

**NONPROFIT CORPORATION ACT (EXCERPT)**  
**Act 162 of 1982**  
Chapter 4

**450.2401 Meetings of shareholders or members; location.**

Sec. 401.

Meetings of shareholders or members may be held at a place within or without this state as provided in the bylaws. In the absence of such a provision, meetings shall be held at the registered office or such other place as may be determined by the board.

**History:** 1982, Act 162, Eff. Jan. 1, 1983

**450.2402 Annual meeting of shareholders or members for election of directors and conduct other business; failure to hold meeting at designated time or elect sufficient number of directors; adjournment of meeting; court order to hold meeting or election; quorum.**

Sec. 402.

A corporation shall hold an annual meeting of its shareholders or members, to elect directors and conduct any other business that may come before the meeting, on a date designated in the bylaws, unless the shareholders or members act by written consent under section 407 or by ballot under section 408 or 409. A failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or any adjournment of the meeting, does not affect otherwise valid corporate acts or work a forfeiture or give cause for dissolution of the corporation, except as provided in section 823. If the annual meeting is not held on the date designated for the meeting, the board shall cause the meeting to be held as soon after that date as is convenient. If the annual meeting is not held for 90 days after the date designated for the meeting, or if no date is designated for 15 months after formation of the corporation or after its last annual meeting, the circuit court for the county in which the principal place of business or registered office of the corporation is located, on application of a shareholder or member, may summarily order that the corporation hold the meeting or the election, or both, and that it is held at the time and place, after the notice, and for the transaction of the business that is designated in the order. At any meeting ordered by the court under this section, the shareholders or members that are present in person or by proxy and that have voting powers constitute a quorum for transaction of the business designated in the order.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;— Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2403 Special meeting of shareholders or members; court order; quorum.**

Sec. 403.

The board may call a special meeting of shareholders or members or the officers, directors, shareholders, or members may call a special meeting as provided in the bylaws. Notwithstanding any provision in the bylaws concerning the call of a special meeting, if it receives an application from the holders of not less than 10% of all the shares or from not less than 10% of all the members entitled to vote at a meeting, the circuit court for the county in which the principal place of business or registered office is located, for good cause shown, may order the call of a special meeting of shareholders or members and that it is held at the time and place, after the notice, and for the transaction of the business that is designated in the order. At any meeting ordered by the court under this section, the shareholders or members that are present in person or by proxy and that have voting powers constitute a quorum for transaction of the business designated in the order.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2404 Notice of time, place, and purposes of meeting of shareholders or members; manner; contents; notice of adjourned meeting; notice not given; attendance at meeting; participating and voting by remote communication; meeting without notice.**

Sec. 404.

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

(a) Personally, by mail, or by electronic transmission, not less than 10 or more than 60 days before the date of the meeting to each shareholder or member of record that is entitled to vote at the meeting.

(b) By including the notice, prominently displayed, in a newspaper or other periodical that is regularly published at least semiannually by or in behalf of the corporation and addressed and mailed, postage prepaid, to each member or shareholder entitled to vote at the meeting not less than 10 or more than 60 days before the meeting.

(2) A corporation may provide notice to a shareholder or member that is not or may not be entitled to vote at a meeting of shareholders or members in a manner provided in subsection (1), whether or not the notice is required under this act or under other applicable law.

(3) Notice of the purposes of a meeting shall include notice of any proposal a shareholder or member intends to propose, if that proposal is a proper subject for shareholder or member action and the shareholder or member notified the corporation in writing of the shareholder's or member's intention to present the proposal at the meeting. The bylaws may establish reasonable procedures for the submission of proposals to the corporation in advance of a meeting.

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

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

(6) A shareholder's or member's attendance at a meeting, in person or by proxy, will result in both of the following:

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

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

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

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2008, Act 222, Imd. Eff. July 16, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2405 Shareholder, member, or proxy holder participation in meeting by conference telephone or other**

**means of remote communication; conditions; participation as presence in person at meeting; participating and voting by remote communication.**

Sec. 405.

(1) Unless otherwise restricted by the articles of incorporation or bylaws, a shareholder, member, or proxy holder may participate in a meeting of shareholders or members by a conference telephone or other means of remote communication that permits all persons that participate in the meeting to communicate with all the other participants. All participants shall be advised of the means of remote communication.

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

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

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

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

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

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

**History:** 1982, Act 162, Imd. Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2406 Chairperson presiding at meeting of shareholders or members; powers, duties, and authority.**

Sec. 406.

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

(2) Unless the articles of incorporation or bylaws provide otherwise, the chairperson that presides at a meeting of the shareholders or members shall determine the order of business and has the authority to establish rules for the conduct of the meeting. Any rules adopted for, or for the conduct of, the meeting must be fair to shareholders or members.

(3) The chairperson of a meeting shall announce at the meeting when the polls close for each vote of the shareholders or members. If an announcement is not made, the polls close on the final adjournment of the meeting. After the polls close, ballots, proxies, and votes and any revocations or changes to ballots, proxies, or votes, shall not be accepted.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2406a Notice by electronic transmission.**

Sec. 406a.

In addition to any other form of notice to a shareholder or member permitted by the articles of incorporation, the bylaws, or this chapter, any notice given to a shareholder or member by a form of electronic transmission to which the shareholder or member has consented is effective.

**History:** Add. 2008, Act 9, Imd. Eff. Feb. 29, 2008

**450.2407 Taking corporate action without meeting; consent; notice; statement on filed certificate; consent by electronic transmission; delivery.**

Sec. 407.

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

(2) If the shareholders or members take an action by written consent under subsection (1) that would require filing of a certificate under any other section of this act if the action had been taken at a meeting of the shareholders or members, the certificate filed under that other section shall state, in lieu of any statement required by that section concerning a vote of shareholders or members, that both written consent and written notice have been given as provided in subsection (1).

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

(4) An electronic transmission that consents to an action that is transmitted by a shareholder, member, or proxy holder, or by a person authorized to act for the shareholder, member, or proxy holder, is written, signed, and dated for the purposes of this section if the electronic transmission is delivered with information from which the corporation can determine that the electronic transmission was transmitted by the shareholder, member, or proxy holder, or by a person authorized to act for the shareholder, member, or proxy holder, and the date on which the electronic transmission was transmitted. The date on which an electronic transmission is transmitted is the date on which the consent was signed for purposes of this section. A consent given by electronic transmission is not delivered until it is reproduced in paper form and the paper form is delivered to the corporation by delivery to its registered office in this state, its principal office in this state, or an officer or agent of the corporation that has custody of the book in which proceedings of meetings of shareholders or members are recorded. Delivery to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Delivery to a corporation's principal office in this state or to an officer or agent of the corporation that has custody of the book in which proceedings of meetings of shareholders or members are recorded shall be made by hand, by certified or registered mail, return receipt requested, or in any other manner provided in the articles of incorporation or bylaws or by resolution of the board of directors of the corporation.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2408 Taking corporate action without meeting; shareholder or member action by ballot; requirements; revocation of ballot; inclusion of proposed action in ballot; statement of certificate.**

Sec. 408.

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

of shareholders or members.

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

(a) Set forth each proposed action.

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

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

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

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

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

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

(7) If any other section of this act requires the filing of a certificate with the department if an action is approved by vote of the shareholders or members at a meeting, the shareholders or members may approve that action by ballot under subsection (1) and, in lieu of any statement required under that section concerning the vote of the shareholders or members at a meeting, the certificate shall state that the action was approved by ballot under this section.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2409 Taking corporate action without meeting; voting by shareholder or member at polling place; accessibility; requirements; revocation of ballot; inclusion of proposed action in ballot; statement on certificate.**

Sec. 409.

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

(2) A ballot authorized under subsection (1) shall describe each proposed action and provide an opportunity for a shareholder or member to vote for or against the action.

(3) An action is considered approved by the shareholders or members by ballot under this section if the total number of shareholders or members that vote or the total number of votes cast by shareholders or members at the polling place or polling places during the period when the polls were open equals or exceeds the quorum required to be present at a meeting to take that action, and the number of favorable votes equals or exceeds the number of votes that would be required to take the action at a meeting at which the number of votes cast by shareholders or

members present was the same as the number of votes cast by ballot. Except as otherwise provided in the articles of incorporation, an invalid ballot, an abstention, or the submission of a ballot marked "abstain" with respect to any action does not constitute a vote cast on that action.

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

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

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

(7) If any other section of this act requires the filing of a certificate with the department if an action is approved by vote of the shareholders or members at a meeting, the shareholders or members may approve that action by ballot under subsection (1) and, in lieu of any statement required under that section concerning the vote of the shareholders or members at a meeting, the certificate shall state that the action was approved by ballot under this section.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2411 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's Notes:** The repealed section pertained to fixing record date for determination of shareholders or members entitled to notice and vote.

#### **450.2412 Record date.**

Sec. 412.

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

(2) For the purpose of determining which shareholders or members are entitled to express consent to or to dissent from a proposal without a meeting under section 407, the bylaws may provide for establishing a record date.



The record date shall not be more than 60 days before the proposed effective date of the shareholder or member action. If the bylaws do not establish a record date, the board may establish a record date that does not precede the date the board adopts the resolution establishing the record date and is not more than 10 days after the board resolution. If a record date is not established and prior action by the board is required with respect to any corporate action to be taken without a meeting under section 407, the record date is the close of business on the day on which the resolution of the board is adopted. If a record date is not fixed and prior action by the board is not required, the record date is the first date on which a signed written consent is delivered to the corporation under section 407.

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2413 Making and certifying list of shareholders or members entitled to vote at meeting or adjournment; requirements; noncompliance; adjournment of meeting; validity of action taken.**

Sec. 413.

(1) The officer or agent responsible for the shareholder or membership records of a corporation shall make and certify a complete list of the shareholders or members entitled to vote at a meeting or any adjourned meeting of the shareholders or members. All of the following apply to the list:

(a) The officer or agent shall arrange the list alphabetically within each class and include the address of each member or shareholder and, if applicable, the number of shares held by each shareholder.

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

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

(d) The list is prima facie evidence of which shareholders or members are entitled to examine the list or to vote at the meeting.

(2) If the requirements of this section are not complied with, and a shareholder or member that is present in person or by proxy in good faith challenges the existence of sufficient votes to approve any action at the meeting, the corporation shall adjourn the meeting until the requirements are complied with. Failure to comply with the requirements of this section does not affect the validity of an action taken at the meeting before a challenge under this subsection.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2415 Quorum; continuing conduct of business if less than quorum; adjournment of meeting; shareholders entitled to vote separately.**

Sec. 415.

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

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2421 Authorizing person to act for shareholder or member by proxy; election of directors by proxy; validity; revocability; methods of granting authority; use of copy, facsimile, or reproduction.**

Sec. 421.

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

(2) A proxy is not valid after the expiration of 3 years from its date unless otherwise provided in the proxy.

(3) A proxy is revocable at the pleasure of the person that executes it, except as otherwise provided in this section and sections 422 and 423.

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

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

(a) Delivering a writing to the person that authorizes that person to act for the shareholder, member, or person entitled to vote in the election of directors of a directorship corporation as proxy and is executed by the shareholder, member, or person entitled to vote in the election of directors of a directorship corporation, or by an authorized officer, director, employee, or agent of the shareholder, member, or person entitled to vote in the election of directors of a directorship corporation, by signing the writing or causing his or her signature to be affixed to the writing by any reasonable means, including, but not limited to, facsimile signature.

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

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2422 Irrevocable proxy.**

Sec. 422.



A proxy that is entitled "irrevocable proxy", and that states that it is irrevocable, is irrevocable when it is held by any of the following or a nominee of any of the following:

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

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

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

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

(e) A person designated by or under an agreement under section 461.

(f) A holder of any other proxy coupled with an interest.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2423 Revocability of proxy.**

Sec. 423.

(1) A proxy described in section 422 becomes revocable, notwithstanding a provision that makes it irrevocable, after the pledge is redeemed, the security interest is terminated, the debt of the corporation is paid, the period of employment provided for in the contract of employment expires, or the agreement under section 461 is terminated. A proxy described in section 422(c) or (d) 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 that makes it irrevocable, by a purchaser of shares that did not know at the time of purchase of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the face or back of the certificate representing the shares.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2431 Inspectors at shareholders' or members' meeting; waiver; appointment and duties; failure to appoint; vacancy; report; evidence.**

Sec. 431.

(1) If the bylaws require inspectors at a shareholders' or members' meeting, the requirement is waived unless compliance therewith is requested by a shareholder or member present in person or by proxy and entitled to vote at the meeting. Unless otherwise provided in the bylaws, the board, in advance of a shareholders' or members' meeting, may appoint 1 or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a shareholders' or members' meeting may, and on request of a shareholder or member entitled to vote shall, appoint 1 or more inspectors. In case a person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding.

(2) The inspectors shall determine the number of shares outstanding and the voting power of each or the members entitled to vote, the shares or members entitled to vote represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine challenges and questions arising in connection with the right to vote, count and tabulate votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders or members. On request of the person presiding at the meeting or a shareholder or member entitled to vote, the inspectors shall make and execute a written report to the person presiding at the meeting of any of the facts found by them and matters determined by them. The report is prima facie evidence of the facts stated and of the vote as certified by the inspectors.

**History:** 1982, Act 162, Eff. Jan. 1, 1983

**450.2432 Beneficial owner of shares or memberships registered in name of nominee; recognition by corporation as shareholder or member; procedure.**

Sec. 432.

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

(2) A procedure established under subsection (1) may include any of the following:

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2441 Voting generally.**

Sec. 441.

(1) Each outstanding share or member is entitled to 1 vote on each matter submitted to a vote, unless otherwise provided under section 303 or 304. A person may cast a vote at a meeting of the shareholders or members either orally or in writing, unless otherwise provided in the bylaws.

(2) If an action, other than the election of directors, is submitted for a vote of the shareholders or members, the action is approved or authorized if it receives the affirmative vote of a majority of the votes cast by the holders of shares or members entitled to vote on the action, unless a higher vote is required in the articles of incorporation or a higher or lower vote is required under another section of this act. Unless otherwise provided by the articles of incorporation, abstaining from a vote or submitting a ballot marked "abstain" with respect to an action is not a vote cast on that action. Except as otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast at an election.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2442 Voting as class.**

Sec. 442.

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

(2) If voting as a class is required under this act to authorize an action, the action is authorized if it receives the affirmative vote of a majority of the votes cast by the shareholders or members of each class entitled to vote on that

action, unless a higher vote is required in the articles of incorporation or under another section of this act. A vote as a class under this subsection is in addition to any other vote required under this act.

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2443 Grouping of members in local units; basis; purpose; actions authorized by bylaws; incorporation and powers of local units; powers, rights, and privileges of elected representatives or delegates.**

Sec. 443.

(1) The articles of incorporation or bylaws adopted by the members of a nonstock corporation may provide that members or a class or classes of members shall be grouped in local units, formed upon the basis of territorial units or some other reasonable basis, for the purpose of election of delegates or representatives to represent the members or the class or classes of members within such local units at any annual or special meeting or for the purpose of election of members to the board of directors.

(2) If the articles of incorporation or bylaws authorize the grouping of members in local units, the bylaws shall do, or shall authorize the board to do, the following:

(a) Draw the local units according to the territorial limits or other reasonable basis.

(b) Only if the grouping is for the purpose of election of delegates, determine the number of delegates to which members or each class of members within the local units are entitled, in accordance with the members' respective voting rights. Members or any class of members within each local unit who do not have voting rights shall be entitled to at least 1 delegate. Unless the articles of incorporation or bylaws otherwise provide, a delegate representing members or any class of members who do not have voting rights shall not have voting rights.

(c) Take other actions reasonably necessary to insure the fair representation of each member within the local units at meetings of the corporation.

(3) The local units designated pursuant to this section may be incorporated under the laws of this state by the members of the local unit, and may do all things necessary to give effect to the preceding sections, the rules promulgated, and bylaws adopted under this act.

(4) Representatives or delegates elected pursuant to this section shall have and may exercise all of the powers, rights, and privileges of members at an annual or special meeting, subject in all respects to the provisions of this act governing members.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 1984, Act 209, Eff. Nov. 1, 1985

**450.2444 Voting by corporation or business corporation; voting of pledged shares.**

Sec. 444.

(1) Shares or memberships that are held by another domestic corporation, domestic business corporation, foreign corporation, or foreign business corporation, whether or not the corporation or business corporation is subject to this act, may be voted by an officer or agent, or by a proxy that is appointed by an officer or agent or by some other person, who by action of its board or under its bylaws is appointed to vote the shares or membership.

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2445 Voting of shares or membership held by person in representative or fiduciary capacity or held jointly by fiduciaries.**

Sec. 445.

(1) The vote of shares or a membership held by a person in a representative or fiduciary capacity may be cast by that person without a transfer of the shares or membership into the name of the representative or fiduciary.

(2) The vote of shares or a membership held jointly by fiduciaries, where the instrument or order appointing the fiduciaries does not otherwise direct, shall be cast as follows:

(a) If only 1 fiduciary votes, that act binds all.

(b) If more than 1 fiduciary votes, the vote of the shares or membership shall be cast as the majority of the fiduciaries determines.

(c) If the fiduciaries are equally divided as to how the vote of the shares or membership shall be cast, a court having jurisdiction in an action brought by any of the fiduciaries or by any beneficiary may appoint an additional person to act with the fiduciaries in such matter, and the vote of the stock or membership shall be cast by the majority of such fiduciaries and such additional person.

**History:** 1982, Act 162, Eff. Jan. 1, 1983

**450.2446 Voting of shares or membership held by joint tenants or tenants in common.**

Sec. 446.

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2447 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's Notes:** The repealed section pertained to prohibition against voting on treasury shares and certain other shares held by corporation.

**450.2447a Voting of shares or memberships if owned by another corporation or business corporation.**

Sec. 447a.

Unless specifically otherwise provided in the articles of incorporation or bylaws, absent an order of a court of competent jurisdiction based on a determination that special circumstances exist and the best interests of the

corporation would be served, the shares or memberships of a corporation shall not be voted on any matter or considered to be outstanding shares or memberships for any purpose related to voting if they are owned, directly or indirectly, by another corporation, foreign corporation, business corporation, or foreign business corporation, and the first corporation owns, directly or indirectly, a majority of the shares or memberships entitled to vote for directors of the second corporation.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2448 Redemption of shares; voting.**

Sec. 448.

After written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, the shares shall not be voted on any matter nor deemed to be outstanding shares.

**History:** 1982, Act 162, Eff. Jan. 1, 1983

#### **450.2451 Voting for directors.**

Sec. 451.

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

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2455 Action requiring vote or concurrence of greater proportion of shares, members, or class than required by act; amendment of articles of incorporation.**

Sec. 455.

With respect to an action to be taken by the shareholders or members, if the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares or a greater proportion of members, or of a class of shares or members, than required under this act with respect to the action, the articles of incorporation shall control. An amendment of the articles of incorporation that adds, changes, or deletes that provision requires the same vote that is required to amend the articles of incorporation under section 611, or the same vote that would be required to take action under that provision, whichever is greater. A failure to include a provision described in this section in the articles of incorporation does not invalidate any bylaw or agreement that would otherwise be

considered valid.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2461 Agreement as to voting rights.**

Sec. 461.

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2466 Transfer of shares or membership to trustee; filing of voting rights agreement; voting and other rights of trustee; inspection of filed copy of voting trust agreement; description of beneficial interests.**

Sec. 466.

(1) If shares or memberships of a corporation are transferable, a shareholder or member may confer on a trustee the right to vote or otherwise represent those shares or memberships for a period that does not exceed 10 years, by entering into a written voting trust agreement that includes the terms and conditions of the voting trust, by filing an executed counterpart of the agreement at the registered office of the corporation, and by transferring those shares or membership to the trustee for purposes of the agreement.

(2) If a voting rights agreement under subsection (1) is filed, the holder of any certificates for shares or memberships transferred shall surrender the certificates and the corporation shall cancel the certificates and issue new certificates for the shares or memberships to the trustee that state that they are issued under the agreement. The corporation shall also describe the transfer of ownership in the records of the corporation, and the trustee may vote the transferred shares or memberships during the term of the agreement.

(3) A trustee that holds memberships transferred under an agreement executed under this section has the same voting and other rights as the beneficiaries would have if the memberships were not in trust.

(4) The filed copy of a voting trust agreement under this section is subject to inspection at any reasonable time by a shareholder, member, or a holder of a beneficial interest in the voting trust, in person or by agent or attorney.

(5) Any voting trust certificates issued under subsection (2) shall describe the beneficial interests in the voting trust.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2467 Shares or memberships subject to voting trust; liability of trustee; designation of 2 or more persons as voting trustees.**

Sec. 467.

(1) A trustee that votes shares or memberships that are subject to a voting trust under section 466 is not liable as a shareholder, member, trustee or otherwise, except for the trustee's malfeasance.

(2) If 2 or more persons are designated as voting trustees, and the right and method of voting shares or memberships in their names are not fixed in the agreement that appoints the trustees, a majority of the trustees shall



determine the right to vote and manner of voting the shares or memberships. If the trustees are equally divided concerning the right to vote and the manner of voting, the votes shall be divided equally among the trustees.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2468 Extension of voting trust agreement.**

Sec. 468.

(1) At any time within the 12-month period before the expiration of the original term of a voting trust agreement under section 466 or an extension of a voting trust agreement under this section, 1 or more beneficiaries of the voting trust, by written agreement and with written consent of the voting trustees, may extend the duration of the voting trust agreement with regard to the shares or memberships subject to their beneficial interest for an additional period that does not exceed 10 years. Before expiration of the original term of a voting trust agreement under section 466 or an extension of a voting trust agreement under this section, if the voting trustees file in the registered office of the corporation an executed counterpart of an extension agreement and of their consent to the extension, the term of the voting trust agreement is extended for the period described in the extension agreement. An extension agreement does not affect the rights or obligations of persons that are not parties to the extension agreement.

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2471 Shares as personal property; transfer; applicability of MCL 440.8101 to 440.8601.**

Sec. 471.

The shares of a corporation are personal property. Article 8 of the uniform commercial code, 1962 PA 174, MCL 440.8101 to 440.8601, applies to the transfer of shares only to the extent not inconsistent with this act.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2000, Act 359, Eff. Mar. 28, 2001

#### **450.2472 Transfer or registration of bond, share, or membership; written restriction.**

Sec. 472.

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

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

the face or back of the instrument or on the information statement required under section 336, the restriction, even if permitted under this section or section 473, is ineffective except against any person that has actual knowledge of the restriction.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2473 Transfer or registration of bond, share, or membership; imposition of restrictions; conditions.**

Sec. 473.

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

- (a) Obligates the holders of the restricted instruments to offer to the corporation or to any other holders of bonds, shares or memberships of the corporation, to any other person, or to any combination of those persons, a prior opportunity to acquire the restricted instruments.
- (b) Obligates the corporation or a holder of bonds, shares, or memberships of the corporation, any other person, or any combination of those persons, to purchase the instruments that are the subject of an agreement respecting the purchase and sale of the restricted instruments.
- (c) Requires the corporation or the holders of a class of bonds, shares, or memberships of the corporation to consent to a proposed transfer of the restricted instruments or to approve the proposed transferee of the restricted instruments.
- (d) Prohibits the transfer of the restricted instruments to designated persons or classes of persons, and the designation is not contrary to public policy.
- (e) Exists for the purpose of maintaining the status of the corporation under section 115, 501, 521, 527, or 528 of the internal revenue code of 1986, 26 USC 115, 501, 521, 527, and 528.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2481 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's Notes:** The repealed section pertained to issuing or delivering unissued or treasury shares.

#### **450.2485 Books, records, and minutes.**

Sec. 485.

A corporation shall keep books and records of account and minutes of the proceedings of its shareholders or members, board, and executive committee, if any. Unless otherwise provided in the bylaws, the corporation may keep the books, records, and minutes outside this state. The corporation shall keep at its registered office, or at the office of its transfer agent in or outside this state, records that contain the names and addresses of all shareholders or members, the number and class of shares held by each shareholder or the class or classes of membership held by each member, and the dates when they respectively became shareholders of record or members. Any of the books, records, or minutes may be in written form or in any other form that is convertible into written form within a reasonable time. A corporation shall convert into written form without charge any record that is not in written form, if requested by a person that is entitled to inspect the record.

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2487 Mailing balance sheet and statements to shareholder or member upon request; inspection during regular business hours; written demand; "proper purpose" defined; order compelling inspection; burden of proof; powers of court; inspection by director; costs; holder of voting trust certificate as shareholder or member; right to inspect prohibited or limited; definitions.**

Sec. 487.

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

(2) Any shareholder or member of record of a corporation that is organized on a stock or membership basis, in person or by attorney or other agent, may during regular business hours inspect for any proper purpose the corporation's stock ledger, a list of its shareholders or members, and its other books and records, if the shareholder or member gives the corporation written demand describing with reasonable particularity the purpose of the inspection and the records the shareholder or member desires to inspect, and the records sought are directly connected with the purpose. As used in this subsection, "proper purpose" means a purpose that is reasonably related to a person's interest as a shareholder or member. A shareholder or member must deliver a demand under this subsection to the corporation at its registered office in this state or at its principal place of business. If an attorney or other agent is the person seeking to inspect the records, the demand must include a power of attorney or other writing that authorizes the attorney or other agent to act on behalf of the shareholder or member.

(3) If a corporation does not permit an inspection required under subsection (2) within 5 business days after a demand is received under subsection (2), or imposes unreasonable conditions on the inspection, the shareholder or member may apply to the circuit court for the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. If the shareholder or member seeks to inspect the books and records other than its stock ledger or list of shareholders or members, the shareholder or member must establish that the shareholder or member has complied with this section concerning the form and manner of making demand for inspection of the documents, that the inspection is for a proper purpose, and that the documents sought are directly connected with the purpose. If the shareholder or member seeks to inspect the corporation's stock ledger or list of shareholders or members and establishes that the stockholder or member has complied with this section concerning the form and manner of making demand for the inspection of the documents, the corporation has the burden of proof to establish that the inspection that is sought is for an improper purpose or that the records sought are not directly connected with the person's purpose. In its discretion, the court may order the corporation to permit the shareholder or member to inspect the corporation's stock ledger, a list of shareholders or members, and its other books and records, prescribe conditions and limitations on the inspection, and award other or further relief that the court considers just and proper. The court may order books, documents and records, pertinent extracts, or duly authenticated copies to be brought to this state and kept in this state and prescribe terms and conditions on those obligations.

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

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

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

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

(a) Opening the stock ledger, lists of shareholder or members, lists of donors or donations, or its other books and

records for inspection would impair the rights of privacy or free association of the shareholders or members.

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

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

(8) A corporation that limits inspection of lists of its shareholders or members under subsection (7) shall provide a reasonable way for shareholders or members to communicate with all other shareholders or members concerning the election of directors and other affairs of the corporation. A corporation described in this subsection may require a shareholder or member that wishes to communicate with other shareholders or members under this subsection to pay the reasonable costs to cover the cost of labor and materials and third-party charges incurred by the corporation in doing so.

(9) As used in this section:

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

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

**History:** 1982, Act 162, Eff. Jan. 1, 1983 ;-- Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2488 Agreement among members of corporation.**

Sec. 488.

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

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

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

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

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

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

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

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

(h) It establishes that shares or memberships may be assessable by the corporation, including the procedures for an assessment and the consequences of a failure by a shareholder or member to pay an assessment.

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

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

(a) It is included in either of the following:

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

(ii) A written agreement that is signed by all members or shareholders or all directors of a corporation that is

organized on a directorship basis at the time of the agreement and that is disclosed to the corporation.

(b) Is subject to amendment only by all members or shareholders or by all directors of a corporation that is organized on a directorship basis at the time of the amendment, unless the agreement provides otherwise or the amendment involves a provision of the articles of incorporation described in section 209(1)(f).

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

(4) Any person that becomes a member of a corporation organized on a membership basis, a shareholder of a corporation organized on a stock basis, or a director of a corporation organized on a directorship basis and did not have knowledge of the existence of an agreement authorized under this section at the time the person became a member, shareholder, or director, may elect to resign as a member, shareholder, or director, may elect to rescind the transfer of any membership or shares, or may elect to maintain an action to terminate the agreement. For purposes of this subsection, a person is considered to have knowledge of an agreement authorized under this section if at the time the person becomes a member, shareholder, or director, the agreement is included in the articles of incorporation or bylaws, the agreement's existence is noted on the certificate or information statement provided under subsection (3), or a copy or a written summary of the agreement is furnished to the person before the person becomes a member, shareholder, or director. A person must commence an action to enforce a right of rescission or to terminate the agreement within 90 days after discovery of the existence of the agreement or 2 years after the person becomes a shareholder, member, or director, whichever is earlier. In an action or suit to terminate the agreement, the court in which the action is brought shall terminate the agreement if the court determines that the agreement is materially inconsistent with or detrimental to carrying out the purposes of the corporation, materially impairs rights or interests the person that brought the action or suit would reasonably have expected to have acquired in becoming a member, shareholder, or director, or is inconsistent with 1 or more of the limitations under subsection (11).

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

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

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

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

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

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

(11) An agreement under this section is not effective to do any of the following:

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

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

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2489 Court action that certain acts illegal, fraudulent, or willfully unfair and oppressive; order or relief; "willfully unfair and oppressive conduct" defined.**

Sec. 489.

(1) A director of a corporation that is organized on a directorship basis, a shareholder of a corporation that is organized on a stock basis, or a member of a corporation that is organized on a membership basis may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to establish that the acts of the directors, shareholders, members, or others in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the director, member, or shareholder. If the director, member, or shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate including, but not limited to, an order that provides for any of the following:

- (a) The dissolution and liquidation of the assets and affairs of the corporation.
- (b) The cancellation or alteration of a provision contained in the articles of incorporation, an amendment of the articles of incorporation, or the bylaws of the corporation.
- (c) The cancellation of, alteration of, or an injunction against a resolution or other act of the corporation.
- (d) The direction or prohibition of an act of the corporation or of shareholders, members, directors, officers, or other persons that are parties to the action.
- (e) The purchase at fair value of the shares of a shareholder or the membership of a member, either by the corporation or by the officers, directors, or other shareholders or members responsible for the wrongful acts. In establishing the fair value of the shares or membership for purposes of this subsection, a shareholder or member is not considered to have any interest in charitable or other assets of the corporation that would not be distributable to shareholders or members of the corporation in a dissolution under section 855.

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

(2) As used in this section, "willfully unfair and oppressive conduct" with respect to a member or shareholder means a continuing course of conduct or a significant action or series of actions that substantially interferes with the rights or interests of the member or shareholder as a member or shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2491 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's Notes:** The repealed section pertained to action by shareholder or member in right of corporation to procure judgment.

**450.2491a Definitions.**

Sec. 491a.

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

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

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

(c) "Disinterested director" means an individual who is currently serving on the board of a corporation and is not



a party to a derivative proceeding, or an individual who is currently serving on the board of a corporation and is a party to a derivative proceeding if the corporation demonstrates that the claim asserted against the director is frivolous or insubstantial.

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

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2492 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's Notes:** The repealed section pertained to discontinuing, compromising, or settling action authorized by MCL 450.2491.

**450.2492a Derivate proceeding; criteria to be met by shareholder or member.**

Sec. 492a.

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

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

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

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2493 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's Notes:** The repealed section pertained to award of expenses in action brought in right of corporation.

**450.2493a Derivative proceeding; commencement.**

Sec. 493a.

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

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

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2494 Derivative proceeding; investigation; issuance of stay.**

Sec. 494.

If the corporation commences an investigation of the allegations made in a demand under section 493 or a complaint in a derivative proceeding, the court may stay the derivative proceeding for a period that the court considers appropriate.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2495 Derivative proceeding; dismissal.**

Sec. 495.

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

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

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

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

(c) By a panel of 1 or more disinterested individuals who are appointed by the court on a motion by the corporation.

(d) By all disinterested directors.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

#### **450.2496 Derivative proceeding; discontinuance or settlement; court approval required.**

Sec. 496.

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

taxable costs.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015

**450.2497 Derivative proceeding; termination.**

Sec. 497.

If a derivative proceeding is terminated, the court may order 1 of the following:

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

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

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015