

HOUSE BILL NO. 5388

November 14, 2023, Introduced by Reps. Koleszar, Breen, Steckloff, Rogers, Hoskins, Hope, Hood, Haadsma, Tyrone Carter, Tsernoglou, Andrews, Mentzer, Wozniak and Skaggs and referred to the Committee on Judiciary.

A bill to amend 1972 PA 284, entitled "Business corporation act," by amending sections 105, 106, 131, 202, 211, and 911 (MCL 450.1105, 450.1106, 450.1131, 450.1202, 450.1211, and 450.1911), sections 105, 106, 211, and 911 as amended by 2012 PA 569 and sections 131 and 202 as amended by 2018 PA 85.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 **of the chief officer.**

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

3 (a) The original articles of incorporation or any other
4 instrument filed or issued under any statute to organize a domestic
5 or foreign corporation, as amended, supplemented, or restated by
6 certificates of amendment, merger, conversion, or consolidation or
7 other certificates or instruments filed or issued under any
8 statute.

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

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

13 (4) **"Benefit corporation" means a domestic corporation that**
14 **meets the requirements for being a benefit corporation under**
15 **chapter 9A and has not terminated its status as a benefit**
16 **corporation under that chapter.**

17 (5) ~~(4)~~—"Board" means board of directors or other governing
18 board of a corporation.

19 (6) ~~(5)~~—"Bonds" includes secured and unsecured bonds,
20 debentures, and notes.

21 Sec. 106. (1) "Corporation" or "domestic corporation" means a
22 corporation formed under this act, or existing on January 1, 1973
23 and formed under any other statute of this state for a purpose for
24 which a corporation may be formed under this act. **Corporation or**
25 **domestic corporation includes a benefit corporation.**

26 (2) "Department" means the department of licensing and
27 regulatory affairs.

28 (3) "Director" means a member of the board of a corporation.

29 (4) "Distribution" means a direct or indirect transfer of

1 money or other property, except the corporation's shares, or the
2 incurrence of indebtedness by the corporation to or for the benefit
3 of its shareholders in respect to the corporation's shares. A
4 distribution may be in the form of a dividend, a purchase,
5 redemption or other acquisition of shares, an issuance of
6 indebtedness, or any other declaration or payment to or for the
7 benefit of the shareholders.

8 (5) "Electronic transmission" or "electronically transmitted"
9 means any form of communication that meets all of the following:

10 (a) It does not directly involve the physical transmission of
11 paper.

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

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

16 Sec. 131. (1) A document **that is** required or permitted to be
17 filed under this act ~~shall~~**must** be submitted by delivering the
18 document to the administrator together with the fees and
19 accompanying documents required by law. The administrator may
20 establish a procedure for accepting delivery of a document
21 submitted under this subsection by facsimile or other electronic
22 transmission. However, by December 31, 2006, the administrator
23 shall establish a procedure for accepting delivery of a document
24 submitted under this subsection by ~~electronic mail~~**email** or over
25 the internet. Beginning January 1, 2007, the administrator shall
26 accept delivery of documents submitted by ~~electronic mail~~**email** or
27 over the internet.

28 (2) If a document submitted under subsection (1), **other than**
29 **an annual benefit report under section 961**, substantially conforms

1 to the requirements of this act, the administrator shall endorse
2 ~~upon~~ **on** it the word "filed" with ~~his or her~~ **the administrator's**
3 official title and the date of receipt and of filing and shall file
4 and index the document or a photostatic, micrographic,
5 photographic, optical disc media, or other reproduced copy in ~~his~~
6 ~~or her~~ **the administrator's** office. If requested at the time of the
7 delivery of the document to ~~his or her~~ **the administrator's** office,
8 the administrator shall include the hour of filing in the
9 endorsement on the document.

10 (3) The administrator may return the original or a copy of a
11 document filed under subsection (2) to the person that submitted it
12 for filing. The administrator shall mark the filing date on the
13 copy or original before returning it or may provide proof of the
14 filing date to the person that submitted the document for filing in
15 another manner determined by the administrator.

16 (4) The records and files of the administrator relating to
17 domestic and foreign corporations ~~shall~~ **must** be open to reasonable
18 inspection by the public. The administrator may maintain records or
19 files in their original form or may maintain records or files in
20 the form of reproductions ~~pursuant to~~ **in accordance with** the
21 records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and
22 may destroy the originals of the reproduced documents.

23 (5) The administrator may make reproductions of any documents
24 filed under this act or any predecessor act ~~pursuant to~~ **in**
25 **accordance with** the records reproduction act, 1992 PA 116, MCL
26 24.401 to 24.406, and may destroy the originals of the reproduced
27 documents. A reproduced copy of a document certified by the
28 administrator, including a copy sent by facsimile or other
29 electronic transmission, is considered an original document for all

1 purposes and is admissible in evidence in like manner as an
2 original document.

3 (6) Except as provided in section 806, a document filed under
4 subsection (2) is effective at the time it is endorsed unless a
5 subsequent effective time, not later than 90 days after the date of
6 delivery, is ~~set forth~~**stated** in the document.

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

12 (a) For any filing that a person requests the administrator to
13 complete within 1 hour on the same day as the day of the request,
14 \$1,000.00. The department may establish a deadline by which a
15 person must submit a request for filing under this subdivision.

16 (b) For any filing that a person requests the administrator to
17 complete within 2 hours on the same day as the day of the request,
18 \$500.00. The department may establish a deadline by which a person
19 must submit a request for filing under this subdivision.

20 (c) Except for a filing request under subdivision (a) or (b),
21 for the filing of any formation or qualification document that a
22 person requests the administrator to complete on the same day as
23 the day of the request, \$100.00. The department may establish a
24 deadline by which a person must submit a request for filing under
25 this subdivision.

26 (d) Except for a filing request under subdivision (a) or (b),
27 for the filing of any other document concerning an existing
28 domestic corporation or a qualified foreign corporation that a
29 person requests the administrator to complete on the same day as

1 the day of the request, \$200.00. The department may establish a
 2 deadline by which a person must submit a request for filing under
 3 this subdivision.

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

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

11 Sec. 202. The articles of incorporation ~~shall~~**must** contain all
 12 of the following:

13 (a) The name of the corporation.

14 (b) The purposes for which the corporation is formed. All of
 15 the following apply for purposes of this subdivision:

16 (i) Except as otherwise provided in subparagraph (ii), ~~or (iii)~~,
 17 **or (iv)**, it is a sufficient compliance with this subdivision to
 18 state substantially, alone or with specifically enumerated
 19 purposes, that the corporation may engage in any activity within
 20 the purposes for which corporations may be formed under the
 21 business corporation act, and all activities ~~shall~~**must** by the
 22 statement be considered within the purposes of the corporation,
 23 subject to expressed limitations.

24 (ii) Any corporation that proposes to conduct educational
 25 purposes shall state the purposes and shall comply with all
 26 requirements of sections 170 to 177 of 1931 PA 327, MCL 450.170 to
 27 450.177.

28 (iii) A professional corporation shall comply with section
 29 283(2) and (3).

1 (iv) **The purpose of a benefit corporation must comply with**
2 **section 953.**

3 (c) The aggregate number of shares that the corporation has
4 authority to issue.

5 (d) If the shares are, or are to be, divided into classes, or
6 into classes and series, the designation of each class and series,
7 the number of shares in each class and series, and a statement of
8 the relative rights, preferences and limitations of the shares of
9 each class and series, to the extent that the designations,
10 numbers, relative rights, preferences, and limitations have been
11 determined.

12 (e) If the shares are to be designated and issued in 1 or more
13 classes or series, a statement of any authority vested in the board
14 to designate and issue shares in 1 or more classes or series, and
15 to determine or change for any class or series its designation,
16 number of shares, relative rights, preferences and limitations.

17 (f) Except as otherwise provided in section 611(2)(c), the
18 street address, and the mailing address if different from the
19 street address, of the corporation's initial registered office and
20 the name of the corporation's initial resident agent at that
21 address.

22 (g) The names and addresses of the incorporators.

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

24 Sec. 211. **(1)** Except as provided in chapter 2A for a
25 professional corporation **and subsection (2) for a benefit**
26 **corporation**, the corporate name of a domestic corporation ~~shall~~
27 **must** contain the word "corporation", "company", "incorporated", or
28 "limited" or ~~shall~~ **must** contain 1 of the following abbreviations:
29 corp., co., inc., or ltd., with or without periods.

1 **(2) The corporate name of a benefit corporation must contain**
 2 **the words "benefit corporation" or "benefit company" or must**
 3 **contain the initials "B.C.", with or without periods.**

4 Sec. 911. (1) A domestic corporation and each foreign
 5 corporation subject to chapter 10 shall file a report with the
 6 administrator ~~no~~**not** later than May 15 of each year. The report
 7 ~~shall~~**must** be on a form approved by the administrator, signed by an
 8 authorized officer or agent of the corporation, and contain all of
 9 the following information:

10 (a) The name of the corporation.

11 (b) The name of ~~its~~**the corporation's** resident agent and
 12 address of ~~its~~**the corporation's** registered office in this state.

13 (c) The names and addresses of ~~its~~**the corporation's**
 14 president, secretary, treasurer, and directors.

15 (d) ~~General~~**The general** nature and kind of business in which
 16 the corporation is engaged.

17 (e) For each foreign corporation authorized to transact
 18 business in this state, the total number of authorized shares and
 19 the most recent percentage used in computation of the tax required
 20 by the Michigan business tax act, 2007 PA 36, MCL 208.1101 to
 21 ~~208.1601.~~**208.1519.**

22 (f) For each professional corporation, the names and addresses
 23 of its shareholders and a certification that both of the following
 24 are met:

25 (i) Each shareholder is a licensed person in 1 or more of the
 26 professional services provided by the professional corporation.

27 (ii) The corporation meets the other requirements of chapter
 28 2A.

29 **(2) A corporation that is a benefit corporation shall include**

1 **the annual benefit report that is required under section 961 with**
2 **the report under subsection (1).**

3 (3) ~~(2)~~—A corporation **that is** formed or authorized to do
4 business on or after January 1 and before May 16 of a calendar year
5 is not required to file the report described in subsection (1) for
6 that calendar year.

7 (4) ~~(3)~~—If there are no changes in the information provided in
8 the last filed report required under subsection (1), the
9 corporation may file a report that certifies to the administrator
10 that no changes in the required information have occurred since the
11 last filed report. A report filed under this subsection ~~shall~~**must**
12 be on a form approved by the administrator and filed ~~no~~**not** later
13 than the date required under **this** section. ~~911.~~**A corporation that**
14 **is a benefit corporation that files a report under this subsection**
15 **shall include the annual benefit report that is required under**
16 **section 961 with that report.**

17 Enacting section 1. This amendatory act does not take effect
18 unless Senate Bill No. ____ or House Bill No. 5387 (request no.
19 04622'23) of the 102nd Legislature is enacted into law.