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger, and each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(b) The board of each domestic corporation proposing to participate in a merger adopts a plan of merger, that sets forth all of the following:

(i) The name of each constituent entity, the name of the constituent entity that will be the surviving entity, the street address of the surviving entity's principal place of business, and the type of organization of the surviving entity.

(ii) If a domestic corporation that is a party to the merger is a stock corporation, the designation and number of outstanding shares of each class, specifying the classes entitled to vote, each class entitled to vote as a class, and, if the number of shares is subject

to change before the effective date of the merger, the manner in which the change may occur.

(iii) If a domestic corporation that is a party to the merger is a membership corporation, a description of the members, including the number, classification, and voting rights of members.

(iv) If a domestic corporation that is a party to a merger is a directorship corporation, a description of the organization of the board, including the number, classification, and voting rights of directors.

(v) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests, obligations, or other securities of or membership or other interests in the surviving entity, or into cash or other consideration, if any, that may include ownership interests, obligations or other securities of or membership or other interests in an entity not a party to the merger, or into a combination of those securities, interests or property.

(vi) If the surviving entity is to be a domestic corporation, a statement of any amendment to the articles of incorporation of the surviving corporation that will result from the merger or any restatement of the articles as provided in section 641(1), in the form for restated articles required under section 642.

(vii) Other provisions with respect to the proposed merger that the board considers necessary or desirable.

(c) A plan of merger adopted by the board of each constituent domestic corporation shall be submitted for approval at a meeting of the shareholders or members as provided in

section 703a(1), or, if the corporation is organized on a directorship basis, for approval by the board of directors, as provided in section 703a(3).

(2) If a domestic corporation has not commenced business, has not issued any shares, and has not elected a board, the corporation may merge with any domestic or foreign entity by unanimous consent of its incorporators. If the incorporators unanimously consent to a merger under this subsection, a majority of the incorporators shall execute a certificate of merger in accordance with subsection (3)

(3) After a plan of merger is approved, each domestic corporation that is a party to the merger shall execute and file a certificate of merger. The certificate shall set forth all of the following:

(a) A statement of the applicable requirements set forth in subsections (1)(b)(i), (ii), (iii), (iv), (v), (vi) and (vii), and the manner and basis of converting the ownership, membership or other interests of each constituent entity as set forth in the plan of merger.

(b) A statement that the plan of merger has been adopted by the board in accordance with subsection (1)(b).

(c) A statement that the surviving entity will furnish a plan of merger, on request and without cost, to any shareholder or member of the domestic corporation.

(d) If approval of the shareholders or members of the domestic corporation was required, a statement that the plan was approved by the shareholders or members in accordance with subsection (1)(c) or, if the corporation is organized on a directorship basis, a statement that the plan was approved by the board of directors in accordance with subsection (1)(c).

(e) If subsection (2) applies to a merger, a statement that the corporation has not commenced business, has not issued any shares or memberships, and has not elected a board, and that the plan of merger was approved by the unanimous consent of the incorporators.

(f) A statement of any assumed names of merging entities transferred to the surviving entity as authorized by section 217(3), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic corporation or a foreign corporation authorized to conduct affairs in this state, the certificate may include a statement of the names or assumed names of merging entities that are to be treated as newly filed assumed names of the surviving corporation under section 217(4).

(4) The certificate of merger becomes effective in accordance with section 131.

(5) When a merger takes effect, all of the following apply:

(a) Every other entity that is a party to the merger merges into the surviving entity and the separate existence of every entity that is a party to the merger except the surviving entity ceases.

(b) The title to all real estate and other property and rights owned by each entity that is a party to the merger are vested in the surviving entity without reversion or impairment.

(c) The surviving entity may use the name and the assumed names of any entity that is a party to the merger, if the filings required by section 217(3) or (4) or other applicable statute are made.

(d) The surviving entity has all liabilities of each entity that is a party to the merger. This section does not affect the liability, if any, of a person who was an obligated person with respect to an entity that is a party to the merger for acts or omissions that occurred before the merger.

(e) A person may continue any proceeding pending against any entity that was a party to the merger as if the merger did not occur, or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of incorporation of a surviving domestic corporation are amended to the extent provided in the plan of merger.

(g) The ownership interests, shares or memberships of each entity that is a party to the merger that are to be converted into ownership interests or obligations of or membership or other interests in the surviving entity or into cash or other property are converted.

(6) If the surviving entity in a merger under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state if it transacts business in this state. The surviving entity is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is a party to the merger.

(7) Notwithstanding the provision of this section or any other provisions of this act, a corporation shall make distributions to its shareholders or members or to any other person in connection with a merger with a business organization under this section only in conformity with Section 301 and with any limitations on distributions in its articles of incorporation.

(8) Section 755, and not this section, applies to a merger if all of the business organizations merging with 1 or more domestic corporations are foreign corporations, domestic business corporations or foreign business corporations.

(9) As used in this section:

(a) "Business organization" means a domestic or foreign limited liability company, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic business corporation, foreign corporation or foreign business corporation.

(b) "Entity" means a business organization, domestic corporation, foreign corporation or foreign business corporation.

(c) "Obligated person" means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise who, under applicable law, is generally liable for the obligations of the business enterprise.

Sec. 741. At any time before the effective date of ~~a~~ **the certificate of merger, ~~or consolidation, the merger or consolidation~~ **subject to any contractual rights, a merger** may be abandoned ~~pursuant to provisions therefor, if any~~ **without further shareholder or member action, in accordance with the procedure** set forth in the plan of merger ~~or consolidation~~ **or, if none is set forth, in the manner determined by the board.** If a certificate of merger ~~or consolidation~~ has been filed by a corporation, it shall file a certificate of abandonment within 10 days after the abandonment, but not later than the proposed effective ~~day~~ **date.****

Sec. 745. (1) A domestic corporation may convert into a business organization if all of the following requirements are satisfied:

(a) The conversion is permitted by the law that will govern the internal affairs of the business organization after conversion and the surviving business organization complies with that law in converting.

(b) Unless subdivision (d) applies, the board of the domestic corporation proposing to convert adopts a plan of conversion that includes all of the following:

(i) The name of the domestic corporation, the name of the business organization into which the domestic corporation is converting, the type of business organization into which the domestic corporation is converting, identification of the statute that will govern the internal affairs of the surviving business organization, the street address of the surviving business organization, the street address of the domestic corporation if different from the street address of the surviving business organization, and the principal place of business of the surviving business organization.

(ii) For a domestic corporation organized on a stock basis, the designation and number of outstanding shares of each class, specifying the classes entitled to vote, each class entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the conversion, the manner in which the change may occur.

(iii) For a domestic corporation organized on a membership basis, a description of the members, including the number, classification and voting rights of members.

(iv) For a domestic corporation organized on a directorship basis, a description of the organization of the board, including the number, classification, and voting rights of directors.

(v) The terms and conditions of the proposed conversion, including the manner and basis of converting the shares or memberships into ownership interests or obligations of the

surviving business organization, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(vi) The terms and conditions of the organizational documents that are to govern the surviving business organization.

(vii) Any other provisions with respect to the proposed conversion that the board considers necessary or desirable.

(c) If the board adopts the plan of conversion under subdivision (b), the plan of conversion is submitted for approval in the manner as required for a merger under section 703a(2).

(d) If the domestic corporation has not commenced business, has not issued any shares or memberships, and has not elected a board, subdivisions (b) and (c) do not apply and the incorporators may approve the conversion of the corporation into a business organization by unanimous consent. To effect the conversion, a majority of the incorporators must execute and file a certificate of conversion under subdivision (e).

(e) After the plan of conversion is approved under subdivisions (b) and (c) or the conversion is approved under subdivision (d), the domestic corporation files any formation documents required to be filed under the laws governing the internal affairs of the surviving business organization, in the manner required by those laws, and files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(i) Unless subdivision (d) applies, all of the information described in subdivision (b)(i), (ii), (iii) and (iv) and the manner and basis for converting the shares or memberships, if any, of the domestic corporation contained in the plan of conversion.

(ii) Unless subdivision (d) applies, a statement that the board has adopted the plan of conversion under subdivision (c), or if subdivision (d) applies to the conversion, a statement that the domestic corporation has not commenced business, has not issued any shares or memberships, and has not elected a board and that the plan of conversion was approved by the unanimous consent of the incorporators.

(iii) A statement that the surviving business organization will furnish a copy of the plan of conversion, on request and without cost, to any shareholder or member of the domestic corporation.

(iv) If approval of the shareholders or members or the domestic corporation was required, a statement that the plan was approved by the shareholders or members under subdivision (c).

(v) A statement specifying each assumed name of the domestic corporation to be used by the surviving business organization and authorized under section 217(5).

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The domestic corporation converts into the surviving business organization, and the articles of incorporation of the domestic corporation are cancelled. Except as otherwise provided in this section, the surviving business organization is organized under and subject

to the organizational laws of the jurisdiction of the surviving business organization as stated in the certificate of conversion.

(b) The surviving business organization has all of the liabilities of the domestic corporation. The conversion of the domestic corporation into a business organization under this section shall not be considered to affect any obligations or liabilities of the domestic corporation before conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the domestic corporation with respect to matters arising before the conversion.

(c) Title to all real estate and other property and rights owned by the domestic corporation remain vested in the surviving business organization without reversion or impairment. The rights, privileges, powers, and interests in property of the domestic corporation, as well as the debts, liabilities, and duties of the domestic corporation, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving business corporation to which the domestic corporation has converted for any purposes of the laws of this state.

(d) The surviving business organization may use the name and assumed names of the domestic corporation if the filings required under section 217(5) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A proceeding pending against the domestic corporation may be continued as if the conversion had not occurred, or the surviving business organization may be substituted in the proceeding for the domestic corporation.

(f) The surviving business organization is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the domestic corporation was originally incorporated.

(g) The shares or memberships of the domestic corporation that were to be converted into ownership interests or obligations of the surviving business organization or into cash or other property are converted.

(h) Unless otherwise provided in a plan of conversion adopted in accordance with this section, the domestic corporation is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversions does not constitute a dissolution of the domestic corporation.

(4) If the surviving business organization of a conversion under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business and the conduct of affairs in this state if it transacts business or conducts affairs in this state. The surviving business organization is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of the domestic corporation.

(5) Notwithstanding the provisions of this section and other provisions of this act, a corporation shall make distributions to shareholders or members of any corporation or to any other person in connection with a conversion under this section only in conformity with section 301 and with limitations on distributions in its articles of incorporation.

(6) As used in this section and section 746, "business organization" and "entity" mean those terms as defined in section 736a(9).

Sec. 746. (1) A business organization may convert into a domestic corporation if all of the following requirements are satisfied:

(a) The conversion is permitted by the law that governs the internal affairs of the business organization and the business organization complies with that law in converting.

(b) The business organization proposing to convert into a domestic corporation adopts a plan of conversion that includes all of the following:

(i) The name of the business organization, the type of business organization that is converting, identification of the statute that governs the internal affairs of the business organization, the name of the surviving domestic corporation into which the business organization is converting, the street address of the surviving domestic corporation, and the principal place of business of the surviving domestic corporation.

(ii) A description of all of the ownership interests in the business organization, specifying the interests entitled to vote, any right those interests have to vote collectively or as a class, and if the ownership interest are subject to change before the effective date of the conversion, the manner in which the change may occur.

(iii) The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the business organization into shares, memberships or obligations of the surviving domestic corporation, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion.

(iv) The terms and conditions of the articles and bylaws that are to govern the surviving domestic corporation.

(v) Any other provisions with respect to the proposed conversion that the business organization considers necessary or desirable.

(c) If the plan of conversion is adopted by the business organization under subdivision (b), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that business organization.

(d) After the plan of conversion is approved under subdivisions (b) and (c), the business organization files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(i) All of the information described in subdivision (b)(i) and (ii) and the manner and basis of converting the ownership interests of the business organization contained in the plan of conversion.

(ii) A statement that the business organization has adopted the plan of conversion under subdivision (c).

(iii) A statement that the surviving corporation will furnish a copy of the plan of conversion, on request and without cost, to any owner of the business organization.

(iv) A statement specifying each assumed name of the business organization to be used by the surviving domestic corporation and authorized under 217(6).

(v) Articles of incorporation of the surviving domestic corporation that meet all of the requirements of this act applicable to articles of incorporation.

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a business organization converts into the surviving domestic corporation, all of the following apply:

(a) The business organization converts to the surviving domestic corporation. Except as otherwise provided in this section, the surviving domestic corporation is organized under and subject to this act.

(b) The surviving domestic corporation has all of the liabilities of the business organization. The conversion of the business organization into a domestic corporation under this section shall not be considered to affect any obligations or liabilities of the business organization incurred before the conversion or the personal liability of any person incurred before the conversion and the conversion shall not be considered to affect the choice of law applicable to the business organization with respect to matters arising before conversion.

(c) The title to all real estate and other property and rights owned by the business organization remain vested in the surviving domestic corporation without reversion or impairment. The rights, privileges, powers, and interests in property of the business organization, as well as the debts, liabilities, and duties of the business organization, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving domestic corporation to which the business organization has converted for any purpose under the laws of this state.

(d) The surviving domestic corporation may use the name and the assumed names of the business organization if the filings required under section 217(6) or any other applicable statute are made and the laws regarding the use and form of names are followed.

(e) A proceeding pending against the business organization may be continued as if the conversion had not occurred, or the surviving domestic corporation may be substituted in the proceeding for the business organization.

(f) The surviving domestic corporation is considered to be the same entity that existed before the conversion and is considered to be organization on the date that the business organization was originally organized.

(g) The ownership interest of the business or that were converted into shares, memberships or obligations of the surviving domestic corporation or into cash or other property are converted.

(h) Unless otherwise provided in the plan of conversion adopted in accordance with this section, the business organization is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the business organization.

Sec. 751. (1) A corporation may take any of the following actions on the terms and conditions and for a consideration authorized by its board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets in the usual and regular course of its business.

(b) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets following approval of dissolution under section 804.

(c) Transfer any or all of its property and assets to another corporation all of the shares of which are owned, or to another entity wholly owned or controlled by the corporation, whether or not in the usual and regular course of business.

(d) Mortgage or pledge any or all of its property and assets whether or not in the usual and regular course of business.

(2) Unless otherwise provided in the articles of incorporation, approval by the shareholders or members of a transaction described in subsection (1) is not required.

(3) As used in subsection (1), "consideration" may consist in whole or in part of cash or other property, including shares, bonds or other securities of any other domestic corporation, domestic business corporation, foreign corporation or foreign business corporation.

Sec. 753. (1) ~~A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a corporation, may be made upon such terms and conditions and for a consideration, which may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other corporation or business corporation, domestic or foreign, as authorized as provided in this section.~~ **Except as provided in section 751, a corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets, with or without the goodwill, if not in the usual and regular course of its business as conducted by the corporation, on terms and conditions and for a consideration, as authorized under this section. A corporation has not disposed of all or substantially all of its property and assets if it retains a significant continuing business activity. For purposes of this subsection, it is conclusively presumed that a corporation has retained a significant continuing business activity if the corporation and its subsidiaries reported on a consolidated basis continue to conduct an activity that represented at least 25% of total revenues or 25% of total assets at the end of the most recently completed fiscal year or at least 25% of total program expenditures for that fiscal**

year. As used in this subsection, “consideration” may consist in whole or in part of cash or other property, including shares, bonds or other securities of any other domestic corporation, domestic business corporation, foreign corporation or foreign business corporation.

(2) ~~The board shall approve a proposal for the sale, lease, exchange, or other disposition.~~

Unless the power to initiate the transaction is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488, the board of a stock or membership corporation must recommend the proposed transaction to the shareholders or members, unless the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders or members with the submission of the proposed transaction.

(3) The board may condition its submission to shareholders or members on any basis.

(4) ~~(3)~~ In the case of a stock or membership corporation, the corporation must submit the proposed transaction ~~shall be submitted~~ for approval at a meeting of shareholders or members. ~~Notice~~ The corporation shall give notice of the meeting ~~shall be given~~ to each shareholder or member of record whether or not entitled to vote at the meeting, ~~not less than 20 days before the meeting,~~ within the time and in the manner provided in this act for the giving of notice of meetings of shareholders or members. The notice shall include or be accompanied by a statement summarizing the principal terms of the proposed transaction or a copy of any documents containing the principal terms.

(5) ~~(4)~~ At the meeting **described in subsection (4)**, the shareholders or members may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any term or condition ~~thereof~~ and the consideration to be received by the corporation ~~therefor~~. ~~The~~ **Subject to subsections (7) and (8)**, authorization requires ~~the affirmative vote of the holders of~~ **that a majority of the outstanding shares** ~~the votes held by shareholders or members of the corporation entitled to vote thereon, and if a class is entitled to vote thereon as a class, the affirmative vote of a majority of the outstanding shares or members of each class~~ **be cast in favor of the sale, lease, exchange, or other disposition.**

(6) Notwithstanding subsection (5), unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, if there are more than 20 shareholders or members entitled to vote at the meeting, the sale, lease, exchange or other disposition is approved if a majority of the votes held by shareholders or members present in person or by proxy at the meeting are cast in favor the sale, lease, exchange, or other disposition.

(7) ~~(5)~~ Notwithstanding authorization by the shareholders or members **under subsections (4) or (5)**, unless the power to initiate the transaction is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488, the board may abandon the sale, lease, exchange, or other disposition, subject to the rights of third parties under any contracts relating ~~thereto~~ **to the sale, lease, exchange, or other disposition**, without further action or approval by shareholders or members.

(8) ~~(6)~~ ~~In the case of~~ **If a corporation is organized upon** ~~on~~ a directorship basis, a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or

without goodwill, of a corporation, **if not in the usual and regular course of its business as conducted by the corporation**, shall be authorized upon receiving the affirmative vote of a majority of the directors then in office. ~~Notice~~ **A corporation shall give notice** of the meeting to authorize ~~the~~ a sale, lease, exchange, or other disposition ~~shall be given~~ **under this section** to each director then in office not less than 20 days before the meeting and **the notice** shall include a statement summarizing the principal terms of the proposed transaction or a copy of any documents containing the principal terms.

(9) A sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of a corporation or other entity a majority of the shares or beneficial interests of which are owned by a second corporation, including a change in shares of the corporation or beneficial interest in another entity held by the second corporation because of a merger, is a disposition by the second corporation of its pro rata share of the property and assets of the corporation or other entity on a consolidated basis for purposes of this section.

(10) A transaction that is a distribution permitted by section 301 is governed by section 545 and not by this section or section 751.

Sec. 754. Shareholders or members of a corporation that proposes to issue, directly or through a subsidiary, its shares, memberships, obligations, or securities in the course of a merger, acquisition of some or all of the outstanding shares of another corporation or interests in or memberships of another entity, or acquisition of some or all of the assets other than cash of a corporation or other entity have the rights to receive notice and to vote on the proposed merger or acquisition provided in section 703a(2) if both of the following apply:

(a) **The securities or other interests to be issued or delivered in the acquisition are or may be converted into shares or memberships of the acquiring corporation.**

(b) **The number of the acquiring corporation's voting shares or member votes to be issued or delivered, plus those initially issuable upon conversion or exchange of any other securities to be issued or delivered, will exceed 100% of the number of its voting shares or member votes outstanding immediately prior to the acquisition plus the number of its common shares or memberships, if any, initially issuable upon conversion or exchange of any other securities then outstanding.**

Sec. 801. (1) A corporation may be dissolved in any of the following ways:

(a) Automatically by expiration of a period of duration to which the corporation is limited by its articles of incorporation.

(b) By action of the incorporators or directors ~~pursuant to~~ **under** section 803.

(c) By action of the shareholders, members, or the board ~~pursuant to~~ **under** section 804.

(d) ~~By action of a shareholder or member pursuant to section 805.~~ **Pursuant to an agreement under section 488. A dissolution under this subdivision becomes effective by filing a certificate under section 805.**

(e) By a judgment of the circuit court in an action brought ~~pursuant to~~ **under** this act or otherwise.

(f) Automatically, ~~pursuant to~~ **under** section 922 ~~,~~ for failure to file an annual report or pay ~~the~~ **an** annual filing fee ~~or a penalty added to the fee~~ .

(2) A corporation whose assets have been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having

jurisdiction of the proceedings. ~~A~~ **The clerk of the court shall file a copy of the order** ~~shall be filed with the administrator by the clerk of the court~~ .

Sec. 804. (1) A corporation may be dissolved by action of its **board and its** shareholders ~~or~~ **or** members, **if any**, ~~or board~~ as provided in this section.

(2) ~~The board shall adopt a resolution that the corporation be dissolved and that a plan of distribution of assets complying with section 855 be implemented.~~ **The board of a corporation organized on a stock or membership basis may propose dissolution for action by the shareholders or members.**

(3) **Unless the power to dissolve the corporation is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488, the board of a corporation organized on a stock or membership basis must recommend dissolution to the shareholders or members unless the board determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders or members.**

(4) **The board may condition its submission of the proposal for dissolution to shareholders or members on any basis.**

(5) ~~(3)~~ **If the** a corporation is organized ~~upon~~ **on** a stock or membership basis, the **board shall submit a** proposed dissolution ~~shall be submitted~~ for approval at a meeting of shareholders or members. ~~Notice shall be given~~ **The corporation shall give notice** to each shareholder or member of record **whether or not** entitled to vote at the meeting ~~as~~ **within the time and in the manner** provided in this act for the giving of notice of meetings of shareholders or members, ~~and~~ **The notice** shall state that a purpose of the meeting is to vote on dissolution

of the corporation. ~~The notice shall include a copy or summary of the plan of distribution of assets.~~

~~(6) (4) At the meeting a vote of~~ **At the meeting described in subsection (5), the**
shareholders or members shall ~~be taken~~ **vote** on the proposed dissolution ~~and plan of~~
distribution of assets . ~~The~~ **Except as provided in this subsection, a** dissolution ~~shall be~~ **is**
approved ~~upon receiving the affirmative vote of the holders of~~ **if** a majority of the ~~outstanding~~
shares or a majority of the **votes held by shareholders or** members of the corporation entitled
to vote ~~thereon, and if a class is entitled to vote thereon as a class, the affirmative vote of a~~
majority of the outstanding shares or members of each such class **on the proposed dissolution**
are cast in favor of dissolution. Unless a greater vote is required in the articles of
incorporation or in a bylaw adopted by the shareholders or members, if there are more
than 20 members or shareholders entitled to vote at the meeting, dissolution is approved if
a majority of the votes held by shareholders members entitled to vote on the proposed
dissolution present in person or by proxy at the meeting are cast in favor of dissolution.

~~(7) (5) If the a corporation is organized upon~~ **on** a directorship basis, ~~the a~~
dissolution ~~shall be authorized by~~ **is approved it receives** the affirmative vote of a majority of
directors then in office. ~~Notice~~ **The corporation shall give notice** of the meeting to authorize
the dissolution ~~shall be given~~ to each director then in office not less than 10 days before the
meeting and shall state that a purpose of the meeting is to vote on dissolution of the corporation.
~~The notice shall include a copy or summary of the plan of distribution of assets.~~

~~(8) (6) If the a dissolution is approved, a certificate of dissolution shall be executed~~
~~and filed on behalf of the corporation, setting forth~~ **it becomes effective by the execution and**

filing of a certificate of dissolution of behalf of the corporation that contains all of the following:

(a) The name of the corporation.

(b) The date and place of the meeting of shareholders, members, or directors approving the dissolution.

(c) A statement that dissolution was **proposed and** approved by the requisite vote of directors and **the** shareholders ~~, directors and~~ or members **under subsection 6**, or **the** directors **under subsection 7**.

Sec. 805. ~~(1) The articles of incorporation may contain a provision that a shareholder, a member, or a director, or the holders of any specified number or proportion of shares or any specified number or proportion of members or directors, or of any specified number or proportion of shares or any specified number or proportion of members or directors, or of any specified number or proportion of shares or members of a class, may require dissolution of the corporation at will or upon the occurrence of a specified event, if all the incorporators have authorized the provision in the articles or the holders or record of all outstanding shares or all the members or all the directors authorize the provision in an amendment to the articles. Said the provision shall also specify a plan of distribution of assets of the corporation which complies with section 855.~~ **Dissolution under an agreement under section 488 becomes effective by executing and filing a certificate of dissolution on behalf of the corporation, that states the name of the corporation and that the corporation is dissolved under an agreement under section 488.**

~~(2) If the articles contain this provision, dissolution may be effected by the execution and filing of a certificate of dissolution on behalf of the corporation when authorized by a holder~~

~~or holders of the number or proportion of shares or by the number or proportion of members or directors specified in the provision, obtained in such the manner as may be specified therein, or if no manner is specified therein, when authorized on written consent signed by such holder or holders, member or members, or director or directors. The certificate of dissolution shall state the name of the corporation and that the corporation is dissolved pursuant to a designated provision in the articles.~~

~~(3) If the articles contain a provision authorized by subsection (1), and the existence of the provisions shall be is noted conspicuously on the face of every certificate for shares issued by the corporation or on the face of a membership certificate delivered to every member of the corporation, a holder or recipient of such that certificate is conclusively deemed considered to have taken delivery or assumed membership with actual notice of the provision.~~

Sec. 811. (1) ~~Dissolution~~ **A corporation may revoke dissolution** proceedings commenced ~~pursuant to~~ **under** section ~~804 or 805 may be revoked~~ **488 or 804** before complete distribution of assets, if a proceeding ~~pursuant to~~ **under** section 851 is not pending, by filing a certificate of revocation executed, in person or by proxy, by all the shareholders, members, or directors entitled to vote on dissolution, stating that revocation is effective ~~pursuant to~~ **under** this section and that all the shareholders, members, or directors of the corporation entitled to vote on dissolution have executed the certificate in person or by proxy.

(2) ~~Dissolution~~ **A corporation may also revoke dissolution** proceedings commenced ~~pursuant to~~ **under** section 804 ~~may also be revoked~~ before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) ~~The~~ **Unless the power to dissolve the corporation is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement**

under section 488, the board of directors shall adopt a resolution ~~that the~~ revoking dissolution be revoked. The corporation shall submit the proposed revocation ~~shall be submitted~~ for approval at a meeting of shareholders ~~, or members, or directors,~~ and **The corporation shall give the shareholders ~~, or members, or directors shall be given~~ the same notice of the meeting and the revocation ~~shall~~ must be approved by the same vote ~~as~~ that is required ~~by~~ in section 804 for the approval of dissolution.**

(b) If the power to dissolve the corporation is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488, the shareholders or members may approve revocation of dissolution in the manner provided in the articles of incorporation or in the agreement under section 488 for approval of dissolution. The corporation shall give the shareholders or members the same notice of the meeting that is required by section 804 for the approval of dissolution and the revocation of dissolution must be approved by the same vote that is required in section 804 or in the applicable provisions of the articles of incorporation or in the agreement under section 488 for the approval of dissolution.

(c) If the corporation is organized on a directorship basis, a dissolution may be revoked by the affirmative vote of a majority of the directors then in office. The corporation shall give the directors the same notice of the meeting that is required in section 804 for dissolution.

(d) ~~(b)~~ A certificate of revocation stating that dissolution is revoked pursuant to this section, and giving the information required by section ~~804(6)~~ 804(7), shall be executed and filed on behalf of the corporation.

Sec. 815. A corporation whose term has expired may renew its corporate existence, if a proceeding ~~pursuant to~~ **under** section 851 is not pending, in the following manner:

(a) The board ~~shall adopt~~ **adopts** a resolution that the corporate existence be renewed.

(b) If the corporation is organized ~~upon~~ **on** a stock or membership basis, the **corporation shall submit the** proposed renewal ~~shall be submitted~~ for approval at a meeting of shareholders or members. ~~Notice shall be given~~ **The corporation shall give notice** to each shareholder or member of record entitled to vote at the meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders or members, ~~and~~ **The notice** shall state that a purpose of the meeting is to vote on the renewal of corporate existence. At the meeting ~~a vote of~~ shareholders or members entitled to vote ~~thereat shall be taken~~ **on the renewal shall vote** on the proposed renewal ~~which shall be~~ **and the renewal is** adopted ~~upon receiving the affirmative vote of holders of~~ **if** a majority of the ~~outstanding~~ shares ~~or a majority of the~~ **votes held by shareholders or** members of the corporation entitled to vote ~~thereon, and if a class of shareholders or members is entitled to vote thereon as a class,~~ the affirmative vote of a majority of the outstanding shares ~~or the members of each such class~~ **on the renewal are cast in favor of the renewal.** Unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, ~~the~~ a proposed renewal shall ~~is also be~~ adopted ~~upon receiving an affirmative vote of~~ **if** a majority of **votes held by shareholders or** members ~~or shares of shareholders~~ present in person or by proxy at ~~such~~ **the** meeting **are cast in favor of the renewal** if due notice of the time, place and object of the meeting ~~was~~ **is** given by mail, at **the** last known address, to each shareholder or member entitled to vote ~~thereon~~ **on the renewal** at least 20 days ~~prior to~~ **before** the date of the meeting or by

publication in a publication distributed to its shareholders or members at least 20 days ~~prior to~~
before the date of the meeting.

(c) If the corporation is organized ~~upon~~ **on** a directorship basis, renewal ~~shall be~~ **is** authorized ~~by the~~ **if it receives the** affirmative vote of a majority of directors then in office.

(d) If renewal of the corporate existence **of a corporation** is approved, a certificate of renewal shall be executed and filed on behalf of the corporation, ~~setting forth~~ **that contains all of the following:**

(i) The name of the corporation.

(ii) The date and place of the meeting of shareholders or members approving the renewal of existence, if any.

(iii) A statement that renewal was approved by the requisite vote of **the** directors and **the** shareholders ~~, directors and~~ **or** members **under subdivision (b)**, or **of the** directors **under subdivision (c)**.

(iv) The duration of the corporation, if other than perpetual.

Sec. 817. (1) ~~Upon filing of~~ **When** the certificate of revocation of dissolution or of renewal of existence **is filed**, the revocation of the dissolution proceedings or the renewal of the corporate existence becomes effective, and the corporation may again conduct affairs.

(2) Revocation of dissolution or renewal of corporate existence does not relieve the corporation of any penalty or liability accrued against it under any law of this state.

(3) ~~If during the period of dissolution or expiration of term the corporate name or a confusingly similar name has been assigned to another corporation, the administrator may require that the corporation adopt a different name upon filing of a certificate of revocation of dissolution or of renewal of existence.~~ **A corporation that files a certificate of renewal shall**

file the reports for the last 5 years or any lesser number of years in which they were not filed and pay any fee required under this act for any year for which a report was not filed or a fee was not paid.

(4) The administrator may require a corporation that files a certificate of revocation of dissolution or a certificate of renewal of corporate existence to adopt a corporate name that conforms to the requirements of section 212.

(5) ~~(4)~~ The rights of a corporation that complies with this section are the same as though a dissolution or expiration of term has not occurred, and all contracts entered into and other rights acquired during the interval are valid and enforceable.

Sec. 821. (1) The attorney general may bring an action in the circuit court ~~for~~ of the county in which the **principal place of business or** registered office of the corporation is located **or of Ingham County** for dissolution of a corporation upon the ground that the corporation has committed any of the following acts:

(a) Procured its organization through fraud.

(b) Repeatedly, ~~and wilfully~~ **willfully and materially** exceeded the authority conferred upon it by law.

(c) Repeatedly, ~~and wilfully~~ **willfully and materially** conducted its affairs in an unlawful manner.

(2) The enumeration in this section of grounds for dissolution does not exclude any other statutory or common law action by the attorney general for dissolution of a corporation or revocation or forfeiture of its corporate franchises.

Sec. 823. (1) A corporation **organized on a stock or membership basis** may be dissolved by a judgment entered in an action brought in the circuit court of the county in which

the **principal place of business or** registered office of the corporation is located by 1 or more directors or by 1 or more shareholders or members entitled to vote in an election of directors of the corporation, ~~upon proof of~~ **if both of the following are proved:**

(a) The directors of the corporation, **or its shareholders or members if a provision in the articles of incorporation authorized by subsection (1) of 488 is in effect**, are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs, or the shareholders or members of the corporation are so divided in voting power that they have failed to elect successors ~~to~~ **for** any director whose term has expired or would have expired upon the election and qualification of ~~the director's~~ **his or her** successor.

(b) As a result of a condition stated in subdivision (a), the corporation is unable to carry out its corporate purposes or function effectively in the best interests of its creditors and shareholders or members, if any, **or the persons the corporation is organized to benefit.**

(2) A corporation organized on a directorship basis may be dissolved by a judgment entered in an action brought in the circuit court of the county in which the principal place of business or registered office of the corporation is located by 1 or more directors or by 1 or more other persons entitled to vote in an election of 1 or more of the directors of the corporation, if both of the following are proved:

(a) The directors of the corporation are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs, or the directors or other persons entitled to vote in the election of 1 or more of the directors of the corporation are so divided in voting power that they have failed to elect successors to any director whose term has expired or would have expired upon the election and qualification of his or her successor.

(b) As a result of a condition stated in subdivision (a), the corporation is unable to carry out its corporate purposes or function effectively in the best interests of its creditors and shareholders or members, if any, or the persons the corporation is organized to benefit.

(3) The person or persons filing an action for dissolution of a charitable purpose corporation under this section shall give the attorney general written a notice of the commencement of the action by mail within 30 days after filing.

Sec. 841a. (1) The dissolved corporation may notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

(a) A description of the information that must be included in a claim. The corporation may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

(b) A mailing address where a claim may be sent.

(c) The deadline by which the dissolved corporation must receive the claim. The deadline must be at least 6 months after the effective date of the written notice.

(d) A statement that a claim that is not received by the deadline is barred.

(2) Providing a notice under subsection (1) does not constitute recognition that a person to whom the notice is directed has a valid claim against the corporation.

(3) A claim against the dissolved corporation is barred if either of the following applies:

(a) If a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline.

(b) If a claimant whose claim is rejected by a written notice of rejection by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the written notice of rejection.

(4) As used in this section and section 842a:

(a) The "effective date" of a written notice is the earliest of the following:

(i) The date it is received.

(ii) Five days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and correctly addressed.

(iii) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(b) "Existing claim" means any claim or right against the corporation, liquidated or unliquidated. It does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Sec. 842a. (1) A dissolved corporation may also publish notice of dissolution at any time after the effective date of dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice described in subsection (1) must meet both of the following:

(a) Be published 1 time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or if there is no principal office in this state, its registered office, is or was last located.

(b) State that a claim against the corporation is barred unless a proceeding to enforce the claim is commenced within 1 year after the publication date of the newspaper notice.

(3) Subject to subsection (4), if the dissolved corporation publishes a newspaper notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 1 year after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 841a.

(b) A claimant who sent a timely claim to the dissolved corporation but the corporation did not act on the claim.

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) Notwithstanding subsection (3), a claimant who has an existing claim known to the corporation at the time of publication in accordance with subsection (2) and who did not receive written notice under section 841a is not barred from commencing a proceeding until 6 months after the claimant has actual notice of the dissolution.

Sec. 851. (1) After a corporation ~~has been~~ is dissolved in any manner, the corporation, a creditor, a shareholder, member, or a director may apply at any time to the circuit court ~~for~~ in the county in which the **principal place of business or** registered office of the corporation is located for a judgment that the affairs of the corporation and the liquidation of its assets continue under supervision of the court. The court shall make ~~such~~ **any** orders and judgments ~~as may be~~ **that are** required, including, but not limited to, continuance of the liquidation of the corporation's assets by its officers and directors under supervision of the court, or the

appointment of a receiver of the corporation ~~to be~~ **who is** vested with powers ~~as~~ **that** the court designates to liquidate the affairs of the corporation.

(2) For good cause shown, and ~~so long as~~ **if** a corporation has not made complete distribution of its assets, the court ~~, in an action pending under this section or otherwise,~~ may permit a creditor who has not ~~filed a~~ **delivered his or her claim or commenced a proceeding to enforce his or her claim** within the time ~~limited by section 841,~~ or who has not commenced an action on a rejected claim within the time ~~limited by section 842,~~ **limits provided in sections 841a and 842a** to file ~~such~~ **the** claim or to commence ~~such action~~ **a proceeding** within ~~such~~ **the** time ~~as~~ **that** the court directs.

Sec. 855. ~~Upon dissolution, the assets of~~ **All of the following apply when a corporation shall be applied and distributed as follows** **is dissolved:**

(a) ~~All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor.~~ **The corporation shall pay or make provision for its debts, obligations and liabilities. Compliance with this subdivision requires that, to the extent that a reasonable estimate is possible, provision be made for those debts, obligations, and liabilities anticipated to arise after the effective date of dissolution. A corporation is not required to make provision for any debt, obligation, or liability that is or is reasonably anticipated to be barred under section 841a or 842a. The fact that corporate assets are insufficient to satisfy claims arising after a dissolution does not create a presumption that the corporation has failed to comply with this subdivision. A corporation is considered to have made adequate provision for any debt, obligation, or liability of the corporation if payment has been assumed or guaranteed in good faith by 1 or more financially responsible corporations, persons, or the United States government or agency of the United**

States government, and the provision, including the financial responsibility of the corporations or other persons, was determined in good faith and with reasonable care by the board to be adequate.

(b) Assets held by the corporation ~~upon~~ **on** condition requiring return, transfer, or conveyance, ~~which~~ **and the** condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with ~~such~~ **the requirements of the conditions.**

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held ~~upon~~ **on** a condition requiring return, transfer, or conveyance by reason of the dissolution **under subdivision (b)**, shall be transferred or conveyed in accordance with any provisions in the articles of incorporation or bylaws ~~which~~ **that** designate 1 or more recipients or a mechanism for determining 1 or more recipients ~~which~~ **that** are domestic or foreign corporations, societies, or organizations, including governmental agencies, engaged in activities furthering ~~such~~ **those** purposes. If the articles of incorporation or bylaws do not contain ~~such provisions,~~ ~~such~~ **a provision described in this subdivision, the** assets shall be transferred or conveyed to 1 or more domestic or foreign corporations, societies, or organizations, including governmental agencies, engaged in activities substantially similar to or consistent with those of the dissolving corporation.

(d) Other assets, if any, shall be distributed in accordance with provisions of the articles of incorporation or the bylaws ~~which~~ **that** determine the distributive rights of shareholders or members, or any class or classes of shareholders or members, or provide for distribution to others. **Except as otherwise provided in this sections, assets subject to this subdivision may**

be distributed in cash, in kind, or both in cash and in kind, to shareholders, members, or others according to their respective rights and interests.

(e) Any remaining assets may be distributed to ~~such~~ **any** persons ~~, societies,~~ organizations, domestic or foreign corporation, or domestic or foreign business corporations, as may be specified in a plan of distribution adopted by the corporation.

(f) ~~When~~ **If** there is no provision for the distribution of assets, the assets remaining after implementation of the provisions of this section shall escheat to the state.

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Sec. 901. (1) ~~Each~~ A domestic corporation at least once in each **calendar** year shall cause a report of the corporation for the preceding fiscal year to be made and distributed to each shareholder or member ~~thereof~~ or presented at the annual meeting of shareholders or members, or, if the corporation is organized ~~upon~~ **on** a directorship basis, at the annual meeting of the board. ~~The~~ **Except for information not required to be disclosed under section 487(7), the** report shall include ~~the corporation's year-end statement of assets and liabilities, including trust funds, and the principal change in assets and liabilities during the year preceding the date of the report and, if prepared by the corporation, its source and application of funds and any other information required by this act.~~ **all of the following for the corporation's preceding fiscal year:**

(a) Its income statement.

(b) Its year-end balance sheet, including trust funds and funds restricted by the donors or the board.

(c) Its statement of source and application of funds, if the corporation prepares that statement.

(d) Any other information required in this act.

(2) A corporation may distribute the financial report required under subsection (1) electronically, either by electronic transmission of the report or by making the report available for electronic transmission. If the report is distributed electronically under this subsection, the corporation shall provide the report in written form to a shareholder, member or director on request.

Sec. 911. (1) ~~A~~ **Each** domestic corporation ~~or~~ **and each** foreign corporation authorized to conduct affairs in this state **subject to chapter 10** shall file a report with the administrator no later than October 1 of each year. The report ~~shall be~~ **shall be** on a form approved by the administrator, ~~shall~~ **signed by an authorized officer or agent of the corporation, and** contain all of the following information:

(a) The name of the corporation.

(b) The name of **its** resident agent and address of its registered office in this state.

(c) The names and business or residence addresses of its ~~officers~~ **president, secretary, treasurer** and directors

(d) ~~Purposes~~ **The purposes** of the corporation.

(e) ~~Nature~~ **The general nature** and kind of business in which the corporation ~~has~~ **is** engaged ~~during the year covered by the report.~~

(2) ~~The~~ **A corporation is not required to file a** report required under this section ~~is not required to be filed~~ in the year of incorporation or authorization ~~by corporations that were~~ **if the corporation was** formed or authorized to do business on or after January 1 and before October 1 of that year.

(3) If there are ~~not~~ **no** changes in the information provided in the last filed report **required under subsection (1), the corporation shall certify may file a report that certifies to the administrator** that no changes in the required information have occurred since the last filed report. The ~~certification~~ **report filed under this subsection** shall be on a ~~report provided~~ **form approved** by the administrator and filed no later than the date required in subsection (1).

Sec. 913. ~~The~~ **A** county clerk may destroy the copies of ~~the~~ **any** corporate documents of a **domestic or foreign** corporation ~~which~~ **that** were forwarded to ~~the office of the county~~

clerk in accordance with Act No. 327 of the Public Acts of 1931, as amended, being sections 450.62 to 450.192 of the Michigan Compiled Laws, and **his or her office under 1931 PA 327, MCL 450.98, any repealed provisions of 1931 PA 327, MCL 450.98 to 450.192, or its** predecessor act. The clerk may destroy **these records** or dispose of ~~these records~~ **them** in accordance with section 5 of ~~Act No. 271 of the Public Acts of 1913, as amended, being section 399.5 of the Michigan Compiled Laws~~ **1913 PA 271, MCL 399.5.**

Sec. 922. (1) If a domestic corporation neglects or refuses ~~for 2 consecutive years~~ to file ~~the~~ **its annual reports report under section 911** or pay ~~the~~ **any** annual filing fee or a **penalty added to the fee** required by law, **and the neglect or refusal continues for a period of 2 years from the date on which the annual report or filing fee was due,** the corporation ~~shall be~~ **is** automatically dissolved **60 days after the expiration of the 2-year period.** The administrator shall notify the corporation of the impending dissolution not later than 90 days before the ~~2 years has expired~~ **2-year period expires.** Until a corporation ~~has been~~ **is** dissolved **under this subsection,** it is entitled to issuance by the administrator, ~~upon~~ **on** request, of a certificate of good standing setting forth that it has been validly incorporated as a domestic corporation and that it is validly in existence under the laws of this state.

(2) A charitable purpose corporation that is dissolved under subsection (1) shall ~~provide notice of the dissolution to the attorney general~~ within ~~60~~ **90** days after the date of dissolution and shall not dispose of any of its assets with written approval of the attorney general **do 1 of the following:**

(a) **Comply with the dissolution of charitable purpose corporation act, 1965 PA 169, MCL 450.251 to 450.253.**

(b) **Renew its corporate existence under section 925.**

(3) If a foreign corporation neglects or refuses for 1 year to file ~~the~~ **its** annual report **under section 911** or pay the annual filing fee **or a penalty added to the fee** required by law, its certificate of authority is subject to revocation ~~in accordance with~~ **under** section 1042. Until revocation of its certificate of authority, or its withdrawal from this state or termination of its existence, the foreign corporation is entitled to issuance by the administrator, ~~upon~~ **on** request, of a certificate of good standing setting forth that it has been validly authorized to ~~transact business~~ **conduct affairs** in this state and that it holds a valid certificate of authority to ~~transact business~~ **conduct affairs** in this state.

Sec. 923. (1) ~~The administrator for~~ **If** good cause **is** shown, **the administrator** may extend the time for filing ~~of~~ a report **under section 911** for not more than 1 year from the due date of the filing.

(2) The administrator may report promptly to the attorney general any failure or neglect under ~~section~~ **sections** 922, 931, and 932, and the attorney general may ~~commence~~ **bring** an action ~~for imposition of~~ **to impose** the prescribed penalties. ~~When~~ **If** a **domestic or foreign** corporation neglects or refuses to file its report **under section 911** within ~~90 days after~~ the time prescribed by this act, the administrator shall notify the corporation of that fact by mail ~~directed~~ **sent** to its registered office **within 90 days after the due date of the filing**. ~~The administrator's certificate of mailing of the notice is prima facie evidence in all courts and places of that fact, and that the notice was received by the corporation.~~

Sec. 925. (1) A domestic corporation ~~which has been~~ **that is** dissolved ~~pursuant to~~ **under** section 922(1), or a foreign corporation whose certificate of authority ~~has been~~ **is** revoked ~~pursuant to~~ **under** section 922(2) or section 1042, may renew its corporate existence or its certificate of authority by filing the reports for the last 5 years or any lesser number of years

in which the reports were not filed and paying the annual filing fees for all the years for which they were not paid, together with a penalty of \$5.00 for each delinquent report. ~~Upon filing~~ **When the reports are filed and payment of the fees and penalties are paid**, the corporate existence or the certificate of authority is renewed. ~~If during the intervening period the corporate name or confusingly similar name has been assigned to another corporation the~~ **The** administrator may require ~~that~~ the corporation **to** adopt or use within this state a ~~different~~ **corporate name that conforms to the requirements of section 212.**

(2) ~~Upon compliance with the provisions of this section, the~~ **The** rights of ~~the~~ **a** corporation ~~shall be~~ **that complies with this section are** the same as ~~though~~ **if** a dissolution or revocation ~~had~~ **has** not taken place, and all contracts entered into and other rights acquired during the interval ~~shall be~~ **are** valid and enforceable.

Sec. 932. (1) A person ~~who~~ **shall not** knowingly ~~makes~~ **make** or ~~files~~ **file** or ~~a~~ person ~~who~~ knowingly ~~assists~~ **assist** in the making or filing of a false or fraudulent report, certificate, or other statement **that a domestic or foreign corporation is required by this act to be filed by a corporation to file under this act** with a public officer of this state, ~~or~~ **and** a person ~~knowing the same to be~~ **who knows a report, certificate of statement is false or fraudulent, who procures, counsels, or advises shall not procure, counsel or advise** the making or filing of ~~such a~~ **that** report, certificate, or statement. ~~↗~~ **A person who violates this subsection is guilty of a misdemeanor and is subject to punishable by a fine of not to exceed more than \$1,000.00 for each such offense violation of this subsection.**

(2) An officer or agent of a corporation ~~who~~ **shall not** knowingly ~~falsifies~~ **falsify** or wrongfully ~~alters~~ **alter** the books, records, or accounts of a corporation. **An officer or agent**

who violates this subsection is guilty of a misdemeanor ~~and is subject to~~ **punishable by** a fine of not ~~to exceed~~ **more than** \$1,000.00 for each ~~such offense~~ **violation of this subsection.**

Sec. 1001. A foreign corporation ~~which is~~ **that was** authorized to conduct affairs in this state on ~~the effective date of this act~~ **January 1, 1983**, for a purpose for which a corporation might secure ~~such~~ authority **to conduct affairs in this state** under this act ~~;~~ has the rights and privileges applicable to a foreign corporation ~~which~~ **that** receives a certificate of authority to ~~transact business~~ **conduct affairs** in this state under this act. ~~From the effective date of this act~~ **Beginning on January 1, 1983**, the corporation is subject to the duties, restrictions, penalties, and liabilities prescribed ~~herein~~ **in this act** for a foreign corporation ~~which~~ **that** receives a certificate of authority to ~~transact business~~ **conduct affairs** in this state under this act.

Sec. 1012. Without excluding other activities ~~which~~ **that** may not constitute conducting affairs in this state, a foreign corporation is not considered to be conducting affairs in this state, for the purpose of this act ~~;~~ solely because it is carrying on in this state any 1 or more of the following activities:

(a) Maintaining, ~~or~~ defending, ~~an action or suit or an administrative or arbitrate proceeding, or effecting the settlement thereof or the settlement of a claim or dispute~~ **or settling any proceeding.**

(b) Holding meetings of ~~its~~ **the board of** directors, shareholders, or members or carrying on ~~any~~ other activities concerning ~~its~~ internal **corporate** affairs.

(c) Maintaining ~~a~~ bank ~~account~~ **accounts.**

(d) ~~Effecting sales through an independent contractor.~~ **Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.**

(e) **Selling through independent contractors.**

(f) ~~(e)~~ Soliciting or ~~procuring~~ **obtaining** orders, whether by mail or through employees or agents or otherwise, ~~where such~~ **if the** orders require acceptance ~~without~~ **outside** this state before ~~becoming binding~~ **they become** contracts.

~~(f)~~ **Borrowing money, with or without security.**

(g) **Soliciting or obtaining donations, whether by mail, by telephone or other form of remote communications, by electronic transmission or through employees, agents, volunteers or otherwise, if the donations are made to a foreign corporation that has its principal place of business outside the state.**

(h) **Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.**

(i) ~~(g)~~ Securing or collecting debts or enforcing ~~any right in property securing the same~~ **mortgages and security interests in property securing the debts.**

~~(h)~~ **Transacting business in interstate commerce.**

(j) **Owning, without more, real or personal property.**

(k) ~~(i)~~ Conducting an isolated transaction **that is completed within 30 days and that is not 1 transaction** in the course of ~~a number of~~ repeated transactions of ~~like~~ **a similar** nature.

(l) **Transacting business in interstate commerce.**

(2) This section does not apply in determining the contacts or activities ~~which~~ **that** may subject a foreign corporation to service of process or taxation in this state or to regulations under any other ~~act~~ **statute** of this state.

Sec 1013. (1) A foreign corporation may acquire or, through another person entitled to conduct affairs or transact business in this state may make, a loan that is insured

or guaranteed in whole or in part by the federal department of housing and urban development, department of veteran's affairs or a successor or other agency of the federal government and that is secured in whole or in part by 1 or more mortgages of real property located in this state, and a foreign corporation may purchase a loan that is secured in whole or in part by a mortgage of real property located in this state, without maintaining authority to conduct affairs in this state under this act or any other law of this state relating to qualification or maintaining authority to conduct affairs in this state and without paying a fee to qualify or maintain authority to conduct affairs in this state.

(2) A failure of a foreign corporation described in subsection (1) to qualify or maintain authority to conduct affairs in this state under this act or any such other law of this state or a failure to pay fees to qualify or maintain authority to conduct affairs in this state does not affect or impair its ownership of a loan or its right to collect and service the loan through another person entitled to conduct affairs or transact business in this state, or its right to enforce a loan or to acquire, hold, protect, convey, lease and otherwise contract and deal with respect to any property mortgaged as security for the loan.

(3) As used in this section, "loan" includes an interest or participation in a loan.

Sec. 1015. To procure a certificate of authority to conduct affairs in this state, a foreign corporation shall file with the administrator an application ~~setting forth~~ that contains all of the following:

- (a) The name of the corporation and the jurisdiction of its incorporation.
- (b) The date of incorporation and the period of duration of the corporation.
- (c) The street address, and the mailing address if different from the street address, of its main business or headquarters office.

(d) The **street** address of its registered office in this state, **the mailing address if different from the street address**, and the name of its resident agent in this state at ~~such~~ **that** address, together with a statement that the resident agent is an agent of the corporation ~~upon~~ **on** whom process against the corporation may be served.

(e) The character of the affairs it is to ~~transact~~ **conduct** in this state, together with a statement that it is authorized to conduct ~~such~~ **those** affairs in the jurisdiction of its incorporation.

(f) **Any** ~~Such~~ additional information ~~as~~ **that** the administrator ~~may require~~ **reasonably requires** in order to determine whether the corporation is entitled to a certificate of authority to conduct affairs in this state **and to determine the fees and taxes prescribed by law.**

Sec. 1016. (1) ~~A copy of the articles of incorporation and all amendments thereto, certified by the proper officer of the jurisdiction of its incorporation shall be attached to the application of a foreign corporation.~~ **A foreign corporation shall attach a certificate setting forth stating** that the corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of the jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days before filing of the application ~~;~~ **shall also be attached to the application for authority to conduct affairs in this state.** If ~~such~~ **the** certificate is in a foreign language, **the foreign corporation shall attach** a translation thereof **of the certificate** under oath of the translator ~~shall be attached thereto~~ **to the certificate.**

(2) ~~Upon filing of the~~ **If a foreign corporation files an** application ~~;~~ accompanied by the filing and franchise fees prescribed by law, the administrator shall issue to the foreign

corporation a certificate of authority to conduct affairs in this state. ~~Thereupon~~ **When a certificate of authority is issued**, the foreign corporation is authorized to conduct in this state any affairs of the character set forth in its application **that a domestic corporation formed under this act may lawfully transact**. The authority **granted under this subsection** continues so long as the foreign corporation retains its authority to conduct ~~such~~ **its** affairs in the jurisdiction of its incorporation and its authority to conduct affairs in this state ~~has not been~~ **is not** surrendered, suspended, or revoked.

Sec. 1021. (1) ~~When the articles of incorporation of~~ **Except as otherwise provided in this section**, a foreign corporation authorized to conduct affairs in this state ~~are amended, the foreign corporation, within 60 days after the amendment is effective, shall file with the administrator a copy of the amendment certified by the proper officers of the jurisdiction of its incorporation.~~ **that changes its corporate name, or enlarges, limits, or otherwise changes the affairs that the foreign corporation proposes to conduct in this state, or makes any other change that affects the information set forth in its application for certificate of authority to conduct affairs in this state, shall file an amended application with the administrator within 30 days after the time a change becomes effective. A foreign corporation may make a change in its registered office or resident agent under section 242. The amended application under this subsection shall set forth all of the following:**

- (a) **The name of the foreign corporation as it appears on the records of the administrator and the jurisdiction of its incorporation.**
- (b) **The date the foreign corporation was authorized to conduct affairs in this state.**
- (c) **If the name of the foreign corporation has changed, a statement of the name relinquished, a statement of the new name, and a statement that the name was properly**

changed under the laws of the jurisdiction of its incorporation and the date the name was changed.

(d) **If the affairs the foreign corporation proposes to conduct in this state enlarge, limit, or otherwise change the affairs the foreign corporation is authorized to conduct, a statement reflecting the change and a statement that the foreign corporation is authorized to conduct in the jurisdiction of its incorporation the affairs that it proposes to conduct in this state.**

(e) **Any additional information as the administrator may require.**

(2) ~~When~~**If** a foreign corporation authorized to conduct affairs in this ~~state is a party to a merger, consolidation, or similar corporate action taken in accordance with the laws of the jurisdiction of its incorporation, the foreign corporation, within 60 days after the effective date thereof, shall file with the administrator a copy of the certificate of merger, consolidation, or similar corporation action, certified by the proper officers of the jurisdiction of its incorporation~~ **is the survivor of a merger permitted by the laws of the jurisdiction in which the foreign corporation is incorporated, within 30 days after the merger becomes effective, the foreign corporation shall file a certificate issued by the proper officer of the jurisdiction of its incorporation attesting to the occurrence of the merger. If the merger has changed the corporate name of the foreign corporation, or has enlarged limited, or changed the affairs the foreign corporation proposes to conduct in this state, or changed any of the information contained in the application, the foreign corporation shall comply with subsection (1).**

Sec. 1032. ~~Upon filing the~~ **If a foreign corporation files an application for withdrawal and ~~payment of~~ pays** the filing fees prescribed by law, the administrator shall issue to the

foreign corporation a certificate of withdrawal, ~~whereupon~~ **and both of the following shall occur:**

(a) The authority of the **foreign** corporation to conduct affairs in this state ~~shall cease~~ **is terminated.**

(b) The authority of its resident agent in this state to accept service of process against the **foreign** corporation is ~~deemed~~ revoked.

Sec. 1035. (1) ~~When~~ **If** a foreign corporation authorized to conduct affairs in this state is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, or it is merged into or consolidated with another corporation, ~~there shall be filed~~ **the foreign corporation shall file** with the administrator ~~such~~ **any** information as may be required by the administrator to determine and assess any unpaid fees payable by ~~such~~ **the** foreign corporation as required by law and either of the following:

(a) A certificate of the official of the jurisdiction of incorporation of the foreign corporation who has custody of the records pertaining to corporations, evidencing the occurrence of ~~any such~~ **the** event.

(b) A certified copy of an order or judgment of a court of competent jurisdiction directing dissolution of the foreign corporation, the termination of its existence, or the cancellation of its authority.

(2) ~~Upon filing of the~~ **If a foreign corporation files** a certificate, order, or judgment **under subsection (1)** and ~~payment of~~ **pays** the filing ~~fees~~ **fee** prescribed by law, the administrator shall issue a certificate of withdrawal ~~with like~~ **that has the same** effect as ~~provided in~~ **a certificate of withdrawal under** section 1032.

Sec. 1041. In addition to any other ground for revocation provided by law, the administrator may revoke the certificate of authority of a foreign corporation to conduct affairs in this state upon the conditions prescribed in section 1042 ~~upon~~ **on** any of the following grounds:

(a) The corporation fails to maintain a resident agent in this state as required ~~by~~ **under** this act.

(b) The corporation, after ~~change of~~ **changing** its registered office or resident agent, fails to file a statement of ~~such~~ **the** change as required ~~by~~ **under** this act.

(c) The corporation ~~, after amending its articles of incorporation,~~ fails to file ~~a copy of the amendment as~~ **an amended application when** required ~~by~~ **under** this act.

(d) The corporation, after becoming ~~a party to~~ **the survivor in** a merger, ~~consolidation, or similar corporation action,~~ fails to file a ~~copy of the~~ certificate **attesting to the occurrence** of **the** merger, ~~consolidation, or similar corporate action~~ as required ~~by~~ **under** this act.

(e) The corporation fails to file its annual report within the time required ~~by~~ **under** this act, **or fails to pay an annual fee required under this act.**

Sec. 1042. (1) The administrator shall revoke a certificate of authority of a foreign corporation only ~~when the administrator has given~~ **if he or she gives** the **foreign** corporation ~~not less than~~ **at least** 90 days' notice that a default under section ~~922~~ **1041** exists and that **he or she will revoke** its certificate of authority ~~will be revoked~~ unless the default is cured within 90 days ~~after mailing of~~ the notice **is mailed**, and the corporation fails ~~before revocation~~ **within the 90 day period** to cure the default.

(2) The **administrator shall send** a notice ~~shall be sent~~ **described in subsection (1)** by first class mail to the corporation at its registered office in this state, ~~and at its main business or headquarters office as these offices are on record in the office of the administrator.~~

(3) ~~Upon revoking~~ **If he or she revokes** a certificate of authority **under this section**, the administrator shall issue a certificate of revocation and mail a copy to the corporation at ~~each~~ of the addresses designated in subsection ~~(2)~~ **its registered office in this state**.

(4) ~~The issuance of the~~ **Issuing** a certificate of revocation **under this section** has the same force and effect ~~as issuance~~ **issuing** of a certificate of withdrawal under section 1031.

Sec. 1051. (1) A foreign corporation conducting affairs in this state without a certificate of authority shall not maintain an action or proceeding in any court of this state until the corporation has obtained a certificate of authority. An action commenced by a foreign corporation ~~having no~~ **that does not have** a certificate of authority shall not be dismissed if **the foreign corporation obtains** a certificate of authority ~~has been obtained~~ before the order of dismissal. **If an action or proceeding is dismissed because a foreign corporation has not obtained a certificate of authority, the order of dismissal shall be without prejudice to the recommencement of the action or proceeding by the foreign corporation after it obtains a certificate of authority.** This ~~prohibition~~ **subsection** applies to **the foreign corporation and to any of the following:**

(a) A successor in interest of the foreign corporation, except a receiver, trustee in bankruptcy, or other representative of creditors of the corporation.

(b) An assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but ~~has~~ **did** not ~~obtained~~ **obtain** a certificate of authority in this state.

(2) Failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state does not impair the validity of a contract or act of the corporation, and does not prevent the corporation from defending an action or proceeding in a court of this state.

Sec. 1056. (1) A foreign corporation that is not authorized to conduct affairs in this state and is not required to obtain authority to conduct affairs in this state may register its corporate name under this act if permissible under section 212.

(2) A foreign corporation described in subsection (1) may register a corporate name by filing all of the following in the office of the administrator:

(a) An application for registration executed on behalf of the corporation, that contains the name and the mailing address of the corporation, the jurisdiction of its incorporation, the date of its incorporation, a statement that it is conducting affairs, and a brief statement of the affairs in which it is engaged.

(b) A certificate dated not earlier than 30 days before filing of the application, that states that the corporation is in good standing under the laws of the jurisdiction of its incorporation and is executed by the office of the jurisdiction that has custody of the records pertaining to corporations.

(3) Unless sooner terminated by the filing of a certificate of termination, a registration under this section is effective until the close of the calendar year in which the application for registration is filed. However, registrations filed after September 30 in any calendar year shall expire at the end of the following calendar year. The administrator shall notify the corporation of the impending expiration not later than 90 days before the expiration of the registration. A foreign corporation that has in effect a registration of its corporate name may renew the registration from year to year by filing annually an application for renewal and a certificate of good standing as required for the original registration. A renewal application may be filed between October 1 and December 31 in each year, and extends the registration for the following calendar year.

Sec. 1060. (1) ~~The fees a person shall pay to the administrator for the purposes described in this section are as follows~~ **When delivering a document described in this subsection to the administrator for filing, the person shall pay the administrator whichever of the following fees apply to that document:**

(a) ~~Examining, filing, and copying of articles~~ **Articles of incorporation** of a domestic corporation, \$10.00.

(b) ~~Examining and filing articles or certificates of incorporation, and other papers connected with the application~~ **An application** of a foreign corporation for ~~admission~~ **a certificate of authority** to conduct affairs in this state, \$10.00.

(c) ~~Examining, filing and copying an amendment~~ **An amendment** to the articles of **incorporation** of a domestic corporation, \$10.00.

(d) ~~Examining and filing an amendment to the articles of a foreign corporation,~~ **An amended application for certificate of authority to conduct affairs in this state, \$10.00.**

(e) ~~Examine, filing, and copying a certificate~~ **A certificate** of merger or ~~consolidation~~ **conversion** under chapter 7, \$50.00.

(f) ~~Examining and filing a certificate of~~ **A certificate attesting to the occurrence of a merger or consolidation** of a foreign corporation ~~,~~ under section 1021, \$10.00.

(g) ~~Examining, filing, and copying a certificate~~ **A certificate** of dissolution, \$10.00.

(h) ~~Examining and filing an application~~ **An application** for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, \$10.00.

(i) ~~Examining, filing, and copying an application~~ **An application** for reservation of corporate name, \$10.00.

- (j) ~~Examining, filing and copying a certificate~~ **A certificate** of assumed name or certificate of termination of assumed name, \$10.00.
- (k) ~~Examining, filing, and copying a statement~~ **A statement** of change of registered office or resident agent, \$5.00.
- (l) ~~Examining, filing, and copying restated~~ **Restated articles of incorporation of a domestic corporation corporations**, \$10.00.
- (m) ~~Examining, filing, and copying a certificate~~ **A certificate** of abandonment, \$10.00.
- (n) ~~Examining, filing, and copying a certificate~~ **A certificate** of correction, \$10.00.
- (o) ~~Examining, filing, and copying a certificate~~ **A certificate** of revocation of dissolution proceedings, \$10.00.
- (p) ~~Examining, filing, and copying certificate~~ **A certificate** of renewal of corporate existence, \$10.00.
- (q) ~~Filing and examination of a~~ **For examining a** special report required by law, \$2.00.
- (r) ~~Examining and filing, a certificate of election, \$10.00.~~ **Certificate of registration of corporate name of a foreign corporation, \$50.00.**
- (s) **A certificate of renewal of registration of corporate name of a foreign corporation, \$50.00.**
- (t) **A certificate of termination of registration of corporate name of a foreign corporation, \$10.00.**
- (u) ~~(s)~~ Filing a report required under section 911, \$10.00 if paid before October 1, 2003 or after September 30, 2012. After September 30, 2003 and before October 1, 2012, the fee is \$20.00.

(2) ~~A corporation shall pay the applicable fee described in this section to the administrator at the time of filing or when the service is rendered by the administrator.~~ The fees described in ~~this section~~ **subsection (1)** are in addition to any franchise fees prescribed in this act. **The administrator shall not refund all or any part of a fee described in this section.**

(3) **Except as provided in subsection (8), the administrator shall deposit all fees received and collected under this section in the state treasury to the credit of the administrator, who may only use the money credited pursuant to legislative appropriation and only in carrying out those duties of the department required by law.**

(4) **If any money received by the administrator from fees paid under subsection (1)(u) is not appropriated to the department in that fiscal year, the money remaining from those fees shall revert to the general fund of this state.**

(5) ~~(3)~~ A person shall pay a minimum charge of \$1.00 for each certificate and 50 cents per folio to the administrator for certifying a part of a file or record pertaining to a corporation if a fee for that service is not described in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies the fee established in a schedule of fees adopted by the administrator with the approval of the state administrative board. **The administrator shall retain the revenue collected under this subsection, and the department shall use it to defray the costs for its copying and certifying services.**

~~(4) The administrator shall not refund all or any part of a fee described in this section. The administrator shall deposit all fees received and collected under this section in the state treasury to the credit of the administrator, who may only use the money credited pursuant to legislative appropriation and only in carrying out those duties of the department required by law.~~

(6) If a person pays a fee or penalty on behalf of a domestic or foreign corporation by check and the check is dishonored, the fee is unpaid and the administrator shall rescind the filing of all related documents.

(7) The administrator may accept a credit card in lieu of cash or check as payment of a fee under this act. The administrator shall determine which credit cards he or she shall accepted for payment.

(8) The administrator may charge a nonrefundable fee of up to \$50.00 for any document submitted or certificate sent by facsimile or electronic transmission. The administrator shall retain the revenue collected under this subsection and the department shall use if in carrying out its duties required by law.

Sec. 1104. **As used in this chapter:**

(a) ~~(1)~~ “Member capital” means the assets ~~which~~ **that** a member must provide by payment, transfer, or allocation of net savings to a cooperative as a condition of admission to or retention of membership and with respect to which the member has rights to dividends, redemption or distributions on dissolution ~~pursuant to~~ **under** this chapter.

(b) ~~(2)~~ “Membership fees” means a nonredeemable fee ~~which~~ **that** a member must pay to a cooperative as a condition of admission to or retention of membership in the cooperative ~~which~~ **that** is not member capital or a fee for goods, services, or facilities.

(c) ~~(3)~~ “Patron” means a person whose economic exchange is a regular part of the business of a cooperative or foreign cooperative, ~~which~~ **if the** economic exchange is the same type of regular economic exchange engaged in by any class of members.

(d) ~~(4)~~ “Patronage” means the selling or providing of goods, services, or facilities to, or the buying of goods, services, or facilities from members or other persons, or ~~the~~ providing of labor or services to or by a cooperative.

(e) ~~(5)~~ “Redemption” means any method by which a cooperative exchanges cash or debt instruments for member capital, including, but not limited to, repurchase, redemption, refund, or repayment.

(f) ~~(6)~~ “Referendum” means a method of member voting that utilizes secret ballot and established polling places as provided in the cooperative’s bylaws **or under section 419**.

(g) ~~(7)~~ “Unincorporated cooperative” means either of the following:

(a) An association of 2 or more persons organized on a cooperative basis ~~which~~ **that** is not a corporation.

(b) An association of 2 or more persons organized under the laws of another state operating on either a cooperative basis or a similar basis provided in ~~another~~ **that** state as the criterion for being a cooperative, ~~which~~ **that** is not a corporation.

Sec. 1107. To the extent that sections ~~301(3)~~ **301(4)** and ~~(4)~~ **301(5)**, 855, and 901 are inconsistent with this chapter, they shall not apply to cooperatives.

Sec. 1145. Notwithstanding section 611(4), ~~703(2)~~, **703a(2)(d)**, 753(4), or ~~804(4)~~ **804(6)**, unless the articles of incorporation provide for a higher vote for passage, amendment of the articles of incorporation, amendment of the bylaws ~~which~~ **that** alters member voting rights or member capital, merger, ~~consolidation~~, disposition of all or substantially all of the assets of the corporation, or dissolution shall be adopted by the affirmative vote of a majority of the votes cast by members eligible to vote ~~thereon~~ **on that matter**, and if a class is eligible to vote ~~thereon~~ **on that matter** as a class, the affirmative vote of a majority of the votes cast by

members of ~~each~~ **that** class. ~~Such~~ **An action may only described in this section shall** be taken at a meeting called according to the notice provisions of section 404.

Sec. 1162. In the event of an amendment to the articles **of incorporation** or bylaws, merger, ~~consolidation,~~ or disposition of substantially all of the assets of ~~the~~ **a cooperative, or a** dissolution, ~~which~~ **that** results in a distribution of all or substantially all of the assets of the corporation to members, the **corporation shall make that** distribution ~~shall be~~ in the manner and order provided in section 1183.

Section 2. Sections 312, 315, 361, 363, 365, 371, 411, 447, 463, 481, 491, 492, 493, 515, 545, 546, 564, 703, 721, 722, 723, 731, 732, 736, 737, 825, 841, 842, 843 and 935 of 1982 PA 162 (MCL 450.2312, 450.2315, 450.2361, 450.2363, 450.2365, 450.2371, 450.2411, 450.2447, 450.2463, 450.2481, 450.2491, 450.2492, 450.2493, 450.2515, 450.2545, 450.2546, 450.2564, 450.2703, 450.2721, 450.2722, 450.2723, 450.2731, 450.2732, 450.2736, 450.2737, 450.2825, 450.2841, 450.2842, 450.2843, and 450.2935), section 564 as amended by 1993 PA 129 and 1987 PA 170, are repealed.

Section 3. This amendatory act shall not take effect unless [Senate/House] Bill No. _____ of the _____th Legislature and [Senate/House] Bill No. _____ of the _____th Legislature are enacted into law.

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A bill to amend 1965 PA 169, entitled
“An Act to require court proceedings for dissolution of domestic charitable purpose
corporations”
by amending the title and sections 1 and 2, MCL 450.251 and 450.252.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to **require notice and accounting to the attorney general of dissolution,
merger and conversion of certain domestic charitable purpose corporations**, to require court
proceedings for dissolution of **certain** domestic charitable purpose corporations; and to require
the filing of notice of intention to withdraw with the attorney general by foreign charitable
purpose corporations ~~attempting~~ **seeking** to withdraw from this state.

Sec. 1. No nonprofit corporation, foundation, trustee corporation or other corporation or
entity organized under the laws of this state whose corporate purposes are to hold property for
any charitable purpose, except when they are organized for religious purposes; ~~;~~ **shall enter
into a merger with another domestic or foreign nonprofit corporation, domestic or foreign**

business corporation or other domestic or foreign business entity, shall file restated articles of incorporation that convert the entity to a business corporation or to a professional service corporation, shall file a certificate of conversion that converts the entity to another form of domestic or foreign business organization or shall be dissolved except by giving written notice to the attorney general ~~by registered mail at least 45 days~~ prior to the filing of any paper or document in respect to such dissolution, merger or restated articles with any other state agency or court. A corporation that is subject to this act and that is automatically dissolved under section 801(1)(a) or section 922 of the nonprofit corporation act, 1982 PA 166, MCL 450.2801(1)(a) and 450.2922, shall give notice to the attorney general within 60 days the automatic dissolution of the corporation. The attorney general may require the submission of an accounting of the assets of the corporation and of their administration and disposition. The attorney general may require a ~~the~~ dissolution to be accomplished by proceedings in the circuit court **for Ingham County** or for the county in which the registered office or principal place of business of the corporation is located ~~, and the making of an accounting of its assets, administration and disposition of its assets~~. The attorney general is a necessary party to such proceedings and shall be given due notice thereof. The attorney general may consent to a dissolution without court proceedings, provided however, that any other statutory provisions requiring court proceedings shall not be affected nor eliminated by such consent.

Sec.2 (1) ~~The corporation and securities commission~~ **department of licensing and regulatory affairs** shall not accept for filing:

(a) ~~any notice~~ **Any certificate of dissolution of a corporation or other entity described in section 1** unless it is accompanied by a copy of the order of the circuit court

dissolving the corporation, ~~or a certified copy of~~ the written consent of the attorney general to such dissolution **or an affidavit described in section 3.**

(b) **Any certificate of merger of a non-surviving corporation described in this section unless it is accompanied by the written consent of the attorney general to such merger, an affidavit described in section 3 or a final order of a court having jurisdiction authorizing the merger.**

(c) **Restated articles of incorporation or a certificate of conversion that converts a corporation described in section 1 to a business corporation, a professional service corporation or other domestic or foreign business entity unless it is accompanied by the written consent of the attorney general to the conversion, an affidavit described in section 3 or a final order of a court having jurisdiction approving the restated articles of incorporation.**

(d) **Any amendment to the articles of incorporation of a corporation described in this section that changes its term of existence to a date certain unless it it accompanied by the written consent of the attorney general or an affidavit described in section 3.**

~~Sec. 2.~~ (2) ~~The corporation and securities commission~~ **department of licensing and regulatory affairs** shall not ~~accept for filing a notice~~ **issue a certificate** of withdrawal from this state of a foreign corporation or entity whose nature and purposes are similar to those domestic corporations or entities described in section 1, unless the ~~notice of~~ **request for a certificate of** withdrawal is accompanied by ~~a true copy and proof of service by registered mail,~~ of a ~~notice of intention to withdraw from the state served upon the attorney general at least 45 days prior to the receipt by the commission of the notice of withdrawal~~ **the written consent of the attorney general or an affidavit described in section 3.**

Sec. 3. If a charitable entity described in section 1 submits a written request to the attorney general for consent to filing a certificate of dissolution, merger, or conversion, an amendment to or restatement of its articles of incorporation or dissolution or if a foreign corporation submits a written request for consent to filing a certificate of withdrawal under this act, the attorney general shall, within 120 days after submission, either provide written consent to the filing or dissolution or give written notice to the person submitting the request, specifying the reasons for the refusal to consent or requesting that additional information be provided. If the attorney general fails to provide that notice within the 120 day period, the person submitting the request may prepare an affidavit attesting to the request and the failure of the attorney to respond and may submit the affidavit to the department of licensing and regulatory affairs under section 2. A domestic or foreign charitable entity subject to this act may seek judicial review of the refusal of the attorney general to consent to a transaction under this act pursuant to sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.306.

Enacting section 1. This amendatory act shall not take effect unless [Senate/House] Bill No. _____ of the _____th Legislature and [Senate/House] Bill No. _____ of the _____th Legislature are enacted into law.

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**PROPOSED AMENDMENT TO
MICHIGAN LIMITED LIABILITY COMPANY ACT
IN CONNECTION WITH NONPROFIT CORPORATION ACT
AMENDMENTS**

Sec. 102. (1) Unless the context requires otherwise, the definitions in this section control the interpretation of this act.

(2) As used in this act: . . .

(e) "Corporation" or "domestic corporation" means any of the following:

(i) A corporation formed under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2908.

(ii) A corporation existing on January 1, 1973 and formed under another statute for a purpose for which a corporation may be formed under the business corporation act, 1972 PA 192, MCL 450.1101 to 450.2908.

(iii) A corporation formed under the professional services corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(iv) **A corporation formed under or subject, wholly or in part, to the nonprofit corporation act, 1984 PA 162, MCL 450.2101 to 450.3192. . . .**