

**SUBSTITUTE FOR
HOUSE BILL NO. 5681**

A bill to amend 1982 PA 162, entitled
"Nonprofit corporation act,"
by amending sections 106, 404, 505, 548, 611, 901, and 922 (MCL
450.2106, 450.2404, 450.2505, 450.2548, 450.2611, 450.2901, and
450.2922), sections 106, 404, and 901 as amended by 2008 PA 9 and
section 611 as amended by 1984 PA 209.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 106. (1) "CHARITABLE PURPOSE CORPORATION" MEANS A
2 NONPROFIT CORPORATION THAT MEETS ANY OF THE FOLLOWING:

3 (A) IS EXEMPT OR QUALIFIES FOR EXEMPTION UNDER SECTION
4 501(C) (3) OF THE INTERNAL REVENUE CODE, 26 USC 501.

5 (B) IS A CORPORATION WHOSE PURPOSES, STRUCTURE, OR ACTIVITIES
6 ARE EXCLUSIVELY THOSE THAT ARE DESCRIBED IN SECTION 501(C) (3) OF

1 THE INTERNAL REVENUE CODE, 26 USC 501.

2 (C) IS A CORPORATION ORGANIZED OR HELD OUT TO BE ORGANIZED
3 EXCLUSIVELY FOR 1 OR MORE CHARITABLE PURPOSES.

4 (2) ~~(1)~~—"Corporation" or "domestic corporation" means a
5 nonprofit corporation.

6 (3) ~~(2)~~—"Director" means an individual who is a member of the
7 board of a corporation. The term is synonymous with "trustee" of a
8 corporation or other similar designation.

9 (4) ~~(3)~~—"Electronic transmission" or "electronically
10 transmitted" means any form of communication that meets all of the
11 following:

12 (a) It does not directly involve the physical transmission of
13 paper.

14 (b) It creates a record that may be retained and retrieved by
15 the recipient.

16 (c) It may be directly reproduced in paper form by the
17 recipient through an automated process.

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

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

26 (b) By including the notice, prominently displayed, in a
27 newspaper or other periodical regularly published at least

1 semiannually by or in behalf of the corporation and addressed and
2 mailed, postage prepaid, to a member or shareholder entitled to
3 vote at the meeting not less than 10 nor more than 60 days before
4 the meeting.

5 (2) If a meeting **OF THE SHAREHOLDERS OR MEMBERS** is adjourned
6 to another time or place, it is not necessary, unless the bylaws
7 otherwise provide, to give notice of the adjourned meeting if the
8 time and place to which the meeting is adjourned are announced at
9 the meeting at which the adjournment is taken. ~~At the adjourned~~
10 ~~meeting, only business that might have been transacted at the~~
11 ~~original meeting may be transacted if a notice of the adjourned~~
12 ~~meeting is not given.~~ If after the adjournment the board fixes a
13 new record date for the adjourned meeting, a notice of the
14 adjourned meeting shall be given to each shareholder or member of
15 record on the new record date entitled to notice under subsection
16 (1).

17 (3) **IF A MEETING OF SHAREHOLDERS OR MEMBERS IS ADJOURNED UNDER**
18 **SUBSECTION (2), ONLY BUSINESS THAT MIGHT HAVE BEEN TRANSACTED AT**
19 **THE ORIGINAL MEETING MAY BE TRANSACTED AT THE ADJOURNED MEETING IF**
20 **A NOTICE OF THE ADJOURNED MEETING IS NOT GIVEN.**

21 (4) ~~(3)~~ Attendance of a person at a meeting of shareholders or
22 members, in person or by proxy, constitutes a waiver of objection
23 to lack of notice or defective notice of the meeting, unless the
24 shareholder or member at the beginning of the meeting objects to
25 holding the meeting or transacting business at the meeting.

26 (5) ~~(4)~~ If a shareholder or member is permitted to participate
27 in and vote at a meeting by remote communication under section 405,

1 the notice described in subsection (1) shall include a description
2 of the means of remote communication by which a shareholder or
3 member may participate.

4 Sec. 505. (1) ~~The~~ **EXCEPT AS PROVIDED IN SUBSECTION (5), THE**
5 board shall consist of ~~1-3~~ or more directors. The **BYLAWS SHALL FIX**
6 **THE** number of directors ~~shall be fixed by or in the manner provided~~
7 ~~in the bylaws~~ **OR ESTABLISH THE MANNER FOR FIXING THE NUMBER**, unless
8 the articles of incorporation fix the number.

9 (2) The articles **OF INCORPORATION** or a bylaw adopted by the
10 shareholders, ~~or~~ members, **OR INCORPORATORS** of a corporation
11 organized ~~upon~~ **ON** a stock or membership basis may specify the term
12 of office and the manner of election or appointment of directors.
13 If the articles of incorporation or bylaws do not so specify the
14 term of office or manner of election or appointment of directors,
15 the first board of directors shall hold office until the first
16 annual meeting of shareholders or members. ~~, and at~~ **AT** the first
17 annual meeting of shareholders or members and at each **SUBSEQUENT**
18 annual meeting ~~thereafter~~ the shareholders or members shall elect
19 directors to hold office until the succeeding annual meeting,
20 except in case of the classification of directors ~~as permitted by~~
21 **UNDER** this act.

22 (3) The articles **OF INCORPORATION** or a bylaw of a corporation
23 organized ~~upon~~ **ON** a directorship basis shall specify the term of
24 office and the manner of election or appointment of directors.

25 (4) A director shall hold office for the term for which ~~the~~
26 ~~director~~ **HE OR SHE** is elected or appointed and until ~~a~~ **HIS OR HER**
27 successor is elected or appointed and qualified, or until ~~the~~ **HIS**

1 OR HER resignation or removal. A director may resign by written
2 notice to the corporation. ~~The~~ **A** resignation **OF A DIRECTOR** is
3 effective ~~upon its receipt~~ **WHEN IT IS RECEIVED** by the corporation
4 or a ~~subsequent~~ **LATER** time ~~as~~ **IF** set forth in the notice of
5 resignation.

6 (5) **BEGINNING 180 DAYS AFTER THE EFFECTIVE DATE OF THE**
7 **AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE BOARD OF A**
8 **CORPORATION THAT IS IN EXISTENCE ON THE EFFECTIVE DATE OF THE**
9 **AMENDATORY ACT THAT ADDED THIS SUBSECTION SHALL CONSIST OF 3 OR**
10 **MORE DIRECTORS.**

11 Sec. 548. (1) ~~Unless~~ **EXCEPT AS PROVIDED IN SUBSECTION (4) AND**
12 **UNLESS** otherwise prohibited by law, a corporation may lend money
13 to, or guarantee an obligation of, or otherwise assist an officer
14 or employee of the corporation or ~~of its~~ **A** subsidiary, including an
15 officer or employee who is a director of the corporation or ~~its~~
16 subsidiary, ~~when,~~ **IF** in the judgment of the board, the loan,
17 guaranty, or assistance ~~may~~ **IS** reasonably ~~be~~ expected to benefit
18 the corporation. The

19 (2) **A** loan, guaranty, or assistance **DESCRIBED IN SUBSECTION**
20 **(1)** may be with or without interest, and may be unsecured, or
21 secured in ~~such~~ **A** manner ~~as~~ **THAT** the board approves. ~~Nothing in~~
22 ~~this section shall be deemed to~~

23 (3) **THIS SECTION DOES NOT** deny, limit, or restrict the powers
24 of guaranty or warranty of a corporation at common law or under any
25 statute.

26 (4) **IF A CORPORATION IS A CHARITABLE PURPOSE CORPORATION, THE**
27 **CORPORATION SHALL NOT PROVIDE LOANS TO OR GUARANTEE AN OBLIGATION**

1 OF AN OFFICER OR DIRECTOR OF THE CORPORATION OR A SUBSIDIARY OF A
2 CORPORATION, UNLESS THE OFFICER OR DIRECTOR IS ALSO A CLIENT OF THE
3 CORPORATION AND THE LOAN OR GUARANTY IS NECESSARY TO CARRY OUT THE
4 CORPORATION'S CHARITABLE PURPOSES.

5 Sec. 611. (1) Before the first meeting of the board, the
6 incorporators may amend the articles of incorporation by ~~complying~~
7 ~~with section 631(1)~~ **UNANIMOUS CONSENT OF THE INCORPORATORS.**

8 ~~(2) Other amendments of the articles of incorporation, except~~
9 ~~as otherwise provided in this act, shall be approved by the~~
10 ~~shareholders or members entitled to vote thereon. In the case of a~~
11 ~~corporation organized upon a directorship basis, such amendments~~
12 ~~shall be approved by the directors, as provided in this section,~~
13 ~~except as otherwise provided in this act or the articles of~~
14 ~~incorporation.~~ **EXCEPT FOR AN AMENDMENT DESCRIBED IN SUBSECTION (1)**
15 **AND EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, A CORPORATION MUST**
16 **APPROVE ANY AMENDMENT TO THE ARTICLES OF INCORPORATION IN 1 OF THE**
17 **FOLLOWING MANNERS AS PROVIDED IN THIS SECTION:**

18 (A) IF THE CORPORATION IS ORGANIZED ON A MEMBERSHIP BASIS, BY
19 A VOTE OF THE MEMBERS ENTITLED TO VOTE ON THE AMENDMENT.

20 (B) IF THE CORPORATION IS ORGANIZED ON A STOCK BASIS, BY A
21 VOTE OF THE SHAREHOLDERS ENTITLED TO VOTE ON THE AMENDMENT.

22 (C) IF THE CORPORATION IS ORGANIZED ON A DIRECTORSHIP BASIS,
23 UNLESS THE ARTICLES OF INCORPORATION SPECIFY A DIFFERENT MANNER, BY
24 A VOTE OF THE DIRECTORS.

25 (3) ~~Notice of a meeting, setting forth the proposed amendment~~
26 ~~or a summary of the changes to be effected thereby shall be given~~
27 ~~to each shareholder or member of record or director entitled to~~

1 ~~vote thereon~~ **A CORPORATION SHALL GIVE NOTICE OF A MEETING TO**
 2 **CONSIDER AN AMENDMENT TO THE ARTICLES OF INCORPORATION TO EACH**
 3 **MEMBER, SHAREHOLDER, OR DIRECTOR ENTITLED TO VOTE ON THE AMENDMENT,**
 4 **AS APPLICABLE. THE NOTICE SHALL CONTAIN THE PROPOSED AMENDMENT OR A**
 5 **SUMMARY OF THE CHANGES THAT WILL OCCUR IF THE AMENDMENT IS**
 6 **APPROVED. THE CORPORATION SHALL PROVIDE THE NOTICE** within the time
 7 and in the manner provided in this act for ~~the giving of~~ notice of
 8 meetings of shareholders, members, or directors, ~~provided~~ **EXCEPT**
 9 that **THE CORPORATION SHALL GIVE** notice of the meeting ~~is given to~~
 10 each director then in office not less than 10 days before the
 11 meeting.

12 (4) At ~~the~~ **A meeting TO CONSIDER AN AMENDMENT TO THE ARTICLES**
 13 **OF INCORPORATION,** a vote of shareholders, members, or directors
 14 entitled to vote ~~thereon~~ shall be taken on the proposed amendment.
 15 The proposed amendment ~~shall be adopted upon receiving~~ **IS APPROVED**
 16 **IF IT RECEIVES** the affirmative vote of a majority of the
 17 outstanding shares or members entitled to vote ~~thereon~~ **ON THE**
 18 **PROPOSED AMENDMENT** or a majority of the directors then in office. ~~7~~
 19 ~~and in addition, if~~ **IF** any class of shares or members is entitled
 20 to vote ~~thereon~~ **ON THE PROPOSED AMENDMENT** as a class, the
 21 affirmative vote of a majority of the outstanding shares or members
 22 of each ~~such~~ **THAT** class **IS ALSO REQUIRED TO APPROVE THE AMENDMENT.**
 23 The voting requirements of this section are subject to greater
 24 requirements as prescribed by this act for specific amendments, or
 25 as ~~may be provided by~~ **IN** the articles of incorporation or bylaws.
 26 In addition, unless a greater vote is required in the articles of
 27 incorporation, or in a bylaw adopted by the shareholders, ~~or~~

1 members, **OR DIRECTORS**, the proposed amendment ~~shall be adopted upon~~
 2 ~~receiving~~ **IS APPROVED IF IT RECEIVES** an affirmative vote of a
 3 majority of members or shares of shareholders present in person, ~~or~~
 4 by proxy, **OR BY ELECTRONIC TRANSMISSION** at ~~such~~ **THE** meeting if due
 5 notice of the time, place, and object of the meeting was given by
 6 mail, at **THE** last known address, to each shareholder, ~~or~~ member, **OR**
 7 **DIRECTOR** entitled to vote ~~thereon~~ at least 20 days ~~prior to~~ **BEFORE**
 8 the date of the meeting or by publication in a publication
 9 distributed by the corporation to its shareholders or members at
 10 least 20 days ~~prior to~~ **BEFORE** the date of the meeting.

11 (5) ~~Any~~ **THE SHAREHOLDERS, MEMBERS, OR DIRECTORS MAY ACT ON ANY**
 12 number of amendments ~~may be acted upon~~ at 1 meeting.

13 (6) ~~Upon adoption,~~ **IF AN AMENDMENT TO THE ARTICLES OF**
 14 **INCORPORATION IS ADOPTED, THE CORPORATION SHALL FILE** a certificate
 15 of amendment ~~shall be filed~~ as provided in section 631.

16 Sec. 901. (1) Each domestic corporation at least once in each
 17 year shall cause a report of the corporation for the preceding
 18 fiscal year to be made and distributed to each shareholder or
 19 member thereof or presented at the annual meeting of shareholders
 20 or members, or, if the corporation is organized upon a directorship
 21 basis, at the annual meeting of the board. The report shall include
 22 the corporation's year-end statement of assets and liabilities,
 23 including trust funds, and the principal change in assets and
 24 liabilities during the year preceding the date of the report and,
 25 if prepared by the corporation, its source and application of funds
 26 and any other information required by this act.

27 (2) A corporation may distribute the financial report required

1 under subsection (1) electronically, either by electronic
2 transmission of the report or by making the report available for
3 electronic transmission. If the report is distributed
4 electronically under this subsection, the corporation shall provide
5 the report in written form to a shareholder, ~~or~~ member, **OR DIRECTOR**
6 on request.

7 Sec. 922. (1) If a domestic corporation neglects or refuses
8 for 2 consecutive years to file the annual reports or pay the
9 annual filing fee required by law, the corporation shall be
10 automatically dissolved. The administrator shall notify the
11 corporation of the impending dissolution not later than 90 days
12 before the 2 years has expired. Until a corporation has been
13 dissolved, it is entitled to issuance by the administrator, upon
14 request, of a certificate of good standing setting forth that it
15 has been validly incorporated as a domestic corporation and that it
16 is validly in existence under the laws of this state.

17 **(2) A CHARITABLE PURPOSE CORPORATION THAT IS DISSOLVED UNDER**
18 **SUBSECTION (1) SHALL PROVIDE NOTICE OF THE DISSOLUTION TO THE**
19 **ATTORNEY GENERAL WITHIN 60 DAYS AFTER THE DATE OF THE DISSOLUTION**
20 **AND SHALL NOT DISPOSE OF ANY OF ITS ASSETS WITHOUT WRITTEN APPROVAL**
21 **OF THE ATTORNEY GENERAL.**

22 (3) ~~(2)~~—If a foreign corporation neglects or refuses for 1
23 year to file the annual report or pay the annual filing fee
24 required by law, its certificate of authority is subject to
25 revocation in accordance with section 1042. Until revocation of its
26 certificate of authority or its withdrawal from this state or
27 termination of its existence, the foreign corporation is entitled

1 to issuance by the administrator, upon request, of a certificate of
2 good standing setting forth that it has been validly authorized to
3 transact business in this state and that it holds a valid
4 certificate of authority to transact business in this state.