

Act No. 91
Public Acts of 1993
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator Dillingham

ENROLLED SENATE BILL No. 148

AN ACT to amend sections 109, 131, 209, 215, 251, 261, 338, 344, 345, 402, 403, 407, 423, 447a, 472, 492a, 496, 505, 515a, 528, 551, 564b, 565, 571, 631, 643, 712, 735, 741, 753, 761, 764, 769, 778, 791, 805, 811, 834, 841a, 842a, 911, 922, 1012, 1014, 1015, 1016, 1021, 1042, 1060, and 1062 of Act No. 284 of the Public Acts of 1972, entitled "An act to provide for the organization and regulation of corporations; to prescribe their duties, rights, powers, immunities and liabilities; to provide for the authorization of foreign corporations within this state; to prescribe the functions of the administrator of this act; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," sections 109, 209, 251, 261, 407, 423, 472, 505, 528, 551, 565, 571, 712, 741, 753, 761, 764, 769, 805, 911, 1014, 1021, 1042, 1060, and 1062 as amended and sections 344, 345, 447a, 492a, 496, 515a, 564b, 735, 841a, and 842a as added by Act No. 121 of the Public Acts of 1989, section 131 as amended by Act No. 199 of the Public Acts of 1992, sections 631, 643, 922, and 1016 as amended by Act No. 407 of the Public Acts of 1982, section 778 as amended by Act No. 31 of the Public Acts of 1989, and section 791 as added by Act No. 58 of the Public Acts of 1988, being sections 450.1109, 450.1131, 450.1209, 450.1215, 450.1251, 450.1261, 450.1338, 450.1344, 450.1345, 450.1402, 450.1403, 450.1407, 450.1423, 450.1447a, 450.1472, 450.1492a, 450.1496, 450.1505, 450.1515a, 450.1528, 450.1551, 450.1564b, 450.1565, 450.1571, 450.1631, 450.1643, 450.1712, 450.1735, 450.1741, 450.1753, 450.1761, 450.1764, 450.1769, 450.1778, 450.1791, 450.1805, 450.1811, 450.1834, 450.1841a, 450.1842a, 450.1911, 450.1922, 450.2012, 450.2014, 450.2015, 450.2016, 450.2021, 450.2042, 450.2060, and 450.2062 of the Michigan Compiled Laws; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 109, 131, 209, 215, 251, 261, 338, 344, 345, 402, 403, 407, 423, 447a, 472, 492a, 496, 505, 515a, 528, 551, 564b, 565, 571, 631, 643, 712, 735, 741, 753, 761, 764, 769, 778, 791, 805, 811, 834, 841a, 842a, 911, 922, 1012, 1014, 1015, 1016, 1021, 1042, 1060, and 1062 of Act No. 284 of the Public Acts of 1972, sections 109, 209, 251, 261, 407, 423, 472, 505, 528, 551, 565, 571, 712, 741, 753, 761, 764, 769, 805, 911, 1014, 1015, 1021, 1042, 1060, and 1062 as amended and sections 344, 345, 447a, 492a, 496, 515a, 564b, 735, 841a, and 842a as added by Act No. 121 of the Public Acts of 1989, section 131 as amended by Act No. 199 of the Public Acts of 1992, sections 631, 643, 922, and 1016 as amended by Act No. 407 of the Public Acts of 1982, section 778 as amended by Act No. 31 of the Public Acts of 1989, and section 791 as added by Act No. 58 of the Public Acts of 1988, being sections 450.1109, 450.1131, 450.1209, 450.1215, 450.1251, 450.1261, 450.1338, 450.1344, 450.1345, 450.1402, 450.1403, 450.1407, 450.1423, 450.1447a, 450.1472, 450.1492a, 450.1496, 450.1505, 450.1515a, 450.1528, 450.1551, 450.1564b, 450.1565, 450.1571, 450.1631, 450.1643, 450.1712, 450.1735, 450.1741, 450.1753, 450.1761, 450.1764, 450.1769, 450.1778, 450.1791, 450.1805, 450.1811, 450.1834, 450.1841a, 450.1842a, 450.1911, 450.1922, 450.2012, 450.2014, 450.2015, 450.2016, 450.2021, 450.2042, 450.2060, and 450.2062 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 109. (1) "Shareholder" means a person holding units of proprietary interest in a corporation and is considered to be synonymous with "member" in a nonstock corporation.

(2) "Shares" means the units into which proprietary interests in a corporation are divided and is considered to be synonymous with "membership" in a nonstock corporation.

Sec. 131. (1) A document required or permitted to be filed under this act shall be filed by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish a procedure for accepting delivery by facsimile transmission. If the document substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If so requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in his or her endorsement. The administrator shall prepare and return a true copy of the document other than an annual report, or at his or her discretion the original, to the person who submitted it for filing showing the filing date. The records and files of the administrator relating to domestic and foreign corporations shall be open to reasonable inspection by the public. The records or files, at the discretion of the administrator, may be maintained either in their original form or in photostatic, micrographic, photographic, optical disc media, or other reproduced form. The administrator may make reproductions of documents filed under this act, or any predecessor act, by photostatic, micrographic, photographic, optical disc media, or other reproduced form and may destroy the originals of the documents so reproduced.

(2) A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, which may be sent by facsimile transmission, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(3) The document is 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.

Sec. 209. The articles of incorporation may contain any provision not inconsistent with this act or another statute of this state, including any of the following:

(a) A provision 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 and shareholders, or a class of shareholders.

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

(c) A provision providing that a director is not personally liable to the corporation or its shareholders for monetary damages for a breach of the director's fiduciary duty. The provision does not eliminate or limit the liability of a director for any of the following:

(i) A breach of the director's duty of loyalty to the corporation or its shareholders.

(ii) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.

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

(iv) A transaction from which the director derived an improper personal benefit.

(v) An act or omission occurring prior to the date when the provision becomes effective.

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, he or she shall reserve it for exclusive use of the applicant for a period expiring at the end of the sixth full calendar month following the month in which the application was filed.

(2) The right to exclusive use of a reserved corporate name 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. 251. (1) A corporation may be formed under this act for any lawful purpose, except to engage in a business for which a corporation may be formed under any other statute of this state unless that statute permits formation under this act.

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

Sec. 261. A corporation, subject to any limitation provided in this act, in any other statute of this state, or in its articles of incorporation, shall have power in furtherance of its corporate purposes to do all of the following:

(a) Have perpetual duration.

(b) Sue and be sued in all courts and participate in actions and proceedings, judicial, administrative, arbitral, or otherwise, in the same manner as natural persons.

(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 business of the corporation, the conduct of its affairs, its rights and powers and the rights and powers of its shareholders, 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, employ, use and otherwise deal in and with, real or personal property, or an interest in real or personal property, wherever situated.

(g) Sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, or create a security interest in any of its property or an interest in its 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 issued by others, whether engaged in similar or different business, governmental, or other activities, including banking corporations or trust companies. A corporation organized or transacting business 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 rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest in its property, wherever situated. This power shall include the power to give guarantees which are necessary or convenient to the conduct, promotion, or attainment of the business of any of the following corporations, whether or not subject to this act, which guarantees shall be considered to be in furtherance of the corporate purposes of the contracting corporation:

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

(ii) A corporation which owns, directly or indirectly, all of the outstanding shares of the contracting corporation.

(iii) All of the outstanding shares of which are owned, directly or indirectly, by a corporation, whether or not subject to this act, which owns, directly or indirectly, all of the outstanding shares of the contracting corporation.

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

(k) Make donations for any of the following: The public welfare; community fund or hospital; or a charitable, educational, scientific, civic, or similar purpose. A corporation also has the power to provide aid in time of war or other national emergency.

(l) Pay pensions, establish and carry out pension, profit sharing, share bonus, share purchase, share option, 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 corporation, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking, or agreement which 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) Transact business, carry on its operations, and have offices and exercise the powers granted by this act in any jurisdiction in or outside the United States.

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

(r) Participate as a member of any mutual insurance company for purposes of insuring property or activities relative to nuclear facilities owned, operated, constructed, or being constructed by the corporation.

Sec. 338. (1) A corporation may issue certificates for fractions of a share where necessary to effect share transfers, share distributions or a reclassification, merger, share exchange, or reorganization, which shall entitle the holders, in proportion to their fractional holdings, to exercise voting rights and to receive dividends and distributions.

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

(3) As an alternative, a corporation may 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 for full shares, but such scrip shall not entitle the holder to any right of a shareholder except as therein provided. The scrip shall be issued subject to the condition that it becomes 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 thereof distributed to the holders of the scrip, or subject to any other condition which the board may determine.

(4) 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. 344. (1) Subject to restrictions imposed by this act or the articles of incorporation, a corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares, except as provided in subsection (4).

(2) If the articles prohibit reissue of any shares so acquired, the board by resolution shall adopt and file an amendment of the articles reducing the number of authorized shares accordingly.

(3) A corporation shall not acquire its own shares by purchase, redemption, or otherwise unless after the acquisition there remain outstanding shares possessing, collectively, voting rights and unlimited rights to receive assets in dissolution.

(4) Shares of a corporation acquired by it may be pledged as security for the payment of the purchase price of the shares and, until the purchase price is paid by the corporation, such shares are not canceled and do not constitute authorized but unissued shares. However, the acquired and pledged shares shall not be voted directly or indirectly at any meeting or otherwise, shall not be counted in determining the total number of issued shares entitled to vote at any given time, and, upon payment of the purchase price, are canceled and constitute authorized but unissued shares. If the articles prohibit reissue of canceled shares, then the resolution required by subsection (2) shall be filed.

Sec. 345. (1) A board may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3).

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

(3) No distribution may be made if, after giving it effect, the corporation would not be able to pay its debts as they 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 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 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) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or 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 a distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of the date money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares.

(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 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 in exchange for an obligation to make future payments, and distribution of the obligation would otherwise be prohibited under subsection (3) at the time it is made, the corporation may issue the obligation and the following shall apply:

(a) 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.

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

(c) The obligation shall not be considered a liability or debt for purposes of determinations under subsection (3) except to the extent that it is deemed distributed and treated as indebtedness under this subsection.

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

(9) If any 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 shall prevent the person receiving the distribution from asserting a right of rescission or other legal or equitable rights.

Sec. 402. An annual meeting of shareholders for election of directors and for such other business as may come before the meeting shall be held at a time as provided in the bylaws, unless such action is taken by written consent as provided in section 407. Failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or any adjournment thereof, 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, 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, or if no date has been designated for 15 months after organization of the corporation or after its last annual meeting, the circuit court of the county in which the principal place of business or registered office of the corporation is located, upon application of a shareholder, may summarily order the meeting or the election, or both, to be held at such time and place, upon such notice and for the transaction of such business as may be designated in the order. At any such meeting ordered to be called by the court, the shareholders present in person or by proxy and having voting powers constitute a quorum for transaction of the business designated in the order.

Sec. 403. A special meeting of shareholders may be called by the board, or by officers, directors or shareholders as provided in the bylaws. Notwithstanding any such provision, upon application of the holders of not less than 10% of all the shares entitled to vote at a meeting, the circuit court of 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 to be called and held at such time and place, upon such notice and for the transaction of such business as may be designated in the order. At any such meeting ordered to be called by the court, the shareholders present in person or by proxy and having voting powers constitute a quorum for transaction of the business designated in the order.

Sec. 407. (1) The articles of incorporation may provide that any action required or permitted by this act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the holders of outstanding shares 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 entitled to vote on the action were present and voted. The written consents shall bear the date of signature of each shareholder who signs the consent. No written consents shall be effective to take the corporate action referred to unless, within 60 days after the record date for determining shareholders entitled to express consent to or to dissent from a proposal without a meeting, written consents dated not more than 10 days before the record date and signed by a sufficient number of shareholders to take the action are delivered to the corporation. Delivery shall be to the corporation's registered office, its principal place of business, or an officer or agent of the corporation having custody of the minutes of the proceedings of its shareholders. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to shareholders who would have been entitled to notice of the shareholder meeting if the action had been taken at a meeting and who have not consented in writing. If the action consented to would have required filing of a certificate under any other section of this act, if the action had been voted upon by shareholders at a meeting of the shareholders, the certificate filed under such other section shall state, in lieu of any statement required by the section concerning a vote of shareholders, that both written consent and written notice have been given as provided in this section.

(2) Any action required or permitted by this act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if before or after the action all the shareholders entitled to vote consent in writing. If the action consented to would have required filing of a certificate under any other section of this act if the action had been voted upon by shareholders at a meeting, the certificate filed under the other section shall state, in lieu of any statement required by the section concerning a vote of shareholders, that written consent has been given as provided by this section.

Sec. 423. (1) A proxy 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 in section 422(c) or (d), the proxy is revocable 3 years after the date of the proxy or at the end of any

period specified 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 who did not know 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. 447a. 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 of a corporation shall not be voted on any matter or considered to be outstanding shares for any purpose related to voting if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

Sec. 472. (1) A restriction on the transfer or registration of transfer of a bond or share of a corporation may be imposed either by the articles of incorporation or by the bylaws or by an agreement among any number of holders or among the holders and the corporation. A restriction so imposed is not binding with respect to bonds or shares 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 transfer of a bond or share of a corporation, if permitted by this section or section 473 and noted conspicuously on the face or back of the instrument, may be enforced against the holder of the restricted instrument or a successor or transferee of the holder including a personal representative, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless the existence of the restriction is noted conspicuously on the face or back of the instrument, a restriction, even though permitted by this section or section 473, is ineffective except against a person with actual knowledge of the restriction.

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

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

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

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

Sec. 496. A derivative proceeding may 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 a class of shareholders, the court shall direct that notice be given to the shareholders affected. If notice is directed to be given to the affected shareholders, 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 amount of expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

Sec. 505. (1) The board shall consist of 1 or more members. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the articles of incorporation fix the number.

(2) The first board of directors shall hold office until the first annual meeting of shareholders. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the succeeding annual meeting, except in case of the classification of directors as permitted by this act. A director shall hold office for the term for which he or she is elected and until his or her successor is elected and qualified, or until his or her resignation or removal. A director may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or a later time as set forth in the notice of resignation.

(3) The shareholders or board may designate 1 or more directors as an independent director. Any director so designated shall be entitled to reasonable compensation in addition to compensation paid to directors generally, as determined by the board or shareholders, and reimbursement for expenses reasonably related to service as an independent director. An independent director may communicate with shareholders at the corporation's expense, as part of a communication or report sent by the corporation to shareholders. An independent director shall not have any greater duties or liabilities than any other director.

Sec. 515a. (1) Unless otherwise limited by the articles of incorporation, if a vacancy, including a vacancy resulting from an increase in the number of directors, occurs in a board, the vacancy may be filled as follows:

(a) The shareholders 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, if the holders of any class or classes of stock or series are entitled to elect 1 or more directors to the exclusion of other shareholders, vacancies of that class or classes or series 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 or series 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 series.

(3) Unless otherwise limited by the articles 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 shall have been 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 personal representative, administrator, trustee, or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the articles or the bylaws.

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

Sec. 528. (1) A committee designated pursuant to section 527, to the extent provided in the resolution of the board or in the bylaws, may exercise all powers and authority of the board in management of the business and affairs of the corporation. A 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 share exchange.

(c) Recommend to shareholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets.

(d) Recommend to shareholders a dissolution of the corporation or a revocation of a dissolution.

(e) Amend the bylaws of the corporation.

(f) Fill vacancies in the board.

(2) Unless the resolution, articles, or bylaws expressly so provide, a committee does not have power or authority to declare a distribution, dividend, or to authorize the issuance of shares.

Sec. 551. (1) Directors who vote for, or concur in, any of the following corporate actions are jointly and severally liable to the corporation for the benefit of its creditors or shareholders, to the extent of any legally recoverable injury suffered by such persons as a result of the action but not to exceed the amount unlawfully paid or distributed:

(a) Declaration of a share dividend or distribution to shareholders contrary to this act or contrary to any restriction in the articles of incorporation.

(b) Distribution to shareholders during or after dissolution of the corporation without paying or providing for debts, obligations, and liabilities of the corporation as required by section 855a.

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

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

(3) A shareholder who accepts or receives a share dividend or distribution with knowledge of facts indicating it is contrary to this act, or any restriction in the articles, is liable to the corporation in the amount accepted or received by him or her.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee, 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 all of the following apply:

(a) The person furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in sections 561 and 562.

(b) The person furnishes the corporation a written undertaking, 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.

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this act.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the person but need not be secured.

(3) Determinations and evaluations under this section shall be made in the manner specified in section 564a.

Sec. 565. (1) The indemnification or advancement of expenses provided under sections 561 to 564c is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, bylaws, or a contractual agreement. 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 of expenses.

(2) The indemnification provided for in sections 561 to 565 continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, personal representatives, and administrators of the person.

Sec. 571. For the purposes of 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" shall include employee benefit plans.

(c) "Serving at the request of the corporation" shall include any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services by, the director, officer, employee, 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 shall be considered to have acted in a manner "not opposed to the best interests of the corporation or its shareholders" as referred to in sections 561 and 562.

Sec. 631. (1) If the amendment is made as provided in section 611(1), a certificate of amendment shall be signed by the majority of incorporators and filed on behalf of the corporation, setting forth the amendment and certifying that the amendment is adopted by unanimous consent of the incorporators before the first meeting of the board.

(2) In case of any other amendment, except as otherwise provided in this act, 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 adopted in accordance with section 611(2).

(3) A certificate of amendment shall set forth the entire article being amended; however, if the article being amended is divided into separately identified sections, the certificate of amendment need only set forth the section of the article being amended.

Sec. 643. (1) Restated articles of incorporation adopted as provided in section 641(2) shall be signed by the majority of incorporators and filed in accordance with section 131.

(2) Other restated articles of incorporation shall be executed on behalf of the corporation and filed in accordance with section 131.

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

Sec. 712. (1) After a plan of merger is adopted as provided in section 711, a certificate of merger shall be executed and filed on behalf of the parent corporation and shall set forth all of the following:

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

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

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

Sec. 735. (1) One or more foreign corporations may merge or enter into a share exchange with 1 or more domestic corporations if the following apply:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger provided that if the parent corporation in a merger conducted pursuant to section 711 is a foreign corporation, it shall comply, notwithstanding the provisions of the laws of its jurisdiction of incorporation, with section 711(2) with respect to notice to shareholders of a

domestic subsidiary corporation which is a party to the merger and with section 712 with respect to the certificate of merger.

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.

(c) Each domestic corporation complies with the applicable provisions of sections 701 through 713.

(2) If the surviving corporation of a merger or the acquiring corporation in a share exchange is 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 transact business in this state. 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 which is party to the merger, and in a proceeding for the enforcement of a right of a dissenting shareholder of a domestic corporation against the surviving corporation.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of 1 or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Sec. 741. At any time before the effective date of a certificate of merger or share exchange, the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board. If a certificate of merger or share exchange 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.

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, if not in the usual and regular course of its business as conducted by the corporation, may be made upon 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, domestic or foreign, as authorized as provided in this section.

(2) The board must recommend the proposed transaction to the shareholders 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 with the submission of the proposed transaction.

(3) The board may condition its submission of the proposed transaction on any basis.

(4) The proposed transaction shall be submitted for approval at a meeting of shareholders. Notice of the meeting shall be given to each shareholder of record whether or not 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. The notice shall include or be accompanied by both of the following:

(a) A statement summarizing the principal terms of the proposed transaction or a copy of any documents containing the principal terms.

(b) A statement informing shareholders who, under section 762, are entitled to dissent, that they have the right to dissent and to be paid the fair value of their shares by complying with the procedures set forth in sections 762 to 772.

(5) At the meeting the shareholders may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any term or condition and the consideration to be received by the corporation. The authorization requires the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote thereon.

(6) Notwithstanding authorization by the shareholders, the board may abandon the sale, lease, exchange, or other disposition, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

Sec. 761. As used in sections 762 to 774:

(a) "Beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.

(b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving corporation by merger of that issuer.

(c) "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 762 and who exercises that right when and in the manner required by sections 764 through 772.

(d) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(e) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(f) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(g) "Shareholder" means the record or beneficial shareholder.

Sec. 764. (1) If proposed corporate action creating dissenters' rights under section 762 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this act and shall be accompanied by a copy of sections 761 to 774.

(2) If corporate action creating dissenters' rights under section 762 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 766. A shareholder who consents to the corporate action is not entitled to assert dissenters' rights.

Sec. 769. (1) Except as provided in section 771, within 7 days after the proposed corporate action is taken or a payment demand is received, whichever occurs later, the corporation shall pay each dissenter who complied with section 767 the amount the corporation estimates to be the fair value of his or her shares, plus accrued interest.

(2) The payment must be accompanied by all of the following:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and if available the latest interim financial statements.

(b) A statement of the corporation's estimate of the fair value of the shares.

(c) An explanation of how the interest was calculated.

(d) A statement of the dissenter's right to demand payment under section 772.

Sec. 778. (1) "Equity security" means any 1 of the following:

(a) Any stock or similar security, certificate of interest, or participation in any profit sharing agreement, voting trust certificate, or voting share.

(b) Any security convertible, with or without consideration, into an equity security, or any warrant or other security carrying any right to subscribe to or purchase an equity security.

(c) Any put, call, straddle, or other option or privilege of buying an equity security from or selling an equity security to another without being bound to do so.

(2) "Interested shareholder" means any person, other than the corporation or any subsidiary, who is either:

(a) The beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting shares of the corporation.

(b) An affiliate of the corporation and at any time within the 2-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding voting shares of the corporation.

(c) For the purpose of determining whether a person is an interested shareholder pursuant to subdivision (a) or (b), the number of shares of voting shares considered to be outstanding shall include all voting shares owned by the person except for those shares which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(3) "Market value" means either of the following:

(a) With respect to shares, the highest closing sale price during the 30-day period immediately preceding the date in question of a share as listed on:

(i) The composite tape for New York stock exchange—listed securities.

(ii) If not listed pursuant to subparagraph (i), the New York stock exchange.

(iii) If not listed pursuant to subparagraph (i) or (ii), the principal United States security exchange registered under the securities exchange act of 1934, 48 Stat. 881.

(iv) If not listed pursuant to subparagraph (i), (ii), or (iii), the highest closing bid quotation during the 30-day period preceding the date in question as listed on the national association of securities dealers, inc. automated quotations system or any other system then in use.

(v) If a listing is not available pursuant to subparagraphs (i) to (iv), then, the fair market value of the shares, on the date in question, as determined in good faith by the corporation's board of directors.

(b) With respect to property other than cash or shares, the fair market value of the property on the date in question, as determined in good faith by the corporation's board of directors.

(4) "Subsidiary" means a legal entity of which a majority of the voting shares is owned, directly or indirectly, by another person.

Sec. 791. (1) As used in this chapter, "control share acquisition" means the acquisition, directly or indirectly, by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

(2) For purposes of this section, shares or the power to direct the exercise of voting power acquired within a 90-day period, or shares or the power to direct the exercise of voting power acquired pursuant to a plan to make a control share acquisition, are considered to have been acquired in the same acquisition.

(3) For purposes of this section, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has voting power only of shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others.

(4) For purposes of this section, the acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

(a) Before January 1, 1988.

(b) Pursuant to a contract existing before January 1, 1988.

(c) By gift, testamentary disposition, marital settlement, descent and distribution, or otherwise without consideration.

(d) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this chapter.

(e) Pursuant to a merger or share exchange effected in compliance with sections 701 to 735 if the issuing public corporation is a party to the agreement of merger or share exchange.

(f) By a governmental official acting in an official or fiduciary capacity.

(5) For purposes of this section, the acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing this chapter by any person whose voting rights previously had been authorized by shareholders in compliance with this chapter, or whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition but for subsection (4), does not constitute a control share acquisition, unless the acquisition entitles a person, directly or indirectly, alone or as part of a group, to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power which the acquiring person was entitled to exercise or direct prior to such acquisition.

Sec. 805. (1) The articles of incorporation may contain a provision that a shareholder, or the holders of any specified number or proportion of shares, or of any specified number or proportion of shares of a class or series, 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 of record of all outstanding shares authorize the provision in an amendment to the articles.

(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 specified in the provision, obtained in the manner as may be specified in the articles, or if no manner is specified, when authorized on written consent signed by the holder or holders. 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) A provision authorized by subsection (1) becomes invalid if subsequent to the adoption of the provision, shares are transferred or issued to a person who takes delivery of the share certificate without actual notice of the provision, unless that person consents in writing to the provision. If the articles contain a provision authorized by subsection (1) and the existence of the provision is noted conspicuously on the face or back of a certificate for shares issued by the corporation, a holder of that certificate is conclusively considered to have taken delivery with actual notice of the provision.

(4) The failure to include a provision of a kind authorized in subsection (1) in the articles shall not invalidate any bylaw or agreement which would otherwise be considered valid.

Sec. 811. (1) Dissolution proceedings commenced pursuant to sections 804 or 805 may be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, by filing a certificate of revocation executed, in person or by proxy, by all the shareholders, stating that revocation is effective pursuant to this section and that all the shareholders of the corporation have executed the certificate in person or by proxy.

(2) Dissolution proceedings commenced pursuant to 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 board of directors shall adopt a resolution that the dissolution be revoked. The proposed revocation shall be submitted for approval at a meeting of shareholders. The shareholders shall be given the same notice of the meeting and the revocation shall be approved by the same vote, as that required by section 804 for the approval of dissolution.

(b) A certificate of revocation, stating that dissolution is revoked pursuant to this section, and giving the information required by section 804(7), shall be executed and filed on behalf of the corporation.

Sec. 834. Subject to section 833 and except as otherwise provided by court order, a dissolved corporation, its officers, directors and shareholders shall continue to function in the same manner as if dissolution had not occurred. Without limiting the generality of this section:

(a) The directors of the corporation are not deemed to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 541a.

(b) Title to the corporation's assets remains in the corporation until transferred by it in the corporate name.

(c) The dissolution does not change quorum or voting requirements for the board or shareholders, and does not alter provisions regarding election, appointment, resignation or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws.

(d) Shares may be transferred.

(e) The corporation may sue and be sued in its corporate name and process may issue by and against the corporation in the same manner as if dissolution had not occurred.

(f) An action brought against the corporation before its dissolution does not abate because of the dissolution.

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, which may not be less than 6 months from the effective date of the written notice, by which the dissolved corporation must receive the claim.

(d) A statement that the claim will be barred if not received by the deadline.

(2) The giving of notice described above 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 was 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) For purposes of this section and section 842a, "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.

(5) For purposes of this section, the effective date of the written notice is the earliest of the following:

(a) The date it is received.

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and correctly addressed.

(c) 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.

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 must be in accord with all 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 none in this state, its registered office, is or was last located.

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent. The corporation may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within 1 year after the publication date of the newspaper notice.

(3) 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 whose claim was timely sent to the dissolved corporation but not acted on.

(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 having 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 shall in no event be barred from suit until 6 months after the claimant has actual notice of the dissolution.

Sec. 911. (1) Each domestic corporation and each foreign corporation subject to chapter 10 shall file a report with the administrator no later than May 15 of each year. The report shall be on a form approved by the administrator, signed in ink by an authorized officer or agent of the corporation, and shall contain all of the following:

(a) Name of the corporation.

(b) Name of its resident agent and address of its registered office in this state.

(c) State and date of incorporation, term of corporate existence, if other than perpetual; and, if a foreign corporation, the date when authorized to transact business in this state.

(d) Names and addresses of its president, secretary, treasurer, and directors.

(e) General nature and kind of business in which the corporation is engaged.

(f) Total number of authorized shares.

(g) For each foreign corporation authorized to transact business in this state, the most recent percentage used in computation of the tax required by the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws.

(h) Nature and book value of the property owned and used by the corporation listed separately as to property in and outside this state.

(i) A complete and detailed statement of the assets and liabilities of the corporation as shown by the books of the corporation, at the close of business on December 31 or upon the date of the close of its latest fiscal year. For a domestic corporation, the balance sheet information shall be the same as that furnished to shareholders under section 901. A corporation which is a member of an affiliated group of corporations which regularly prepare financial statements on a consolidated basis may file a consolidated balance sheet in place of the statement of assets and liabilities required in this subdivision.

(j) Other information as the administrator reasonably requires for other purposes under this act.

(2) The report is not required to be filed in the year of incorporation or authorization, by corporations which were formed or authorized to do business on or after January 1 and before May 16 of that year.

Sec. 922. (1) If a domestic corporation neglects or refuses to file any annual report or pay 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 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-year period has expired. Until a corporation has been dissolved, it is entitled to issuance by the administrator, upon 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 laws of this state.

(2) If a foreign corporation neglects or refuses for 1 year to file the annual report 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 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 request, of a certificate of good standing setting forth that it has been validly authorized to transact business in this state and that it holds a valid certificate of authority to transact business in this state.

Sec. 1012. (1) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation is not considered to be transacting business in this state, for the purposes of this act, solely because it is carrying on in this state any 1 or more of the following activities:

(a) Maintaining, defending, or settling any proceeding.

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

(c) Maintaining bank accounts.

(d) 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) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(i) Owning, without more, real or personal property.

(j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of like nature.

(k) Transacting business in interstate commerce.

(2) This section does not apply in determining the contacts or activities which may subject a foreign corporation to service of process or taxation in this state or to regulation under any other act of this state.

Sec. 1014. (1) Sections 1001 through 1055 shall apply to all of the following:

(a) A foreign corporation organized not for pecuniary profit.

(b) A foreign joint stock company.

(c) A foreign common law or statutory trust, by whatever term or designation known, having any of the powers or privileges of a corporation not possessed by an individual or partnership.

(2) Sections 1001 through 1055 shall not apply to either of the following:

(a) A foreign corporation permitted to do business in this state by license issued by the commissioner of insurance according to the provisions of law.

(b) The government of any state or political subdivision of the state or of the United States or of any foreign nation or any political subdivision of the United States or a foreign nation, or any corporation organized as an instrumentality of the government of any of the foregoing.

Sec. 1015. To procure a certificate of authority to transact business in this state, a foreign corporation shall file with the administrator an application setting forth 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 the address, together with a statement that the resident agent is an agent of the corporation upon whom process against the corporation may be served.

(e) The character of the business it is to transact in this state, together with a statement that it is authorized to transact such business in the jurisdiction of its incorporation.

(f) Any additional information as the administrator may require in order to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine the fees and taxes prescribed by law.

Sec. 1016. (1) A certificate setting forth 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 be attached to the application of a foreign corporation. If the certificate is in a foreign language, a translation of the certificate under oath of the translator shall be attached to the certificate.

(2) Upon filing of the application, accompanied by the filing and franchise fees prescribed by law, the administrator shall issue to the foreign corporation a certificate of authority to transact business in this state. Upon the issuance of a certificate of authority, the foreign corporation is authorized to transact in this state any business of the character set forth in its application, which a domestic corporation formed under this act may lawfully transact. The authority continues so long as the foreign corporation retains its authority to transact such business in the jurisdiction of its incorporation and its authority to transact business in this state has not been surrendered, suspended, or revoked.

Sec. 1021. (1) Except as otherwise provided in this section, a foreign corporation authorized to transact business in this state which changes its corporate name, or enlarges, limits, or otherwise changes the business which the foreign corporation proposes to do in this state, or otherwise affects the information set forth in its application for certificate of authority to transact business in this state, shall file an amended application with the administrator not later than 30 days after the time a change becomes effective. A change in the registered office or resident agent may be made pursuant to 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 do business in this state.

(c) If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name, and a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation and the date the change was effected.

(d) If the business the foreign corporation proposes to do in this state is to be enlarged, limited, or otherwise changed, a statement reflecting the change and a statement that the foreign corporation is authorized to do in the jurisdiction of its incorporation the business which it proposes to do in this state.

(e) Any additional information as the administrator may require.

(2) If a foreign corporation authorized to transact business in this jurisdiction is the survivor of a merger permitted by the laws of the jurisdiction in which the foreign corporation is incorporated, not later than 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 business the foreign corporation proposes to do in this state, or has affected the information set forth in the application, the foreign corporation shall also comply with subsection (1).

(3) A foreign corporation which has been authorized to transact business in this state and which, after its authorization, increases the number of authorized shares attributable to this state shall file an amended application giving a detailed account of the amount of the increase, and shall pay an additional franchise fee on account of the increase attributable to this state as prescribed by law. The amended application shall be filed within 30 days after the end of the corporation's fiscal year. The number of shares attributable to this state shall be determined pursuant to section 1062.

Sec. 1042. (1) The administrator shall revoke a certificate of authority of a foreign corporation only when he or she has given the corporation not less than 90 days' notice that a default under section 1041 exists and that its certificate of authority will be revoked unless the default is cured within 90 days after mailing of the notice, and the corporation fails within 90 days to cure the default.

(2) The notice shall be sent 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 a certificate of authority, the administrator shall issue a certificate of revocation and mail a copy to the corporation at each of the addresses designated in subsection (2).

(4) The issuance of the certificate of revocation has the same force and effect as issuance of a certificate of withdrawal under section 1031.

Sec. 1060. (1) The fees to be paid to the administrator when the documents described in this subsection are delivered to him or her for filing are as follows:

(a) Articles of domestic corporations, \$10.00.

(b) Application of a foreign corporation for a certificate of authority to transact business in this state, \$10.00.

(c) Amendment to the articles of a domestic corporation, \$10.00.

(d) Amended application for a certificate of authority to transact business in this state, \$10.00.

(e) Certificate of merger or share exchange as provided in chapter 7, \$50.00.

(f) Certificate attesting to the occurrence of a merger of a foreign corporation, as provided in section 1021, \$10.00.

(g) Certificate of dissolution, \$10.00.

(h) Application for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, \$10.00.

(i) Application for reservation of corporate name, \$10.00.

(j) Certificate of assumed name or a certificate of termination of assumed name, \$10.00.

(k) Statement of change of registered office or resident agent, \$5.00.

(l) Restated articles of domestic corporations, \$10.00.

(m) Certificate of abandonment, \$10.00.

- (n) Certificate of correction, \$10.00.
 - (o) Certificate of revocation of dissolution proceedings, \$10.00.
 - (p) Certificate of renewal of corporate existence, \$10.00.
 - (q) For examining a special report required by law, \$2.00.
 - (r) Certificate of registration of corporate name of a foreign corporation, \$50.00.
 - (s) Certificate of renewal of registration of corporate name of a foreign corporation, \$50.00.
 - (t) Certificate of termination of registration of corporate name of a foreign corporation, \$10.00.
- (2) The fees prescribed in subsection (1), no part of which shall be refunded, shall be in addition to the franchise fees prescribed in this act, and shall, when collected, be paid into the treasury of the state and credited to the administrator to be used solely by the corporation and securities bureau in carrying out those duties required by law.
- (3) Fees paid by or on behalf of domestic and foreign regulated investment companies as defined in section 1064 shall be the same as are charged foreign and domestic corporations for the purposes specified in this section.
- (4) The fees received pursuant to section 915 shall be deposited in the state treasury to the credit of the administrator to be used by the corporation and securities bureau in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of the state.
- (5) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a corporation for which provision for payment is not set forth 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 pursuant to a schedule of fees which the administrator shall adopt with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection to be used by the corporation and securities bureau to defray the costs for its copying and certifying services.
- (6) If a domestic or foreign corporation pays fees or penalties by check and the check is dishonored, the fee shall be considered unpaid and the filing of all related documents will be rescinded.
- (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 may be 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 transmission. The administrator shall retain the revenue collected under this section to be used by the corporation and securities bureau in carrying out its duties required by law.

Sec. 1062. (1) A domestic corporation or cooperative association, organized for profit, and a domestic regulated investment company, at the time of filing its articles of incorporation, shall pay to the administrator, as an initial organization fee and as an initial admission fee, a sum equal to \$50.00 for the first 60,000 authorized shares and \$30.00 for each additional 20,000 authorized shares or portion thereof, up to a maximum fee of \$5,000.00 for the first 10,000,000 authorized shares. The fee shall be \$30.00 for each 20,000 authorized shares or portion thereof in excess of 10,000,000 shares up to a maximum of \$200,000.00 for the filing.

(2) The initial admission franchise fee of a foreign corporation for profit and foreign regulated investment company applying for admission to do business in this state shall be \$50.00 and 60,000 shares shall be considered initially attributable to this state at the time of admission.

(3) Every corporation incorporated under the laws of this state which increases its authorized shares, at the time of filing its amendment to the articles, shall pay an additional organization fee of \$30.00 for each increase of 20,000 authorized shares or portion thereof. The maximum additional fee on the increase shall not exceed \$5,000.00 if the corporation's total authorized shares after the increase is 10,000,000 shares or fewer. The corporation shall pay an additional fee of \$30.00 for each 20,000 additional shares or portion thereof to the extent that the total authorized shares after the increase exceeds 10,000,000 shares up to a maximum of \$200,000.00 for each filing.

(4) A foreign corporation authorized to transact business in this state which increases the number of authorized shares attributable to this state shall file an amended application in accordance with section 1021 and shall pay an additional admission franchise fee of \$30.00 for each increase of 20,000 authorized shares or portion thereof attributable to this state. The maximum additional fee shall not exceed \$5,000.00 if the corporation's total authorized shares attributable to this state to the extent that the total authorized shares attributable to this state after the increase exceeds 10,000,000 shares up to a maximum of \$200,000.00 for each filing.

(5) The number of authorized shares attributable to this state shall be determined by multiplying the total number of authorized shares by the most recent apportionment percentage used in the computation of the tax required by the single business tax act, Act No. 228 of the Public Acts of 1975, as amended, being sections 208.1 to 208.145 of the Michigan Compiled Laws. If the business activities are confined solely to this state, the total number of authorized shares shall be considered attributable to this state.

(6) The administrator shall be authorized to require the corporation to furnish detailed and exact information relating to the determination of fees before making a final determination of the organization or admission franchise fee to be paid by the corporation.

(7) "Corporation", as used in this section, includes partnership associations limited, cooperative associations, joint associations having any of the powers of corporations, and common law trust or trusts created by statute of this or another state or country exercising common law powers in the nature of corporations, whether domestic or foreign, in addition to other corporations as are referred to in this act.

(8) If the capital of a corporation is not divided into shares, the fee for purposes of this section shall be determined as if the corporation had 60,000 shares.

(9) If a foreign corporation authorized to transact business in this state merges into any domestic corporation or consolidates with 1 or more corporations into a domestic corporation by complying with the provisions of this act, the resulting domestic corporation shall pay franchise fees for any increase in authorized shares or for any authorized shares as provided in this section, less such sums as the foreign corporation so merging or consolidating has previously paid to the state under this section as an initial or additional admission franchise fee.

Section 2. Section 1023 of Act No. 284 of the Public Acts of 1972, being section 450.2023 of the Michigan Compiled Laws, is repealed.

Section 3. This amendatory act shall take effect October 1, 1993.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.