CHAPTER 450. CORPORATIONS

MICHIGAN GENERAL CORPORATION ACT
Act 327 of 1931

AN ACT to provide for the organization, regulation and classification of corporations; to provide their rights, powers and immunities; to prescribe the conditions on which corporations may exercise their powers; to provide for the inclusion of certain existing corporations within the provisions of this act; to prescribe the terms and conditions upon which foreign corporations may be admitted to do business within this state; to require certain annual reports to be filed by corporations; to prescribe penalties for the violations of the provisions of this act; and to repeal certain acts and parts of acts relating to corporations.

History: 1931, Act 327, Eff. Sept. 18, 1931.

The People of the State of Michigan enact:

450.1-450.61 Repealed. 1951, Act 239, Eff. Sept. 28, 1951;—1962, Act 174, Eff. Jan. 1, 1964;—1967, Act 67, Eff. Nov. 2, 1967;—1972, Act 284, Eff. Jan. 1, 1973.

Compiler's note: The repealed sections pertained to incorporation, articles of incorporation, corporate powers, officers, agents, bylaws, capital stock, shareholders, etc.

450.62-450.64 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

Compiler's note: The repealed sections pertained to renewal of corporate existence.

450.65-450.80 Repealed. 1972, Act 284, Eff. Jan. 1, 1973.

Compiler's note: The repealed sections pertained to corporate dissolution, agreements to pay interest, certificates of appointment of resident agents, and acknowledgment of instruments.

450.81 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

Compiler's note: The repealed section pertained to annual report of nonprofit corporation.

450.82-450.91a Repealed. 1972, Act 284, Eff. Jan. 1, 1973.

Compiler's note: The repealed sections pertained to profit and nonprofit corporations, reports, and records.

450.92 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

Compiler's note: The repealed section pertained to failure of nonprofit corporation to file annual report.

450.93-450.97 Repealed. 1974, Act 140, Imd. Eff. June 5, 1974.

Compiler's note: The repealed sections pertained to procedure for acquiring certificate of authority by foreign corporation; penalties; issuance and revocation of certificates of authority of foreign corporations; increasing capital stock of foreign corporation; and acquiring, making, or purchasing of loans by foreign corporation.

450.98 Applicability of act to corporations limiting dividends or voting rights, and conducting not more than 50% of business with nonstockholders or nonmembers; classification of corporations organized under MCL 450.98 to 450.109 as profit and nonprofit.

Sec. 98. (1) Corporations organized to conduct a lawful business which limits the dividends payable upon stock investment in the case of corporations with capital stock and membership investment in the case of membership corporations without capital stock to not in excess of 8% per annum or which limits the voting rights of stockholders or members to 1 vote regardless of the number of shares of stock or membership held, and in any case do not conduct more than 50% of their business or services with nonstockholders or nonmembers, shall be governed by this act, except as specifically otherwise provided and except for cooperatives organized under chapter 11 of Act No. 162 of the Public Acts of 1982, being sections 450.3100 to 450.3192 of the Michigan Compiled Laws, as to the mode of corporate management, manner of distribution of earnings and profits, their powers, and optional principles of doing business.

(2) Corporations organized under and operated in accordance with sections 98 to 109, which pay limited dividends upon the stock or membership investment or which do not make distribution of earnings to nonstockholders or nonmembers upon the same basis as to stockholders or members shall, for purposes of making reports and payment of privilege fees or other taxes to the state, be classified as profit corporations. Corporations which do not pay dividends or interest upon stock or membership investment and which distribute all earnings to stockholders or members and other persons doing business with the corporation or

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provide for the allocation of such earnings to stockholders or members and other persons doing business with the corporation for future distribution shall, for the purposes of making reports and payments of privilege fees or other taxes to this state, be classified as nonprofit corporations.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.98;—Am. 1978, Act 121, Imd. Eff. Apr. 25, 1978;—Am. 1984, Act 298, Eff. Jan. 1, 1985.

Former law: See section 1 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, § 10027.

450.99 Cooperative plan; definition; allocation of reserved earnings; cooperative corporations; use of term "cooperative,""co-op," or variation thereof.

Sec. 99. Corporations may engage in any lawful business within this state upon any cooperative plan adopted by the incorporators, or by the shareholders at any annual or special meeting. For the purpose of this act, the term "cooperative plan" shall be deemed to mean a mode of operation whereby the earnings of the corporation are distributed on the basis of, or in proportion to, the value of property bought from or sold to shareholders and/or members or other persons, or labor performed for, or services rendered to, or by the corporation: Provided, That the foregoing definition shall not be construed as prohibiting any such corporation from paying limited dividends to stockholders and/or members upon stock and/or membership investment, or from reserving a certain proportion of earnings for future operations or for future distribution. Earnings so reserved shall be allocated on the books of the corporation or a means provided for such allocation to the stockholders and/or members or other persons entitled to such earnings, before general distribution of earnings shall have been authorized and made. Corporations organized under a cooperative plan and governed by sections 98 to 109, inclusive, of this act are hereinafter in this act called cooperative corporations and they may use the term "cooperative", "co-op", or any variation thereof in their name.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.99;—Am. 1984, Act 298, Eff. Jan. 1, 1985.

Former law: See section 2 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10028.

450.100 Cooperative corporations; shares of stock, contents.

Sec. 100. Same; contents of certificates of stock. There shall be printed upon each share of stock issued by co-operative corporations a condensed statement of every article or by-law which in anywise limits the shareholders' right to assign or transfer such shares or to vote the total number of shares held at meetings of the corporation, or which forbids voting by proxy.

The provisions of the uniform stock transfer law of this state shall not be held to apply to the shares of stock of such co-operative corporations in any manner or to any extent inconsistent with the provisions of sections 98 to 116, both inclusive, of this act.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.100.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 3 of Ch. IV of Part II of Act 84 of 1921, as amended by Act 267 of 1929, being CL 1929, § 10029.

450.101 Cooperative corporations; shareholders' powers; directors, election, term, number; voting.

Sec. 101. The shareholders of any cooperative corporation shall have power: to adopt bylaws for the government and regulation of its business management, and to amend such bylaws; to determine the manner of distributing the earnings of the corporation upon a cooperative plan; to limit and define the powers and duties and the number of directors and officers; to delegate to the directors any particular power or authority which the shareholders themselves possess, excepting the right to elect or dismiss directors and to amend the articles; to fix the time for holding the elections of its directors, which, shall be annual unless a longer term is prescribed in the articles or bylaws: Provided, That in the event directors are elected for a term of more than 1 year, the bylaws shall prescribe the length of term and the number of directors to be elected each year, to determine whether or not voting by proxy shall be allowed, and if so allowed, when and how, to provide the manner in which directors and officers may be removed and their successors elected at any time by vote of the shareholders; to determine whether or not shareholders shall be limited to 1 vote each, regardless of the number of shares held; to determine the number of shareholders attending any meeting, or the number of shares represented at any meeting of shareholders which shall constitute a quorum, which may be less than a majority; to determine the manner in which shareholders may vote by mail, if the articles or bylaws provide for such voting; and to provide a limitation upon the amount of capital stock which may be owned by any 1 shareholder therein; all of which shall be included in the bylaws or in the articles.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.101;—Am. 1949, Act 232, Eff. Sept. 23, 1949.

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Former law: See section 4 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10030.

450.102 Cooperative corporations; membership, regulations.

Sec. 102. Same; membership. The shareholders of every co-operative corporation may also provide in their articles or by-laws, the necessary qualifications of shareholders or members, together with provisions limiting, prescribing or regulating the transfer of such membership, and the terms and conditions under which, if at all, membership or certificates of stock may be transferred. No sale, transfer or assignment of membership rights or of any stock in any co-operative corporation shall be valid unless made in accordance with its articles or by-laws; nor shall any purchase and sale of any such shareholder's stock or privileges in such corporation made under execution, or in the course of bankruptcy proceedings, or by any legal process or by operation of law, give any person any shareholder's or membership right, title or interest in and to such corporation, unless in accordance with its articles or by-laws.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.102.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 5 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10031.

450.103 Cooperative corporations; amendments to articles.

Sec. 103. Same; amendment to articles. One-tenth of the entire number of shareholders of any cooperative corporation may propose any desired amendment to the articles or to the bylaws of such corporation, and any amendment so proposed shall be voted upon at the next annual meeting by the shareholders.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.103.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 6 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10032.

450.104 Cooperative corporations; reserve funds, investment; shareholders, vote.

Sec. 104. Same; investment of reserve fund. At any regular meeting, or any duly called special meeting, at which the quorum fixed by the bylaws shall be present, the shareholders of any cooperative corporation may by a majority vote of such shareholders present in person, subscribe for shares and invest a portion of the reserve fund of such corporation, not to exceed at any time 20 per cent in the aggregate of its capital, in the capital stock or membership capital of any other cooperative corporation or corporations with which it desires to cooperate or affiliate: Provided, however, That this provision shall not be construed to prevent such corporation from accepting patronage dividends in the form of stock or otherwise from such other corporation in any amount.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.104.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 7 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10033.

450.105 Cooperative corporations; purchase of business; payment, methods.

Sec. 105. Same; purchase of business of another corporation. Whenever any cooperative corporation shall purchase the business of another corporation, firm or person or persons, it may pay for the same in whole or in part by issuing to the selling corporation, firm, person or persons, shares of its capital stock to an amount which, at par value, would equal the fair market value of the business so purchased, and in such case the transfer to the purchasing corporation of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.105.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 8 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10034.

450.106 Cooperative corporations; distribution of dividends; reserves; distribution of cooperative dividends; determining annual privilege fee.

Sec. 106. The shareholders of every cooperative corporation shall provide in the bylaws what percent upon the paid-up capital stock of the corporation, not exceeding 8% per annum, shall be first paid and distributed to the holders of the paid-up capital stock as dividends before dividing the surplus earnings or profits, as provided in this act, and whether or not the dividends shall be cumulative. The bylaws shall further provide what amount or percentage of the annual profit and earnings of the business, over and above the dividends to shareholders shall be retained and kept in the treasury of the corporation as a reserve, and in what manner, method, and proportion the surplus annual earnings and profits of the business of the corporation, in excess of the dividends and reserves, shall be divided up and distributed as a cooperative dividend, under the

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cooperative plan or principle adopted by the corporation among shareholders or members doing business with the corporation; and may also provide for cooperative dividends to nonstockholders or nonmembers. For the purposes of determining the amount owing by the cooperative corporation as an annual privilege fee, the balance of the reserve in excess of 30% of the paid-up capital of the corporation shall be considered as surplus.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.106;—Am. 1978, Act 121, Imd. Eff. Apr. 25, 1978.

Former law: See section 9 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10035.

450.107 Cooperative corporations; surplus earnings, distribution; failure, penalty.

Sec. 107. Same; surplus earnings. The surplus earnings and profits of every co-operative corporation shall be distributed to those entitled thereto at such times as the by-laws may provide, which shall be as often as once in each year. If any such corporation shall fail for 5 consecutive years to pay the dividend upon its paid-up capital stock in accordance with the provisions of its by-laws, a majority of the shareholders may petition the circuit court in chancery, in the county in which the registered office of such corporation is located, for the dissolution of such corporation. If, upon the hearing the court finds the allegations of the petition are substantially true, such corporation may be dissolved, its business wound up and its property distributed as the court may order and decree.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.107.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 10 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10036.

450.108 Cooperative corporations; dealing in commodities; contracts, agreements.

Sec. 108. Same; contracts and agreements. Every cooperative corporation engaged in buying, handling, selling or dealing in farm produce or other agricultural products, canned goods, or byproducts of any such goods, wares, merchandise or commodities, may enter into any and all necessary contracts with stockholders, members or other persons respecting the terms of such transaction, and may deal in such commodities upon commission or brokerage basis, by agency agreements, or upon a warehouse storage plan.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.108.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 11 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10037.

450.109 Cooperative corporations; breach of contract; encouragement prohibited; penalty.

Sec. 109. Same; persons liable for damage for encouraging breach of contracts and agreements. Any person, firm, or corporation who solicits or persuades or permits or aids or abets, any stockholder and/or member or other person to breach a contract with a cooperative corporation, by accepting or receiving from such stockholder and/or member or other person, products for sale, marketing, manufacturing, or processing for sale, contrary to the terms of any marketing agreement of which said person or any member of said firm or any officer or manager of said corporation has knowledge or notice, shall be liable to the cooperative corporation aggrieved in a civil suit in the penal sum of $500.00 for each such contract; and such cooperative corporation shall be entitled to an injunction against such person, firm, or corporation to prevent further breaches and a multiplicity of actions thereon. In addition, said person, firm, or corporation shall pay to the cooperative a reasonable attorney's fee and all costs involved in any litigation or proceedings at law or chancery.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1941, Act 327, Eff. Jan. 1942;—CL 1948, 450.109.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 12 of Ch. IV of Part II of Act 84 of 1921, being CL 1929, § 10038.

450.117-450.132a Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

Compiler's note: The repealed sections pertained to nonprofit corporations generally.

450.133 Incorporation of fraternal or secret societies; parent lodge.

Sec. 133. Incorporation of fraternal, etc., societies. Any number of persons, not less than 3, may become incorporated for the purpose of forming a secret society or lodge for benevolent, charitable, social, educational or mutual aid purposes or for any other similar purpose or purposes not prohibited by law. Such corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided. All societies, fraternal or otherwise, having for their principal purposes the teaching, practice and extending of benevolence, charity and fraternity under the form of secret rituals with a

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lodge form of government as commonly understood, desiring to be incorporated to more effectually carry out such purposes, shall hereafter incorporate under the provisions of this act. No such society or lodge whose parent organization is incorporated under the laws of any other country or state shall be permitted to organize or incorporate any subordinate state or local jurisdiction or lodge within this state without first applying for and receiving permission to do business within this state as such foreign corporation.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.133.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 6 of Ch. I of Part I of Act 84 of 1921, being CL 1929, § 9948; and section 1 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10062.

450.134 Parent corporations; articles of incorporation.

Sec. 134. Parent lodge; articles of incorporation. If such society or lodge shall be intended to operate as a state jurisdiction of a lodge or society having a parent organization without this state, then such persons so incorporating shall exhibit with their articles the charter or permit from such foreign parent society or lodge permitting such incorporation with this state. The persons so incorporating shall execute and file articles in the form prescribed in section 4 of this act, with the secretary of state, as prescribed for non-profit corporations generally; and in addition to the other requirements of said section 4, the incorporators shall state in such articles:

(1) That such society or corporation shall have a secret ritual, and a representative form of government, whose purposes are not unlawful, and

(2) The executive offices within such society by such peculiar name as they shall be respectively known, and

(3) The principal features of organization, the distinguishing purposes and the name of the society by which all subordinate lodges thereof shall also be known when organized.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.134.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 2 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10063.

450.135 Parent corporations; ritual, rules; subordinate lodges, chartering.

Sec. 135. Same; ritual, and rules; chartering of subordinate lodges. Every such parent corporation shall have the right to prescribe the ritual to be used in all the secret work of such lodge or society, the oath or other obligations to be taken by members or officers, and to enact by-laws, rules and regulations having uniform application throughout the organization. Such parent corporation shall have the right to organize and charter subordinate lodges or societies thereof, and to enact a system of discipline to which all such subordinate lodges and individual members may be compelled to conform under pain of expulsion therefrom; and to prescribe the terms and conditions under which such subordinate lodges and members may be admitted, retained in good standing or suspended or expelled from such membership. Such parent corporation may delegate to its officers, committees and to subordinate jurisdictions, such functions and powers as the articles or by-laws of such corporation may from time to time prescribe, not inconsistent with the laws of this state.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.135.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 3 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10064.

450.136 Parent corporations; supervision, subordinate lodge.

Sec. 136. Same; supervision of subordinate lodges. Every such parent corporation shall have the right to superintend, visit, instruct and guide its subordinate lodges and jurisdictions, through its duly appointed officers, agents and committees; may appoint its courts or judicial functionaries for the enforcement of its system of discipline within such lodge; may prescribe the initiation fees and annual or other periodic dues or contributions upon which membership may be conditioned, and may prescribe the proportion of such funds that shall belong to such parent corporation for the work of organizing, maintaining and carrying out the purposes of the society as a whole.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.136.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 4 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10065.

450.137 Parent corporations; management, secretary.

Sec. 137. Same; management, secretary. The fiscal and business affairs of every such parent corporation

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shall be managed by such executive officers, committees, directors or trustees as the articles shall prescribe, who shall severally have such powers and liabilities as may be prescribed in the articles or in by-laws made pursuant thereto. The articles shall in all cases state the name of the committee having authority to enact the original by-laws of the parent corporation, and when and how the members thereof shall be elected or appointed and for how long such committee shall hold office. Every such parent society shall designate an officer who shall be its secretary whose powers and duties shall conform to those prescribed in this act for secretaries of corporations generally.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.137.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 5 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10066.

450.138 Parent corporations; name, regulations.

Sec. 138. Same; name. No such parent corporation shall assume a name already in use by any other corporation, lodge, or society incorporated under the laws of this or any other state of the United States and admitted to do business in this state, nor any name which is so similar to that adopted by any other such lodge, or society as to lead to confusion or deception: Provided, That local or other subordinate jurisdictions shall in all cases use the name of the parent corporation in addition to some suitable local designation.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.138.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 6 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10067.

450.139 Parent corporations; powers as to property.

Sec. 139. Same; powers in relation to property. Every such parent corporation shall have power to hold in fee or otherwise, such real estate, and to own such personal property, as may be necessary to establish its state headquarters, or any charitable home or institution established or maintained by it, and for that purpose may contract for the purchase of land, take conveyance of, purchase, lease or rent such real estate as may be so necessary; and may in connection with any land or building erected thereon let or sublet any vacant space therein or thereon not necessary to the immediate requirements of the corporation. In case it shall become necessary or advisable for the corporation to execute any contract for the purchase of such land or the lease of any such building, or to sell, mortgage or convey the same, the executive or other committee or trustees having charge of the fiscal affairs of such corporation shall designate at least 2 officers of such corporation to execute and deliver such instruments on behalf of the corporation, as shall have been authorized by such committee or trustees.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.139.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 7 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10068.

450.140 Parent corporations; government, representative form; first annual meeting.

Sec. 140. Same; representative form of government; first annual meeting. Every such parent corporation shall adopt a representative form of government, under which form the subordinate lodges shall elect or appoint representatives to attend the annual or other convention, conclave or meeting of the parent corporation, by whatsoever name such meeting shall be known, and at which annual meeting the officers and committees of such parent or state society shall be elected by a majority vote of such representatives. The first annual meeting shall be held at a time and place to be fixed by the executive committee of the parent corporation; and thereafter such time and place shall be fixed by the convention itself.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.140.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 8 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10069.

450.141 Parent corporations; annual meeting, powers.

Sec. 141. Same; powers at annual meeting. The annual convention, conclave or meeting of every such parent corporation when duly called to order, shall have power and authority to elect the officers and the executive committee or trustees thereof; to elect delegates to any higher jurisdiction within said lodge or society; to alter or amend the articles or by-laws of the parent corporation not inconsistent with the state charter of such lodge or society; to determine questions of discipline or policy; and to act upon such other matters as the articles or by-laws may require or permit to be presented to such convention for action.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.141.

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Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 9 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10070.

450.142 Local lodges; purpose.

Sec. 142. Local lodges; purpose. Any number of persons who are members in good standing in any lodge incorporated as a parent society or lodge within this state, and having a charter or permit from such parent lodge or society, may incorporate as a local lodge or branch thereof, upon complying with the provisions of this act appropriate to such corporations. The purpose of all such local lodge corporations shall be to further the interests of the parent corporation in such community, to hold the property of such local lodge or society and to become integral members of the parent lodge or society.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.142.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 10 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10071.

450.143 Local lodges; articles of incorporation.

Sec. 143. Same; of articles of incorporation. The articles of such local lodge or society shall follow the form prescribed for non-profit corporations in this act and shall contain such further statements as the incorporators may wish to insert therein as to purposes and government. Such articles shall state that such local lodge has been granted a charter by the state parent corporation, if there be one.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.143.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 11 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10072.

450.144 Local lodges; powers as to property; parent corporation, supervision.

Sec. 144. Same; powers in relation to property. Every such local lodge shall have the same right to hold, own and dispose of property, both real and personal as is granted in this act to non-profit corporations generally; and such local lodge shall be subject to the discipline, visitation and guidance of the parent corporation, or other higher jurisdictions as the plan of higher organization may prescribe.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.144.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 12 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10073.

450.145 Local lodges; officers, representatives.

Sec. 145. Same; officers and representatives. Every such local lodge or society shall have such officers, committees, trustees and agents as their articles may prescribe, who shall be elected or appointed and who shall have such duties, responsibilities and powers, as the articles or by-laws may prescribe.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.145.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 13 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10074.

450.146 Parent or local lodges; powers of non-profit corporation.

Sec. 146. Same; powers. Every such corporation, whether parent or local, shall have all the rights, powers, immunities and privileges granted by this act to non-profit corporations generally.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.146.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 14 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10075.

450.147 Parent or local lodges; relief funds, raising, payment from treasury.

Sec. 147. Same; relief funds, etc. Every such lodge whether parent or local shall have authority to make provision for the visitation of the sick and afflicted members; to provide funds for the relief of distressed members and their families; to provide funds for the burial of indigent or other worthy members: Provided, That no such funds shall be raised or maintained in the way of dues, assessments or levies based upon an insurance rate, table or contract, express or implied: And provided further, That no such money shall be paid out of the treasury of any such lodge without the express order of the lodge itself or a committee duly authorized to consider and act upon such cases: And provided further, That nothing in this act contained shall be construed as prohibiting any such lodge from establishing and maintaining charitable homes or other institutions for its aged, afflicted or infirm members under the provisions of this act applying to trustee corporations.

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History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.147.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 15 of Ch. II of Part III of Act 84 of 1921, being CL 1929, § 10076.

450.148 Trustee corporations; definition.

Sec. 148. Trustee corporations; definition. Corporations may be formed to carry out the terms of any written declaration, deed or testament making donations, grants, gifts or devises in trust for specific lawful purposes. Such corporations shall be known in law as "trustee corporations," which term may also embrace other corporations as hereinafter provided for in this act. A trustee corporation is hereby defined to be any corporation wherein the trustees appointed by any instrument in writing, whether testamentary or otherwise, to have the title, care, custody or disposition of property or the income therefrom, in trust for such uses and purposes as may be named in such instrument, for the benefit of religious, charitable, benevolent, educational institutions or public benefaction of whatsoever name or nature and any other persons who may be lawfully associated with them, incorporate for the express and main purpose of carrying out the provisions of such trust. The term "trustee corporation" may also embrace any case in which trustees hold in their corporate name, any separate property of the corporation of which they are trustees for specific purposes defined or limited by any written instrument donating, setting aside or devoting such separate property for charitable, religious, benevolent, educational or other beneficial purpose, or where such property is so held by the said trustees under the terms of written instructions as to the use thereof from the governing body of any ecclesiastical, fraternal or charitable society, association or corporation. Such trustees shall in no case have any personal interest in or title to any part or portion of such trust property, nor derive any personal benefit from the principal or income thereof, excepting in the way of just compensation for their labor and skill in executing such trust or by way of reimbursement for necessary and actual expenses incurred in the management of such property or in the performance of their duties as such trustees, or except upon authority expressed in the original deed or instrument of trust. Nothing in this act contained shall be construed as preventing or prohibiting any trustees appointed or provided for under the terms of any deed, will or other written instrument to have the title or management of any property, whether real or personal, for the benefit of the donor or grantor therein or the heirs, dependents or other beneficiaries of such donor or grantor, and not for charitable, religious, educational or benevolent purposes, from incorporating under this act for the purpose of executing such trust, if such incorporation be permitted, directed or contemplated in such instrument, and the business of such corporation, when organized, is one which a corporation might otherwise carry on under this act: Provided, That declarations of trust shall not be sufficient in themselves to authorize the trustees named therein to assume corporate powers, but all such trustees referred to in this act shall be incorporated only in the manner prescribed in and by complying with the provisions of this act. Trustee corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.148.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 3 of Ch. I of Part I of Act 84 of 1921, being CL 1929, § 9945; and section 1 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10077.

450.149 Trustee corporations; trustees, vesting of property; trust instrument, definition.

Sec. 149. Same; vesting of property in trustees; trust instrument defined. In any case mentioned in the foregoing section where property, whether real, personal, or mixed, amounting in value to 1,000 dollars or more, has been or hereafter shall be so given, granted, devised, or bequeathed to 3 or more trustees, or in any case where the income from any property or fund has been or hereafter shall be so given, or bequeathed to such trustees for any such purpose, where the annual amount of such income is 1,000 dollars or more, and where it shall, for the more effective and perfect administration of any such trust, be deemed expedient to organize themselves as a corporation, then it shall be lawful for such trustees to become incorporated under this act. The term "trust instrument" or "instrument of trust" as used in this act shall be construed to mean and refer to any lawful deed of gift, grant, agreement, or any last will and testament by which the donor, grantor, or testator shall give, grant, devise, or bequeath any property, real, personal or mixed, in trust for general or specific uses; and any and all conditions, terms or directions contained therein, and any act, declaration or instructions of a legal nature made by any corporation or body directing or authorizing trustees thereunder to take, receive, hold, manage or dispose of any of the property of such corporation for general or specific purposes for the benefit of such persons or objects as may be therein designated. Such terms shall not include constructive or resulting trusts.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.149.

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Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 2 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10078.

450.150 Trustee corporations; articles of incorporation.

Sec. 150. Same; articles of incorporation. The articles shall, in addition to other requirements made in this act, state:

(a) The nature of the business, if any, in which such trustee corporation will be engaged, and the nature and value of the trust property; and to all such articles, wherever filed, there shall be attached verified copies of every trust instrument or other written directions upon which such trust is founded;

(b) The number of persons who shall constitute the permanent board of trustees of such corporation; the length of time for which the trustees are authorized to act after election or appointment as the case may be; and the mode in which their successors shall be elected or appointed;

(c) Whether or not other persons than the incorporators are, or may become, members or stockholders thereof.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.150.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 3 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10079.

450.151 Trustee corporations; officers.

Sec. 151. Same; officers. Every trustee corporation shall have officers corresponding to those prescribed for corporations generally in this act, appointed or elected as such trustees may agree upon by a majority vote, or as may otherwise be provided for in the trust instrument. Such corporation shall have all the rights, powers, privileges, and immunities conferred by law upon corporations generally, excepting as limited in the trust instrument or by the provisions of this act.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.151.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 4 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10080.

450.152 Trustee corporations; powers as to property.

Sec. 152. Same; powers in relation to property. Unless otherwise prohibited or not contemplated in the trust instrument, such trustee corporation may by gift, grant, devise or bequest, take, receive and hold any property, real or personal, so given, granted, devised or bequeathed from other persons than the person or persons by whose deed, will or other instrument the trust was originally founded. Any 2 or more persons may by the same instrument or by separate instruments, give, grant, devise, or bequeath property in trust, for any of the purposes mentioned in section 148 of this act, to the same trustees upon such terms and conditions as may in such instrument or instruments be agreed on, and such trustees, if authorized to incorporate, shall attach to the articles of incorporation each and every one of such agreements, and shall be governed by the conditions therein imposed upon them, if not incompatible one with the other. After incorporation to carry out the express directions or conditions of any such trust instrument, no such trustees shall thereafter accept any gift, grant, devise, or bequest upon any condition or conditions incompatible with the articles or with any instrument required to be attached thereto.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.152.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 5 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10081.

450.153 Trustee corporations; property and funds, use, investments.

Sec. 153. Same; use of property and funds; investments. The property and funds of every trustee corporation shall be faithfully and exclusively used for the purposes thereof as set forth in its articles or as required by the terms of the trust instrument; and such trustees shall be held to the same degree of responsibility and accountability with respect thereto as if not incorporated, excepting where a less degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or where such trustees remain under the control of shareholders in such corporation other than themselves who retain the right to direct and do direct the action of the trustees as to the use of such trust property from time to time. Nothing herein contained shall be construed as prohibiting any such board of trustees, having more than 5 members, from appointing an executive committee or such other committees as they may desire, with such powers and division of work and responsibility as such board may agree upon, not inconsistent with the trust instrument or with the general provisions of this act governing the management and powers of corporations generally. Such corporation may, unless otherwise specifically directed in the trust instrument, invest its funds

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in accordance with the laws of this state governing authorized investments for trustees: Provided, That no loan of such funds shall be made to any trustee, officer or servant of such corporation.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1937, Act 183, Imd. Eff. July 9, 1937;—CL 1948, 450.153.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 6 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10082.

450.154 Trustee corporations; trustees, vacancy, filling.

Sec. 154. Same; vacancy; among trustees, filling. In any case where the trust instrument fails to provide for the filling of vacancies among the trustees due to death, disability, resignation or other cause, and such vacancy occurs, the remaining trustees may apply to the circuit court in chancery of the county where the registered office of such corporation is located, for the appointment of some suitable and competent person to fill such vacancy, and the circuit judge thereof may, upon such ex parte or other showing as he may require, make such appointment by an appropriate order, and the person so appointed shall, upon filing his written acceptance as such trustee, be and become a trustee of such corporation with the same powers as those originally appointed. A certified copy of every such order shall be forthwith filed in the same manner as provided for original articles.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.154.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 7 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10083.

450.155 Trustee corporations; circuit courts, petition; jurisdiction of court.

Sec. 155. Same; petition of trustees to circuit court; jurisdiction of court. In any case where the trustees of any such trustee corporation are in honest doubt and unable to agree as to the construction of any of the terms or conditions of any such trust instrument or their powers or duties thereunder, any or all of such trustees may file his or their petition in the circuit court in chancery for the county in which the registered office of such corporation is located, asking for the construction of the said court upon the whole or any part of such instrument, under and by the same procedure as is provided by law for the construction of wills. In case any public interest is involved, the prosecuting attorney of such county shall enter his appearance therein, and shall do so in all cases involving hospitals or charitable homes or similar institutions to which the general public may be admitted on application. If less than the entire board of trustees joins in such petition, the remaining members shall become defendants and shall be served with such notice or other process as the rules of the court may require. Such court shall have jurisdiction to determine every doubtful, or disputed question raised by such petition, and the opinion and directions of such court, when filed, shall be binding upon such corporation and the trustees thereof.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.155.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 8 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10084.

450.156 Trustee corporations; act amendment of trustee agreement.

Sec. 156. Same; amendment of trust agreement. If the donor or grantor in any such trust instrument, shall desire to alter, amend, enlarge or restrict the gift or grant or any of the terms or conditions thereof, and does so, it shall be the duty of such trustees to forthwith file a verified copy of such amended trust instrument in the same manner as provided for original articles, and any amendments to such articles occasioned by such amended trust instrument shall likewise be forthwith made and so filed by such trustees, but no such amendments to the articles shall be valid that change the original purposes of the corporation in their entirety.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.156.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 9 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10085.

450.157 Trustee corporations; hospitals; asylums; trustee instrument; apprenticing destitute or foundling children.

Sec. 157. Same; hospitals, asylums. In all cases where lands, or any other property, amounting in value to 5,000 dollars or upwards, have been or shall hereafter be given, granted, devised or bequeathed to 3 or more trustees for the purpose of founding or endowing a hospital or other charitable asylum for the care or relief of indigent or other sick or infirm or aged persons, or the care of minor orphans or crippled children or for the care and protection of unfortunate women, or any number of such purposes, such trustees may incorporate under this act as a trustee corporation. Unless restricted by the trust instrument in respect thereto such trustees

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may unite in such incorporation with other persons contributing to the maintenance of such hospital or asylum, and all such other persons shall become members of such corporation upon making such contribution as may be fixed and determined in the articles or by-laws of the corporation: Provided, That any 3 or more persons may incorporate for any such charitable purpose as a trustee corporation, where the hospital, home, asylum, or other institution to be founded by such corporation is to be constructed, equipped and maintained principally by donations not made under any trust deed or other instrument in writing declaring the uses and purposes to which such property shall be devoted, and every such corporation shall have authority to fix and prescribe the terms and conditions of membership therein.

The trustees of such trustee corporation, or a majority of them, are hereby authorized and empowered to indenture or apprentice to responsible persons, any destitute or foundling children now, or which may be hereafter, in charge or care of such corporation, until such children shall respectively become of lawful age, and to make such indenture in each case as binding and effective in all respects as if said trustees were the lawful parents or guardians of said children: Provided, That said trustees shall have power to withdraw such child from any person to whom he or she may be indentured, when in their opinion the interests of the child may require it.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.157.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 10 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10086; and section 11 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10087.

450.158 Trustee corporations; hospital, asylum, charitable institution; gifts, acceptance.

Sec. 158. Same; hospital; asylum, or other charitable institution. Whenever there shall exist any hospital, asylum, home for the care of indigent, aged or infirm persons, or any other charitable institution in this state, the legal title to which and the land used in connection therewith has been conveyed to 1 or more persons in trust, for charitable purposes, and the care and management of which institution is entrusted to a board of control consisting of 5 or more persons, appointed from 1 or more charitable, religious or fraternal bodies, in pursuance of the provisions contained in the deed conveying the legal title of such institution and land to such trustees, such board of control may become incorporated as a trustee corporation and become subject to the provisions of this act.

Gifts. Such trustee corporation may receive gifts, bequests and devises of money and other personal property and real estate for the benefit of the hospital, asylum or home for the care of indigent, aged or infirm persons, or other charitable institution which it has in its charge, and shall have power to sell such real estate and personal property as shall be given to it, and invest the proceeds thereof in the same manner as is provided in this act for the investment of gifts and bequests of money to trustee corporations whenever, in the judgment of the proper officers or committee or committees of such corporation, it may be deemed beneficial to such institution.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.158.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 12 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10088; and section 13 of Ch. I of Part IV of Act 84 of 1929, being CL 1929, § 10089.

450.159 Church trustee corporations; trustees, election, number; certification of election.

Sec. 159. Church trustee corporations; election of trustees. When there is organized within this state any presbytery, diocesan convention, diocese, synod, conference, district or other organization, being an association of congregations or societies, or a quarterly conference of a station, mission, class, congregation, circuit or other organization of a religious denomination, which shall desire to possess corporate powers in order to effectuate the purposes of such organization or to create a corporate board of trustees for any endowment or other property of the denomination represented by such body, such diocese, presbytery, diocesan convention, synod, conference, board of district stewards, or a quarterly conference thereof, may, at a meeting thereof held and conducted according to the rules and regulations of such organization, association or quarterly conference, elect trustees in number not more than 9 nor less than 3, and also designate the corporate name by which such trustees and their successors in office shall be known. It shall be the duty of the officer presiding over such election to give to such trustees a certificate of their election under his hand and seal, specifying the name by which such trustees and their successors shall thereafter be known. They and their successors shall hold their offices for the term specified in such certificate of election, or until the organization or association first making such election elects others to succeed them. Such trustees, upon receiving certificates of their election, shall file articles in the manner provided in section 5 of this act and shall be subject to the provisions of this act relating to trustee corporations and are hereinafter called church

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trustee corporations. Such corporations shall be governed by the provisions of this act relating to trustee corporations except as specifically otherwise provided.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.159.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 14 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10090.

450.159a Church trustee corporations; trustees, increase, decrease; resolutions, adoption; meetings, terms; additional trustee, election.

Sec. 159a. Notwithstanding any provision or statement contained in the articles or statement of incorporation of any corporation formed or now existing under section 159, such corporation being now designated a church trustee corporation, the number of the trustees constituting such church trustee corporation may be increased in number to not more than 9 or decreased in number to not less than 3 without amendment of its articles or statement of incorporation. The increase or decrease in the number of its trustees may be accomplished by a resolution of the organization or association first electing the trustees or by a resolution of a successor organization or association. The resolution may be adopted at a regular meeting of the organization or association or at a special meeting called for that purpose. The trustees may be divided into classes whose terms of office expire at different dates. The officer presiding over the meeting shall give to the existing trustees a copy of the resolution certified by him to be a correct copy. Any additional trustees may be elected at the meeting at which the resolution is adopted.

History: Add. 1966, Act 29, Imd. Eff. May 3, 1966.

450.160 Church trustee corporations; trustees, vacancy, filling.

Sec. 160. Same; vacancy among trustees, filling. Elections of trustees of church trustee corporations to fill the places of those whose terms of office expire shall take place at the last regular meeting of such presbytery, synod, conference, diocesan convention or other representative body occurring prior to the expiration of the term of their predecessors. Vacancies in any such board of trustees caused by death, resignation, removal, declination to serve, or otherwise, may be filled by the appointing body at any regular meeting thereof, or at any special meeting called for that purpose, or for that and other purposes, pursuant to the rules of such body.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.160.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 15 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10091.

450.161 Church trustee corporations; powers as to property.

Sec. 161. Same; powers in relation to property. Trustees of church trustee corporations may, in their corporate name, take and hold all property, real and personal, devised, bequeathed, transferred or conveyed to them for the use and benefit of the religious denomination by whose representative body they are appointed. In the management and disposition of such property they shall be governed by the terms of any will, deed, or other instrument by which such property shall be given to them, and subject to such terms, by the directions of the body by whom they were elected.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.161.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 16 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10092.

450.162 Church trustee corporations; investment, powers, certificate.

Sec. 162. Same; powers of investment. Trustees of church trustee corporations may, in their corporate name, invest and reinvest the property in their hands and under their control as such trustees, collect the rents, issues and profits thereof, and out of the same pay the taxes, repairs, insurance and other expenses incident to the care thereof: Provided, That such trustees shall neither sell, convey, mortgage, nor lease for a longer period that [than] 3 years, any real estate held by them as such trustees, unless duly authorized to do so by the presbytery, synod, conference, diocesan convention, or other representative body which appointed them. And in every case of sale, conveyance or incumbrance of real estate, such trustees shall cause to be filed in the office of the register of deeds in the county in which such real estate is situated, with the instrument, a copy of the acts of said presbytery, synod, conference, diocesan convention, or other representative body authorizing such sale, conveyance or incumbrance, duly certified by the secretary of said representative body to be a true and complete copy of said proceedings. And such certificate so made and filed shall be prima facie evidence of the facts therein recited.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.162.

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Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 17 of Ch. I of Part IV of Act 84 of 1921, being CL 1929, § 10093.

450.163-450.167 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

Compiler's note: The repealed sections pertained to foundations generally.

450.167a Henry Ford trade school; dissolution; cancellation of franchise; assets, disposal, sale; debts, payment; retirement program; payment of dissolution charges; certificate, filing, contents.

Sec. 167a. (a) Pursuant to section 167 of this act, the Henry Ford trade school, a non-profit corporation and foundation organized and existing under the laws of this state, shall be and as of November 30, 1952 is dissolved, its franchise cancelled, and all of its powers, rights and privileges extinguished and finally terminated except as herein provided for the winding up of its affairs and activities: Provided, however, That the powers, rights and privileges hereinafter set forth shall become immediately effective.

(b) The trustees of said foundation shall, before final disposition of the assets as provided in subdivision (f) of this section, have the power to accept and retain gifts of any nature whatsoever to be devoted to any of the purposes set forth in subdivisions (d), (e) and (f) of this section. Future reference in this section to “assets” shall mean and include any such gift or gifts which may be received by the trustees.

(c) The trustees of said foundation shall liquidate by sale, or otherwise dispose of, subject to the provisions of subdivision (f) of this section, all of the assets of said foundation, including land, buildings and machinery, but until such liquidation is completed, may in their discretion continue to operate on a full or partial basis.

(d) The trustees shall, from the assets of said foundation or from the proceeds of the sale thereof, as provided for in subdivision (c) of this section, pay all debts, obligations and liabilities of the foundation.

(e) The trustees may establish a retirement program and/or other provision for the employees of Henry Ford trade school employed on March 1, 1952; and the trustees may use for this purpose such portion of the assets of the foundation, after the payment of all other debts, obligations and liabilities of the foundation, as is, in their discretion, necessary to fund and carry out such plans, by purchase of annuities, establishment of pension trust funds or other appropriate means.

(f) The trustees shall, after liquidation of the assets of said foundation as provided for in subdivision (c) of this section, the payment of the debts, obligations and liabilities of said foundation, as provided for in subdivision (d) of this section, and the establishment of a retirement program and/or other provision for the employees of the foundation, as provided for in subdivision (e) of this section, dispose of the remaining assets of the foundation by grant, gift, or such other method as the trustees in their sole discretion determine will promote and perpetuate the general purposes for which Henry Ford trade school was organized, namely, instruction and training in technical, scientific and/or agricultural pursuits: Provided, however, That the trustees are hereby specifically authorized, in disposing of said assets, to make or not make in their sole discretion, and upon such terms and conditions as they shall in their sole discretion determine, gifts or grants to the board of education of the school district of the city of Dearborn, Michigan, and/or to the board or boards of education of any other school district or districts within the state of Michigan: Provided further, That in no event and under no circumstances shall either the whole or any part or portion of said assets, or the net income therefrom, be used for, accrue to, or inure to the benefit of any private individual, or be used for or devoted to carrying on propaganda, or otherwise attempting, to influence legislation, or be used for or devoted to objects or purposes which are not exclusively religious, charitable, scientific, literary or educational, within the meaning of both the laws of the state of Michigan and the internal revenue laws of the United States of America.

(g) The trustees are hereby authorized and empowered to pay all necessary and incidental costs, fees, charges and expenses incurred in connection with the winding up and dissolution of Henry Ford trade school provided for in this section, and shall have such further and additional rights and powers as are or may be necessary and proper for the complete winding up of the affairs and activities of the foundation in compliance with this act.

(h) Upon the payment of all the debts, obligations and liabilities of the foundation and the final disposition of the assets of the foundation, the trustees shall file with the Michigan corporation and securities commission a certificate in which the trustees, or 1 of them duly designated therefor, shall certify that all the debts, obligations and liabilities of the foundation have been paid and discharged and that all of the assets of the foundation have been disposed of, all in compliance with this act.

(i) Upon the filing of such certificate the trustees and the members shall be discharged of any and all further responsibility for the debts, obligations, liabilities and/or assets of the foundation and the dissolution and winding up of said foundation shall be complete.

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History: Add. 1952, Act 23, Imd. Eff. Mar. 26, 1952.

450.168 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

Compiler's note: The repealed section pertained to the applicability of provisions of act relating to foundations.

450.169 Corporations to provide student aid.

Sec. 169. Same; corporations to provide student aid. Any corporation heretofore or hereafter organized for the purpose of providing scholarships in the University of Michigan or in any of the publicly maintained schools or colleges of this state or formed for the purpose of loaning money or giving other assistance to students at any of said schools or colleges or said university may, by 2/3 vote of its board of trustees, transfer and convey all its property and assets to, and become consolidated with, any other corporation organized under the laws of this state for corporate purposes of the same character. Notice of such transfer and consolidation shall be filed with the secretary of state within 30 days thereafter, and such corporation shall thereupon be deemed to have surrendered its corporate rights and shall have no rights except as may be necessary to close its corporate affairs.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.169.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 24 of Ch. I of Part IV of Act 84 of 1921, as added by Act 267 of 1929, being CL 1929, § 10100.

450.170 Educational corporations; incorporation.

Sec. 170. Any number of persons, not less than 3, may incorporate for the purpose of conducting a school, academy, seminary, college or other institution of learning where preparatory subjects or the arts, sciences, professions, special occupations and higher learning may be taught. Such corporations are hereinafter called educational corporations. Educational corporations may be organized for profit or by trustee corporations if so provided. Educational corporations organized for profit or as trustee corporations shall also comply with the provisions of this act relating to corporations for profit or trustee corporations. Educational corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided and shall be subject to the provisions of Act No. 148 of the Public Acts of 1943, as amended, being sections 395.101 to 395.103 of the Compiled Laws of 1948.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.170;—Am. 1967, Act 157, Imd. Eff. June 30, 1967.

Former law: See section 4 of Ch. I of Part I of Act 84 of 1921, being CL 1929, § 9946.

Compiler's note: For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

450.171 Educational corporations; classification; religious college not included; filing of articles of incorporation; statement; guaranteed annual income as credit to capital; use of "college", "university", or "junior college" as name; expansion of program.

Sec. 171. (1) For the purposes of this act, educational corporations are classified as 1 of the following:

(a) Class w: those having a capital of not less than $500,000.00.

(b) Class x: those having a capital of not less than $100,000.00 and less than $500,000.00.

(c) Class y: those having a capital of $1,000,000.00 or more.

(d) Class z: those instituted and maintained by an ecclesiastical or religious order, society, corporation, or corporations that retain control of the institution for denominational purposes.

(2) For purposes of this act, educational corporation does not include a religious college described in section 184a.

(3) When submitting its articles of incorporation for filing with the department of labor and economic growth, an educational corporation conducting an elementary or secondary instructional program must include a written statement from the state board of education with the articles of incorporation and an educational corporation conducting a postsecondary educational program must include a written statement from the bureau of career education within the department of labor and economic growth with the articles of incorporation. A written statement submitted with the articles of incorporation of an educational institution under this subsection must confirm all of the following concerning the educational corporation:

(a) The housing space and administration facilities that it possesses or proposes to provide for its declared field or fields of education are adequate.

(b) Its proposed educational program leading to the diplomas or degrees that it proposes to offer is adequate.

(c) The laboratory, library, and other teaching facilities that it possesses or proposes to provide are

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adequate.

(d) It has or proposes to employ an adequate staff, fully trained, for the instruction proposed.

(e) At least 50% of its capital, whether consisting of stock or in gifts, devises, legacies, bequests or other contributions of money or property, has been paid in or is in its possession.

(4) In determining whether any educational corporation satisfies the conditions specified in subsection (1), the department of labor and economic growth may treat as a credit to the capital of the corporation the guaranteed annual income of that corporation to the extent that it considers that guaranteed income the equivalent of all or any part of the required endowment.

(5) The use of the word "college" or "university" in the name of any group, organization, or association formed in this state after September 18, 1931 is limited to those educational corporations complying with the requirements for class w or class y educational corporations or to any educational corporations of class z that satisfy the requirements established for class y corporations. The word "college" may be used by ecclesiastical corporations in the name of religious colleges complying with the requirements of section 184a. The words "junior college" may be used by educational corporations of class x. If this subsection is violated, it is the duty of the prosecuting attorney, in the county where the educational corporation is located, to bring proceedings to enjoin the further use of a name in violation of this subsection.

(6) An educational corporation is not permitted to expand its program beyond that specified in its articles of incorporation until it obtains a written statement approving the facilities, equipment, and staff or the proposed facilities, equipment, and staff as adequate for the offering of the additional educational program and submits it to the department of labor and economic growth. The educational corporation must obtain the written statement described in this subsection from the state board of education if it is conducting an elementary or secondary instructional program or from the bureau of career education within the department of labor and economic growth if it is conducting a postsecondary educational program.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—Am. 1943, Act 160, Imd. Eff. Apr. 17, 1943 ;—CL 1948, 450.171;—Am. 1958, Act 147, Eff. Sept. 13, 1958;—Am. 2006, Act 420, Imd. Eff. Sept. 29, 2006.

Compiler's note: For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Former law: See section 2 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10102.

450.172 Educational foundations; colleges, establishment.

Sec. 172. (a) Educational corporations of class (w) as defined in section 171 of this act shall have authority to establish and conduct general colleges for furnishing higher learning and to confer such degrees and honors as shall be approved by the state board of education prior to the filing of articles of incorporation; and the term “college” as herein used shall be construed to include any college, university or other institution where the arts, sciences, professions and higher learning are taught and degrees and honors therein conferred. Such colleges may also include preparatory schools as commonly understood;

(b) Educational corporations of class (x), as defined in section 171, shall have authority to establish and conduct junior colleges, seminaries, academies or preparatory schools, as determined and approved by the state board of education, but not general colleges or universities as defined in subsection (a) hereof;

(c) Educational corporations of class (z) as defined in said section 171 shall embrace such schools, academies, or colleges as have been heretofore founded under Act 135, Public Acts 1899, known thereunder as “Ursuline academies”; those founded under Act 121, Public Acts 1915, and known thereunder as “ecclesiastical seminaries”; those founded under Act 28, Public Acts 1901, and known thereunder as “Evangelical Lutheran deaf mute institutions”; those founded under Act 135, Public Acts 1867, known as “industrial and charitable schools”; those organized under paragraph (c), subdivision 1, chapter 2, part 4, of Act 84, Public Acts 1921, and such other schools, colleges and institutions of like character and purpose as may be formed under any law of this state for educational purposes shall have all the rights, powers, privileges and immunities enjoyed under its act of incorporation and without regard to the classification made in this act, and upon complying with the provisions hereof shall have such additional rights, powers, privileges and immunities as are conferred hereunder according to the classifications prescribed in this act: Provided further, That any corporation heretofore formed under Act 359, Public Acts 1913, and known thereunder as “kindergarten institutions” shall hereafter be classified under class (x) of sections 171 and 172 of this act: Provided further, That any corporation of class (z) hereafter organized under this act may enjoy the privileges provided under classes (w), (x) and (y) of section 171, on condition that it satisfies the requirements set up for corporations of these respective classes.

(d) Educational corporations of class (y) as defined in section 171 shall have authority to establish and conduct colleges or universities of a graduate rank with programs of studies of 5 years or more.

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History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—Am. 1943, Act 160, Imd. Eff. Apr. 17, 1943 ;—CL 1948, 450.172;—Am. 1958, Act 147, Eff. Sept. 13, 1958.

Compiler's note: Act 135 of 1899, Act 121 of 1915, Act 28 of 1901, Act 135 of 1867, and Act 359 of 1913, referred to in this section, were repealed by § 10134 of the Compiled Laws of 1929. Act 84 of 1921, also referred to in this section, was repealed by Act 327 of 1931.

For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Former law: See section 3 of Ch. II of Part IV of Act 84 of 1921, as amended by Act 267 of 1929, being CL 1929, § 10103.

450.173 Educational foundations; articles of incorporation, contents, amendment.

Sec. 173. Same; articles of incorporation. The articles of every educational corporation shall clearly set forth the educational system of the institution to be founded and the character of the degrees, honors, diplomas, or certificates which it proposes to grant, and same shall be approved by the state board of education prior to the filing of the articles of incorporation. If a college or university, the articles shall state the number and name of the faculties to be established; and if a denominational religious school or college, the name of such denomination and the body supporting or controlling the same. Such articles shall be filed as provided in section 5 of this act. Any such corporation may, by increasing its capital to a higher class and amending its articles, assume the powers and privileges of such higher classification as it may thereby be entitled to as defined in this act.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—CL 1948, 450.173.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Former law: See section 4 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10104.

450.174 Educational foundations; property, acceptance; government.

Sec. 174. Same; acceptance of property. The directors or trustees of any such educational corporation may accept gifts, devises, legacies or bequests, of personal or real property, or the principal or interest of any money or other fund, in trust for the benefit of such institution or particular faculties, departments or other special purposes thereof; and such trustees or directors shall hold and dispose of such trust funds in accordance with the directions and wishes of any of the donors in each case; and shall account for all such funds and property in such manner and at such times as may be appointed in the instrument, deed or will accompanying the donation or as provided by law or the articles or by-laws of such corporation, made pursuant thereto. Where no other provision is made with respect thereto, the directors or trustees of every such corporation shall be governed as to their duties, powers and responsibilities, by the general provisions of this act respecting such boards; and as to their trusteeship of property they shall be governed by the provisions of this act governing trustee corporations.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.174.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Former law: See section 5 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10105.

450.175 Educational foundations; board of directors, trustees; powers.

Sec. 175. Same; powers of board of directors or trustees. The control of the business and secular affairs of every such educational corporation shall be vested in a board of directors or trustees. Such board shall also have exclusive control over the educational affairs and policy of such institution, and as such may:

First, Appoint, employ and pay the salary of a president, or principal, and such professors, tutors, assistants, and employees, as the board shall determine necessary;

Second, Direct and prescribe the course or courses of study and the rules of discipline for such institution, and enforce the same; and prescribe the tuition and other fees to be paid by students attending such institution;

Third, Grant such diplomas, certificates of graduation, or honors and degrees, as the nature of the institution may warrant, or as contemplated in the articles;

Fourth, Delegate to the president or principal, and the various professors and tutors, such authority over the educational affairs of the institution as the board may deem advisable;

Fifth, Co-operate with other schools, colleges and educational institutions within this country in promoting the best interests of education.

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History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.175.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Former law: See section 6 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10106.

450.176 Educational corporations; holders of diplomas or certificates; privilege or immunity.

Sec. 176. A diploma, certificate of graduation, or other evidence of attendance at an educational corporation entitles the lawful recipient to all the privileges and immunities that by custom or usage are allowed to holders of similar diplomas or certificates granted by similar institutions in this country. However, if an occupation or profession is regulated by statute as to the requirements and qualifications necessary to the practice of that occupation or profession, the diploma or certificate of graduation does not entitle the recipient to any privilege or immunity if those statutory requirements or qualifications are not complied with.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.176;—Am. 2006, Act 420, Imd. Eff. Sept. 29, 2006.

Compiler's note: For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Former law: See section 7 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10107.

450.177 Educational foundations; inspection by state board of education, time; annual report, contents.

Sec. 177. Same; inspection by state board of education; annual report. Every such educational corporation shall be visited and inspected by the state board of education, in person or through visitors or inspectors appointed by them, at least once every 3 years. Said state board of education shall at the time of visitation ascertain and publish information upon all matters pertaining to the condition, management, instruction and practices of such corporations, and shall file a copy of their report with the Michigan corporation and securities commission. Upon evidence that the property is at any time less than is required by law, or that any such educational corporation is not otherwise complying with the provisions of this act, they shall serve notice on such corporation to remedy the defects within a reasonable time to be fixed in such notice, and in case the deficiency is not corrected within the time fixed by them, they may institute proceedings at law for the dissolution of such corporation. Such trustees shall be required, on or before the first day of December, annually, to report to the state board of education, a statement of the name of each trustee, officer, teacher and the number of students of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1939, Act 162, Eff. Sept. 29, 1939;—CL 1948, 450.177.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

For transfer of certain powers and duties vested in the department of career development or its director, relating to powers and duties of state board of education or superintendent of public instruction to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Former law: See section 8 of Ch. II of Part IV of Act 84 of 1921, being CL 1929, § 10108.

450.178 Ecclesiastical corporations; incorporation; purpose.

Sec. 178. Ecclesiastical corporations. Any number of persons, not less than 3, may incorporate for the purpose of establishing any church organization for the purpose of teaching and spreading their religious beliefs and principles. Every such corporation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations generally except as specifically otherwise provided. The term “church” and/or “church organization” used in this act shall be construed to include any church, denominational unit, or church society as the term is commonly used and understood but shall not apply to such organizations as Sunday schools, Epworth Leagues, Young People's Unions, Bible classes and similar societies organized by and affiliated with the parent churches. Whenever any number of churches or other corporations organized for religious purposes desire to unite in a central organization for the accomplishment of any common purpose they may incorporate such organization by severally adopting, at meetings specially called for the purpose, resolutions expressing their desire to become members of such corporation; and by filing duly attested copies of such resolutions together with a copy of the articles of such corporation, as provided for the filing of articles in section 5 of this act. The corporations formed under this section are hereinafter called ecclesiastical corporations.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.178.

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Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 5 of Ch. I of Part I of Act 84 of 1921, being CL 1929, § 9947; and section 1 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10109.

450.179 Ecclesiastical corporations; articles of incorporation.

Sec. 179. Same; articles of incorporation. The articles of any such ecclesiastical corporation shall be executed by the incorporators and shall follow the form prescribed in this section, and contain such further statements as may be appropriate to each such corporation, as the law may direct or as the incorporators may deem necessary or advisable. Such form shall run as follows:

"We, the undersigned, desiring to become incorporated under the provisions of Act No. ..... of the Public Acts of 1931 (namely, this act) do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation and by which it shall be known in law, is "The ..... church" (or other name which clearly indicates a religious society or association);

Second, The location of said church or society shall be in the ..... of ..... county of ..... and state of Michigan;

Third, The time for which said corporation shall be created shall be .....;

Fourth, The members of said church or society shall worship and labor together according to the discipline, rules and usages of the ..... church in the United States of America (or other jurisdiction as the case may be), as from time to time authorized and declared by the ..... (here insert the name of the higher ecclesiastical body or bodies, if any, authorized to determine such question);

Fifth, And succeeding articles, if any (containing in brief and concise language, such other and further declarations or statements pertaining to such corporation, as may be deemed necessary or advisable by the incorporators, or as may be hereinafter prescribed).

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the ..... of ....., County of ..... and state of Michigan, this ..... day of ....., 19.....

(Residences)

.....

(Signatures)

.....

(Acknowledgments.)

(Consent if any required.)

(Certificates, if any.)"

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.179.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 2 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10110.

450.180 Ecclesiastical corporations; articles, execution, contents; receivership; unclaimed property, state.

Sec. 180. Same; execution and contents of articles; receivership; unclaimed property to escheat to state. Excepting as herein otherwise provided, such articles shall be executed, acknowledged, filed and disposed of in the same manner and with like effect as is prescribed in section 5 of this act. Such articles may contain, among other things, specified in section 179 of this act, any provisions the incorporators may determine upon respecting the church polity or government, and the blank spaces provided for shall be filled in by words appropriate to the particular denomination or corporation being so incorporated. Such society shall not, however, by its articles, by-laws or system of discipline, permit or encourage the teaching of immoral practices or conduct or anything that is contrary to public policy; that violates the sanctity of the marital relations; that will prohibit any member of such society from appealing to the courts of the United States or the courts of this state for the enforcement of personal or property rights; that the by-laws and rules of discipline shall not be subject to civil law or decree; that encourages violating or disregarding any law of the United States or of this state. No provision shall be made in such by-laws or articles permitting such corporation to receive, accept, acquire or endeavor to secure property through fraud, misrepresentation or undue influence under the guise of religious teaching or discipline; that will permit any individual as such and not as an official of said society to acquire and hold the property thereof in his own name, or which permits any official to dictate and construe the rules of discipline or by-laws of such society without the approval of the directing board thereof, or require that such by-laws and rules be approved by him before becoming

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effective. Whenever proceedings in the nature of quo warranto have been or may hereafter be brought against any association or corporation organized or doing business in this state as a religious or ecclesiastical body, and when it shall appear in the information that such association or corporation has exceeded its powers, misused its franchises and privileges, committed any fraud or deception, has been guilty of any misapplication of funds or property, has secured property or donations through fraud or misrepresentation, has acquired or used property illegally, has been guilty of propagating or teaching immoral or vicious principles or doctrines or has otherwise violated the laws of this state or the United States, the attorney general may, in such proceedings, or in separate proceedings, apply to the same or any other circuit court for a receiver for the property and effects of such association or corporation, and in all such cases the court shall appoint a receiver in like manner and with like effect and powers as in insolvency proceedings as provided for in the judicature act of 1915 and any amendments thereto. All persons having any interest in the property of such association or corporation or who have conveyed, donated or contributed substantially to the funds or property of such association or corporation, may intervene in such proceedings for the purpose of obtaining restitution of such property or their just share thereof, and shall be entitled to prove their claims thereunder according to the rules and practice of the court. Any property, goods or money of such association or corporation, or held in trust by or for it, and not claimed or distributed to the creditors or other claimants whose claims have been duly proved in the proceedings herein authorized, shall escheat to the people of this state and upon the winding up of the receivership shall be conveyed to the state board of escheats, and shall be disposed of by such board as now provided by law for other escheated property.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.180.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 3 of Ch. III of Part IV of Act 84 of 1921, as amended by Act 77 of 1923, being CL 1929, § 10111.

450.181 Ecclesiastical corporations; by-laws.

Sec. 181. Same; by-laws. Every such ecclesiastical corporation shall have authority to adopt by-laws prescribing the qualifications of members; the manner in which they shall be admitted, suspended or expelled; the number and official titles of the person or persons who control the temporal affairs of such corporation; their terms of office; the manner of their selection and removal from office; their respective official duties; the time and manner of calling and holding church business meetings and the number of members constituting a quorum; how far such corporation shall be subject to the approval or control of any other corporation or higher church body which corporation or body shall be named; the manner and condition under which property, both real and personal, may be acquired, held and disposed of; and such other by-laws as may be deemed necessary for the management of the affairs of such corporation. The by-laws may also prescribe how the same may be altered, amended or repealed.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.181.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 4 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10112.

450.182 Ecclesiastical corporations; articles, amendment procedure.

Sec. 182. The articles of any such ecclesiastical corporation may be amended at any meeting of the members of such corporation called for that purpose pursuant to the bylaws, by the affirmative vote of a majority of the members entitled to vote thereon present at such meeting, unless a different majority is required by the rules of discipline or by the church policy in any particular case, and it shall be the duty of the person or persons controlling the temporal affairs of such corporation to make, sign and acknowledge in the same manner that the original articles were made, signed and acknowledged, a certificate, containing the name of the corporation, a copy of the call for the meeting at which the amendment was made, the number of members present at such meeting, the number of members voting in favor of the amendment and a copy of the amendment; and such certificate of amendment shall be filed in the same manner that the original articles were filed, and upon such filing the amendment shall be effective. Where the system of discipline or polity in any particular denomination or church requires the action, consent or vote of a conference, conclave or synod, presbytery or other body, or the approval of certain officers of such conference or other body or of a bishop or other hierarchical officer, to such amendments, then all such amendments shall be made in conformity to such practice and requirements and shall in all other respects conform to the customs, usages, beliefs and discipline of the particular church body concerned.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.182;—Am. 1967, Act 194, Eff. Nov. 2, 1967.

Former law: See section 5 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10113.

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450.183 Ecclesiastical corporations; powers as to property.

Sec. 183. Same; powers in relation to property. Where no other special provision inconsistent herewith is made in sections 178 to 185, both inclusive, of this act, every such ecclesiastical corporation shall have power to acquire, hold, sell and convey property, both real and personal for the general purposes of such corporation, and it may recover and hold the debts, demands, rights, privileges and all property, whether real or personal, of whatever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, except that acquired through fraud, misrepresentation, undue influence or other unlawful means and in whose hands soever the same may be held, the same as if the right and title had originally been vested in such corporation. The board of trustees may authorize certain of the officers of said board to affix the corporate name and the seal of such corporation, and to execute and attest conveyances, notes, obligations, acquittances and all other necessary legal documents. Such corporation may sell, mortgage and dispose of its personal property; and may mortgage and incumber its real estate. It may acquire real estate by gift, purchase or devise for the purpose of having and holding land and buildings for its own use and occupancy, including a pastor's residence, a church cemetery, church and Sunday school buildings and grounds and church society buildings and grounds, and may sell or mortgage such real estate; shall have and enjoy all the rights, privileges and immunities, so far as any church cemetery owned by it is concerned, which corporations organized to establish rural cemeteries have and enjoy under the laws of this state: Provided, That the right to sell, convey or mortgage such real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, articles or by-laws pertaining to each such corporation: And provided further, That every such corporation insofar as it holds any property in trust for religious, charitable, benevolent, educational or social purposes, shall be deemed to be a trustee corporation within the meaning of this act and governed by the provisions relating to trustee corporations, excepting as herein otherwise provided.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.183.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 7 of Ch. III of Part IV of Act 84 of 1921, as amended by Act 77 of 1923, being CL 1929, § 10115.

450.184 Ecclesiastical corporations; gifts, acceptance, investment.

Sec. 184. Any ecclesiastical corporation incorporated in this state may receive, hold, and use gifts or bequests of money or other property for any special religious, benevolent, charitable, educational, social or other purpose, enterprise or project connected with such corporation, or may receive such gifts or bequests to be by such corporation invested in whole or in part in the name of such corporation, the net income therefrom to be by such corporation used for any of said purposes, according to the terms of such gifts or bequests. All real estate so received and not used by such corporation for any of such purposes shall be sold within 10 years and the proceeds therefrom shall be used or invested according to the terms of such gift or bequest. All such investments made by such corporation shall be in accordance with the laws of this state governing authorized investments for trustees. The trustees, vestrymen, consistory, or other governing body of any ecclesiastical corporation incorporated in this state, may in their corporate name receive gifts and bequests of money for investment upon bond and mortgage when the interest of such investment is to be applied in payment or part payment of the salary of the minister, priest, rector, parson or clergyman of such religious society: Provided, That sums of money, mortgages or investments so held by any such corporation shall be invested by the trustees, vestrymen, consistory, or other governing body, in their corporate name, in accordance with the laws of this state governing authorized investments for trustees.

History: 1931, Act 327, Eff. Sept. 18, 1931;—Am. 1937, Act 183, Imd. Eff. July 9, 1937;—CL 1948, 450.184.

Former law: See section 8 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10116.

450.184a Organization and operation of religious college by ecclesiastical corporation.

Sec. 184a. (1) An ecclesiastical corporation that meets all of the following criteria may organize and operate a religious college under this section:

(a) The ecclesiastical corporation was incorporated under this act before January 1, 2007.

(b) At the time it organizes the religious college, according to the most recent federal decennial census, the ecclesiastical corporation is located in a county with a population of more than 17,500 and fewer than 23,500 residents.

(2) A religious college organized and operated under this section must meet all of the following criteria:

(a) The religious college is organized and operated by an ecclesiastical corporation as a division of the ecclesiastical corporation and is not separately incorporated.

(b) The religious college began operating before January 1, 2007.

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(c) The ecclesiastical corporation retains control of the religious college for denominational purposes.

(d) The religious college has an academic advisory board to assist the religious college in the development of its educational programs. The board shall consist of at least 4 individuals, appointed by the ecclesiastical corporation, who represent similar religious colleges located in the United States.

(e) The religious college offers postsecondary educational programs that are solely designed for, directed toward, and attended by students who seek to learn the particular religious faith or beliefs of the ecclesiastical corporation.

(f) The sole purposes of the educational programs of the religious college are to prepare students for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect or to enter into other vocations directly related to the particular faith of the ecclesiastical corporation.

(g) The religious college does not offer general or liberal arts educational programs or any other postsecondary educational programs other than those described in this subsection.

(3) All of the following apply to the name of a religious college organized and operated by an ecclesiastical corporation under this section:

(a) The ecclesiastical corporation may use the word "college" in the name of the religious college. However, immediately following the name of the religious college, the ecclesiastical corporation shall clearly and prominently indicate on any signs, official school publications, letterhead, business cards, websites, or other similar written documents that include the name of the religious college that the religious college is a division of the ecclesiastical corporation.

(b) If the ecclesiastical corporation uses the word "college" in the name of the religious college, it shall provide a copy of each certificate of assumed name filed by the ecclesiastical corporation with the department of labor and economic growth for the name of the religious college to the bureau of career education within the department of labor and economic growth.

(4) Subject to subsection (5), a religious college may award 1 of the following degrees to a student of the religious college who satisfactorily completes a course of study prescribed by the ecclesiastical corporation for that degree:

(a) If the course of study requires at least 60 semester hours or equivalent of study, an associate of biblical studies, an associate of religious studies, an associate of theology, an associate of church administration, or another substantially similar associate degree that does not include the word "arts", "science", "business", or "applied".

(b) If the course of study requires at least 120 semester hours or equivalent of study, a bachelor of biblical studies, a bachelor of religious studies, a bachelor of theology, or another substantially similar bachelor's degree that does not include the word "arts", "science", "business", or "applied".

(c) If the course of study requires a bachelor's degree and at least 30 additional semester hours or equivalent of study, a master of theology, a master of biblical studies, a master of religious studies, or another substantially similar master's degree that does not include the word "arts", "science", "business", or "applied".

(d) If the course of study requires a bachelor's degree and at least 90 additional semester hours or equivalent of study, including, but not limited to, dissertation credits or research study, a doctor of theology, a doctor of biblical studies, a doctor of religious studies, or another substantially similar doctoral degree that does not include the word "arts", "science", "business", or "applied".

(5) A religious college shall clearly and prominently state all of the following on a student's diploma, certificate of graduation, transcript, or any other document prepared by or provided by the religious college to establish or verify that the student had attended the religious college or completed a course of study at the religious college:

(a) For a degree awarded by the religious college, the name of the degree, including the religious limitation on that degree required under subsection (4). A religious limitation required for a degree title under subsection (4) shall immediately precede or be part of the degree title wherever the degree title appears in the diploma or other document.

(b) That the religious college is not licensed, approved, or otherwise endorsed by the state of Michigan.

(c) For any document described in this subsection other than a diploma, that the state of Michigan does not guarantee that any of the degrees or credits granted by the religious college will be recognized by any organization for any purpose.

(6) A diploma, certificate of graduation, or other evidence of attendance at a religious college entitles the lawful recipient to all the privileges and immunities that by custom or usage are allowed to holders of similar diplomas or certificates granted by similar institutions in this country. However, if an occupation or profession is regulated by statute as to the requirements and qualifications necessary to the practice of that occupation or profession, the diploma or certificate of graduation does not entitle the recipient to any privilege

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or immunity if those statutory requirements or qualifications are not complied with.

(7) An ecclesiastical corporation is not required to obtain the approval of or a license from the department of labor and economic growth to operate a religious college under this section in this state and the operation of the religious college and its educational programs are not subject to the supervision of that department. However, if an ecclesiastical corporation does not obtain the approval of or a license from the department of labor and economic growth to operate a religious college, the ecclesiastical corporation shall clearly and prominently print a disclaimer on all of its application materials, course catalogs, brochures, websites, and other similar publications that states all of the following:

(a) The religious college is a division of the ecclesiastical corporation.

(b) The educational programs offered by the religious college are solely designed for, directed toward, and attended by students preparing for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, or sect or preparing to enter into another vocation directly related to the particular faith of the ecclesiastical corporation.

(c) The religious college is not licensed, approved, or otherwise endorsed by the state of Michigan and that the state of Michigan does not guarantee that any of the degrees or credits granted by the religious college will be recognized by any organization for any purpose.

(8) In any application materials, course catalogs, brochures, websites, or other publications made available by the religious college, the religious college shall include the religious limitation on that degree required under subsection (4), either immediately preceding or as part of the degree title, wherever the degree title appears in the document or publication.

(9) Every 2 years, an ecclesiastical corporation organizing or operating a religious college shall submit a sworn affidavit to the department of labor and economic growth that certifies that the religious college complies with the requirements of this section and includes all of the following:

(a) The name of the religious college. The name stated in the affidavit must comply with subsection (3).

(b) A statement that the religious college offers only educational programs designed for, directed toward, and attended by students preparing for ordination or appointment as a member of the clergy of a church, denomination, or religious association, order, sect, or preparing to enter into another vocation directly related to the particular faith of the ecclesiastical corporation.

(c) A statement that each diploma, certificate of graduation, transcript, or other document described in subsection (5) prepared or provided by the religious college complies with that subsection.

(d) A statement that each document provided or publication made available by the religious college under subsection (8) complies with that subsection.

(e) A statement that the religious college does not accept state or federal assistance for its educational programs and does not accept students who are receiving state or federal financial aid under any higher education loan, grant, or scholarship program.

(10) An ecclesiastical corporation organizing or operating a religious college shall annually provide the department with a surety bond that meets all of the following:

(a) It is conditioned to provide indemnification to any student suffering loss because of inability to complete an educational program at the religious college due to the closing of the religious college.

(b) It expires on June 30 following the date of issuance and the ecclesiastical corporation shall submit proof of renewal for an additional 1-year period to the department of labor and economic growth before the date of expiration.

(c) The amount of the security bond is 1 of the following, whichever is higher:

(*i*) An amount determined by multiplying the number of students enrolled in the religious college by $200.00.

(*ii*) The amount of $5,000.00.

(11) An ecclesiastical corporation operating a religious college that is in compliance with the requirements of this section is authorized to conduct business as a religious college and offer postsecondary educational programs in this state.

History: Add. 2006, Act 420, Imd. Eff. Sept. 29, 2006.

450.185 Ecclesiastical corporations; powers of church unrestricted.

Sec. 185. Same; powers of churches not restricted. Nothing in this act contained shall be construed as limiting or restricting the rights, powers, privileges, immunities or the practices of any church heretofore established or incorporated under any law of this state; nor as requiring any such church to alter or change any rule of discipline, custom or usage in respect of its church policy or government; nor as interfering with the lawful acquisition, use or disposition of any property now owned or held by any such church corporation. The provisions of this act relating to ecclesiastical corporations shall be liberally construed in the interests of

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religion and morality.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.185.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 9 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10117.

450.186 Ecclesiastical corporations; Sunday school, religious society; incorporation.

Sec. 186. Same; Sunday school or religious societies. Any 3 or more persons may incorporate a Sunday school society, or other special religious society or union, not being a church, but having for its object the teaching of religious principles, or the associating together for religious work. The incorporators shall subscribe articles similar to those prescribed for non-profit corporations generally, which articles shall also contain any special conditions or distinguishing principles upon which such corporation is founded, and, if connected with some organized church, the name of the church and a statement of the extent to which such church may exercise superintendence over the affairs of or discipline of the members of such Sunday school or other corporation. The corporations referred to in this section as Sunday schools or special religious societies, shall have all the rights, privileges, immunities and powers granted by this act to non-profit corporations generally in their secular affairs; and in their religious affairs they shall be governed solely by their articles and by-laws, and the system of discipline therein adopted.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.186.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

Former law: See section 6 of Ch. III of Part IV of Act 84 of 1921, being CL 1929, § 10114.

450.186a Public building corporations; incorporation; contracts with state administrative board, legislature's approval.

Sec. 186a. Any number of persons, not less than 3, may become incorporated as a public building corporation for the purpose of constructing, operating and maintaining office buildings and other facilities for the use of the state of Michigan. No contract or contracts between the state administrative board and any public building corporation shall become effective until approved by the legislature by concurrent resolution. Such corporations are hereinafter called public building corporations.

History: Add. 1947, Act 316, Eff. Oct. 11, 1947;—CL 1948, 450.186a;—Am. 1963, 2nd Ex. Sess., Act 28, Imd. Eff. Dec. 27, 1963.

450.186b Public building corporations; powers as to property; state contracts, leases; bonds; by-laws.

Sec. 186b. Every such public building corporation shall have power to take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for its object and purpose, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and reinvest the principal thereof and deal with and expend the income of the corporation in such manner as in the judgment of the trustees will best promote its objects; to enter into contracts and leases with the state of Michigan; to borrow money and issue revenue bonds for the repayment thereof with interest, and may in like case mortgage its property as security for its debts: Provided, That the by-laws expressly authorize such action to be taken, or that the same is authorized by resolution of the trustees at any duly called meeting at which a quorum is present.

History: Add. 1947, Act 316, Eff. Oct. 11, 1947;—CL 1948, 450.186b.

450.186c Public building corporations; non-profit provisions, applicability; administration of property and accumulation; rent to state; fees, purpose.

Sec. 186c. Every such corporation shall be a nonprofit corporation and subject to the provisions of this act relating to nonprofit corporations except as specifically otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the state: Provided, That this act shall not prevent such corporation from charging rent to the state for the purpose of paying the cost of construction and maintenance of the office buildings or to charge state employees and others fees for the purpose of paying the cost of construction and maintenance of any parking structures and other facilities.

History: Add. 1947, Act 316, Eff. Oct. 11, 1947;—CL 1948, 450.186c;—Am. 1963, 2nd Ex. Sess., Act 28, Imd. Eff. Dec. 27, 1963.

450.186d Public building corporations; trustees, number, terms, compensation; members, term, admission.

Sec. 186d. The trustees of every such corporation shall provide in the articles the terms and the manner in

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which members may be admitted. The affairs of such corporation shall be managed by a board of not less than 3 nor more than 9 trustees to be elected by the members as provided by the by-laws. Such trustees shall hold offices for 6 years or for such other period as the by-laws shall determine and until their successors are elected and qualified. No such trustee shall receive any compensation for his services as such.

History: Add. 1947, Act 316, Eff. Oct. 11, 1947;—CL 1948, 450.186d.

450.186e Public building corporations; winding up affairs by legislature; property, conservation, disposition.

Sec. 186e. Should any such corporation cease to operate or become unable to usefully serve the purpose of its organization, the legislature may by law provide for the winding up of its affairs and for the conservation and disposition of its property in such way as may best promote and perpetuate the purposes for which such corporation was originally organized.

History: Add. 1947, Act 316, Eff. Oct. 11, 1947;—CL 1948, 450.186e.

450.187 Repealed. 1965, Act 161, Imd. Eff. July 15, 1965.

Compiler's note: The repealed section pertained to reincorporation of foreign corporations.

450.187a Repealed. 1970, Act 66, Imd. Eff. July 10, 1970.

Compiler's note: The repealed section pertained to incorporation of foreign corporations.

450.187b Repealed. 1972, Act 284, Eff. Jan. 1, 1973.

Compiler's note: The repealed section pertained to payment of franchise and issuance fees upon merger or consolidation of corporations.

450.188, 450.189 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

Compiler's note: The repealed sections pertained to corporations incorporated under this act and to applicability of act to existing corporations.

450.190 Catchline headings of sections not part of act.

Sec. 190. Catchline headings of sections not part of act. The catchline headings of sections of this act shall in no way be considered to be a part of the respective sections or of this act but are inserted herein for purposes of convenience.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.190.

Former law: See section 10 of Ch. I of Part I of Act 84 of 1921, being CL 1929, § 9952.

450.191 Repeal of acts and parts of acts; MCL 450.631 and 450.632 inapplicable to corporations governed by this act.

Sec. 191. Repeal. The following acts and parts of acts amendatory thereto, are hereby repealed:

Act 84, Public Acts 1921; Act 20, Public Acts 1921, First Extra Session; Act 77, Public Acts 1923; Act 153, Public Acts 1923; Act 154, Public Acts 1923; Act 172, Public Acts 1923; Act 234, Public Acts 1923; Act 275, Public Acts 1923; Act 232, Public Acts 1925; Act 342, Public Acts 1925; Act 363, Public Acts 1925; Act 388, Public Acts 1925; Act 72, Public Acts 1927; Act 335, Public Acts 1927; Act 267, Public Acts 1929; Act 191, Public Acts 1877; Act 216, Public Acts 1881; Act 21, Public Acts 1885; Act 244, Public Acts 1903; Act 63, Public Acts 1905; Act 188, Public Acts 1905; Act 45, Public Acts 1909; Act 252, Public Acts 1911; Act 105, Public Acts 1919; Act 25, Public Acts 1925; Act 59, Public Acts 1917; Act 210, Public Acts 1917; Act 27, Public Acts 1927; Act 53, Public Acts 1872; Act 328, Public Acts 1905; sections 1, 2, 3, 5, 6 and 8 of chapter 55 Revised Statutes 1846; Act 50, Public Acts 1867; Act 31, Public Acts 1845; Act 85, Public Acts 1851; Act 31, Public Acts 1855; Act 133, Public Acts 1855; Act 43, Public Acts 1867; Act 144, Public Acts 1867; Act 411, Public Acts 1867; Act 9, Public Acts 1871; Act 17, Public Acts 1873; Act 40, Public Acts 1877; and Act 23, Public Acts 1879. Act No. 112, Public Acts of 1889, shall hereafter be inapplicable to corporations governed by this act.

The provisions of said act which are repealed by this act shall remain in force for the filing of annual reports and the payment of privilege fees during the year 1931 and for the enforcement, assessment, imposition and collection of all obligations, penalties or forfeitures which have accrued or may accrue in relation to filing such reports and to the payment of such privilege fees.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.191.

Compiler's note: The underlined acts in this section, which pertain to partnerships, were held not repealed by this section in Attorney General v. Hill-Davis Co., 261 Mich. 89, 245 N.W. 579 (1932). Act 112 of 1889, referred to in this section, is MCL 450.631 and 450.632.

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The catchline following the act section number was incorporated as part of the section when the act was enacted.

450.192 Saving clause.

Sec. 192. Saving clause. This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.

History: 1931, Act 327, Eff. Sept. 18, 1931;—CL 1948, 450.192.

Compiler's note: The catchline following the act section number was incorporated as part of the section when the act was enacted.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1972-4

450.211 Corporation division; transfer.

WHEREAS, the functions and responsibilities of the Corporation Division and Corporation Franchise Fee Division were transferred by Act 380 of the Public Acts of 1965, as amended by Act 324 of 1966, to the Department of Treasury; and

WHEREAS, it is recognized that in the interests of economy, efficiency, and good government, it is necessary to effectuate change in the internal organization of the Executive branch of government;

THEREFORE, I, WILLIAM G. MILLIKEN, Governor of the State of Michigan, pursuant to the authority vested in me by Article V, Section 2 of the Constitution of 1963, do hereby order and direct that:

1. Executive Order 1972-2 is hereby rescinded and the transfers ordered therein are superseded by the following provisions.

2. The Corporation Division is hereby transferred from the Department of Treasury to the Department of Commerce.

3. All powers, functions, duties and responsibilities of the Corporation Division and Franchise Fee Division with the exception of those relating to the determination of the annual franchise fee imposed on profit corporations, being sections 4, 4b, 4c, 5, 5a, 5b, 5c, 5d, 5e, 8, 9, and 10 of Act No. 85 of the Public Acts of 1921, as amended, are hereby transferred by a Type II transfer to the Department of Commerce.

4. All personnel and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Corporation Division are transferred to the Department of Commerce.

5. In effectuating this transfer, and in the subsequent administration of the acts herein referred to, the Departments of Commerce and Treasury shall develop such internal administrative rules and procedures consistent herewith as will effectuate the purpose of this order.

6. In fulfillment of the requirements of Article V, Section 2 of the Michigan Constitution, the provisions of this Order shall become effective July 1, 1972.

History: 1972, E.R.O. No. 1972-2, Eff. Apr. 1, 1972;—Am. 1972, E.R.O. No. 1972-4, Eff. July 1, 1972.

Compiler's note: Act 85 of 1921, referred to in this section, was repealed by Act 144 of 1954, Act 284 of 1972, and Act 230 of 1975.

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PROFESSIONAL SERVICE CORPORATION ACT
Act 192 of 1962

AN ACT authorizing the creation of professional service corporations; providing definitions; providing exceptions; providing the manner and method of creating such corporations; providing for individual liability of officers, employees and agents of such corporations in certain instances; authorizing certain investments of corporate funds; regulating the issuance and transfer of capital stock; providing forfeiture of corporate franchise in certain instances; and requiring identification as a corporation.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1963, Act 153, Eff. Sept. 6, 1963.

The People of the State of Michigan enact:

450.221 Professional service corporation act; short title.

Sec. 1. This act shall be known and may be cited as the "professional service corporation act".

History: 1962, Act 192, Eff. Mar. 28, 1963.

450.222 Definitions.

Sec. 2. As used in this act:

(a) "Licensed person" means an individual who is duly licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, an agency of this state or another jurisdiction, or any corporation all of whose shareholders are licensed persons.

(b) "Professional corporation" means a corporation that is organized under this act for the sole and specific purpose of rendering 1 or more professional services and has as its shareholders only licensed persons, the personal representatives or estates of individuals, or other persons as provided in section 10.

(c) "Professional service" means a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. Professional service includes, but is not limited to, services rendered by certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, professional engineers, land surveyors, and attorneys at law.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1963, Act 153, Eff. Sept. 6, 1963;—Am. 1980, Act 216, Imd. Eff. July 18, 1980;—Am. 1990, Act 166, Imd. Eff. July 2, 1990;—Am. 1998, Act 48, Imd. Eff. Mar. 30, 1998.

450.223 Application of act.

Sec. 3. This act shall not apply to any corporation organized within this state prior to the passage of this act to perform professional services to the public. Any such corporation may bring itself within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

History: 1962, Act 192, Eff. Mar. 28, 1963.

450.224 Professional corporation for pecuniary profit; organization; shareholders to be licensed; rendering of professional services; legal authorization; licensed person of another jurisdiction.

Sec. 4. (1) One or more licensed persons may organize under this act to become a shareholder or shareholders of a professional corporation for pecuniary profit.

(2) Except as otherwise provided in subsection (3) or otherwise prohibited, a professional corporation may render 1 or more professional services, except that each shareholder must be a licensed person in 1 or more of the professional services rendered by the corporation.

(3) Except as otherwise provided in this subsection, if the professional corporation renders a professional service that is included within the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, then all shareholders of the corporation shall be licensed or legally authorized in this state to render the same professional service. One or more physicians and surgeons licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, may organize a professional corporation under this act with 1 or more physicians and surgeons licensed under different provisions of the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(4) A licensed person of another jurisdiction may become an officer, director, shareholder, employee, or agent of the corporation but shall not render any professional service in this state until the person is licensed or otherwise legally authorized to render the professional service in this state.

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History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1974, Act 151, Imd. Eff. June 12, 1974;—Am. 1980, Act 216, Imd. Eff. July 18, 1980;—Am. 1990, Act 166, Imd. Eff. July 2, 1990;—Am. 1997, Act 139, Imd. Eff. Nov. 18, 1997;—Am. 1998, Act 10, Imd. Eff. Feb. 20, 1998;—Am. 2000, Act 335, Imd. Eff. Dec. 20, 2000.

450.225 Professional services to be rendered through licensed or authorized officers, employees, and agents.

Sec. 5. A corporation organized and incorporated under this act shall not render professional services within this state except through its officers, employees, and agents who are duly licensed or otherwise legally authorized to render the professional services within this state. The term employee does not include secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1990, Act 166, Imd. Eff. July 2, 1990.

450.226 Professional service corporations; licensee; negligence, wrongful acts, misconduct; liability.

Sec. 6. Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent or employee of a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services.

History: 1962, Act 192, Eff. Mar. 28, 1963.

450.227 Engaging in other businesses; investments; ownership of property; partnership; incorporator or shareholder.

Sec. 7. A corporation organized under this act shall not engage in any business other than the rendering of the professional services for which it was specifically incorporated. This act or any other provisions of existing law applicable to corporations shall not prohibit the corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments; from owning real or personal property necessary for the rendering of professional services; from becoming a partner in a partnership formed under Act No. 72 of the Public Acts of 1917, as amended, being sections 449.1 to 449.43 of the Michigan Compiled Laws, if the partnership performs the same professional services as the professional corporation; or from becoming an incorporator or shareholder in a professional corporation incorporated under this act, if both professional corporations perform the same professional services.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1980, Act 216, Imd. Eff. July 18, 1980.

450.228 Professional service corporations; capital stock; voting trust.

Sec. 8. A corporation organized under the provisions of this act may not issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. The provisions of the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, shall not apply to the issuance or transfer by that corporation of securities issued by it. A shareholder of a corporation organized under this act shall not enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his or her stock, unless that other person is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated or as otherwise provided in section 10.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1963, Act 153, Eff. Sept. 6, 1963;—Am. 1968, Act 31, Eff. Nov. 15, 1968;—Am. 1998, Act 48, Imd. Eff. Mar. 30, 1998.

450.229 Severance of employment and financial interests by disqualified licensee; noncompliance; forfeiture of articles; dissolution of corporation.

Sec. 9. If an officer, shareholder, agent, or employee of a corporation organized under this act becomes legally disqualified to render the professional services rendered by the corporation or accepts employment that pursuant to existing law places restrictions or limitations upon his or her continued rendering of the

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professional services, he or she shall sever within a reasonable period all employment with and financial interests in the corporation. A corporation's failure to require compliance with this section constitutes a ground for the forfeiture of its articles of incorporation and its dissolution. If a corporation's failure to comply with this section is brought to the attention of the department of commerce, it shall certify that fact to the attorney general for appropriate action to dissolve the corporation.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1963, Act 153, Eff. Sept. 6, 1963;—Am. 1973, Act 149, Imd. Eff. Nov. 21, 1973;—Am. 1990, Act 166, Imd. Eff. July 2, 1990.

450.230 Sale or transfer of shares; redemption or purchase of shares.

Sec. 10. Shares of a corporation organized under this act shall not be sold or transferred except to an individual who is eligible to be a shareholder of the corporation or to the personal representative or estate of a deceased or legally incompetent shareholder or to a trust or split interest trust, in which the trustee and the current income beneficiary are both licensed persons in a professional corporation. The personal representative or estate of the shareholder may continue to own shares for a reasonable period but shall not be authorized to participate in any decisions concerning the rendering of professional service. The articles of incorporation or bylaws may provide specifically for additional restrictions on the transfer of shares and may provide for the redemption or purchase of the shares by the corporation or its shareholders at prices and in a manner specifically set forth.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1963, Act 153, Eff. Sept. 6, 1963;—Am. 1990, Act 166, Imd. Eff. July 2, 1990;—Am. 1998, Act 48, Imd. Eff. Mar. 30, 1998.

450.231 Corporate name.

Sec. 11. The corporate name of a corporation organized under this act shall contain the words “professional corporation” or the abbreviation “P.C.”.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1963, Act 153, Eff. Sept. 6, 1963;—Am. 1978, Act 31, Imd. Eff. Feb. 24, 1978.

450.232 Repealed. 1980, Act 216, Imd. Eff. July 18, 1980.

Compiler's note: The repealed section pertained to board of directors.

450.233 Applicability of business corporation act; consolidation or merger.

Sec. 13. The business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, is applicable to a corporation organized under this act except to the extent that a provision of this act is in conflict with the provisions of that act. If there is a conflict between a provision of this act and that act, the provision of this act applies with respect to a corporation organized under this act. A professional corporation organized under this act shall not consolidate or merge with another corporation whose shareholders are not licensed persons who may be shareholders under this act.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1980, Act 216, Imd. Eff. July 18, 1980;—Am. 1990, Act 166, Imd. Eff. July 2, 1990;—Am. 2001, Act 58, Imd. Eff. July 23, 2001.

Compiler's note: Enacting section 1 of Act 58 of 2001 provides:

“Enacting section 1. This amendatory act is remedial and curative and intended to eliminate any confusion with respect to the application of the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, to a corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235, as a result of OAG, 1989-1990, No 6592, p 166 (July 10, 1989). As provided in section 8 of 1846 RS 1, MCL 8.8, the legislature declares that the reference to the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, in section 13 of the professional service corporation act, 1962 PA 192, MCL 450.233, includes the latest amendments to the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

450.234 Construction of act.

Sec. 14. The provisions of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to corporations, sales of securities or regulating the several professions enumerated in this act except insofar as such laws conflict with the provisions of this act.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1963, Act 153, Eff. Sept. 6, 1963.

450.235 Annual report.

Sec. 15. The annual report of a professional corporation shall list the names and post office addresses of all shareholders and shall certify that the corporation meets the requirements of this act.

History: 1962, Act 192, Eff. Mar. 28, 1963;—Am. 1990, Act 166, Imd. Eff. July 2, 1990.

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DISSOLUTION OF CHARITABLE PURPOSE CORPORATIONS
Act 169 of 1965

AN ACT to require court proceedings for dissolution of domestic charitable purpose corporations; and to require the filing of notice of intention to withdraw with the attorney general by foreign charitable purpose corporations attempting to withdraw from this state.

History: 1965, Act 169, Imd. Eff. July 15, 1965.

The People of the State of Michigan enact:

450.251 Charitable purpose corporations; dissolution; notice, to attorney general, time; court proceedings.

Sec. 1. No nonprofit corporation, foundation, trustee corporation or other corporation or entity organized under the laws of this state whose corporate purposes are to hold property for any charitable purpose, except when they are organized for religious purposes, shall be dissolved except by giving notice to the attorney general by registered mail at least 45 days prior to the filing of any paper or document in respect to such dissolution with any other state agency or court. The attorney general may require the dissolution to be accomplished by proceedings in the circuit court for the county in which the registered office of the corporation is located, and the making of an accounting of its assets, administration and disposition of its assets. The attorney general is a necessary party to such proceedings and shall be given due notice thereof. The attorney general may consent to dissolution without court proceedings, provided however, that any other statutory provisions requiring court proceedings shall not be affected nor eliminated by such consent. The corporation and securities commission shall not accept for filing any notice of dissolution unless it is accompanied by a copy of the order of the circuit court dissolving the corporation or a certified copy of the written consent of the attorney general to such dissolution.

History: 1965, Act 169, Imd. Eff. July 15, 1965.

450.252 Charitable purpose corporations; notice of withdrawal; filing, conditions.

Sec. 2. The corporation and securities commission shall not accept for filing a notice of withdrawal from this state of a foreign corporation or entity whose nature and purposes are similar to those domestic corporations or entities described in section 1, unless the notice of withdrawal is accompanied by a true copy and proof of service by registered mail, of a notice of intention to withdraw from the state served upon the attorney general at least 45 days prior to the receipt by the commission of the notice of withdrawal.

History: 1965, Act 169, Imd. Eff. July 15, 1965.

450.253 Construction of act.

Sec. 3. Nothing in this act shall be construed to repeal the provisions of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948, and any parts of this act inconsistent therewith shall be deemed to modify that act only to that extent.

History: 1965, Act 169, Imd. Eff. July 15, 1965.

CORPORATE FEES, TAXES, AND CHARGES
Act 85 of 1921

450.301-450.310 Repealed. 1954, Act 144, Imd. Eff. Apr. 23, 1954;—1972, Act 284, Eff. Jan. 1, 1973;—1975, Act 230, Imd. Eff. Aug. 27, 1975.

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VALIDATION OF AUDITS
Act 392 of 1978

AN ACT to validate certain audits performed by the department of treasury.

History: 1978, Act 392, Imd. Eff. Aug. 1, 1978.

The People of the State of Michigan enact:

450.321 Validation of certain audits.

Sec. 1. All audits performed by or at the direction of the department of treasury for the purpose of determining liability for a corporate franchise fee levied pursuant to former Act No. 85 of the Public Acts of 1921, and all payments received and refunds made on the basis of those audits before the repeal of former Act No. 85 of the Public Acts of 1921 are declared to be valid and to have been in fulfillment of the legislative purpose to provide for fair administration and enforcement of that act.

History: 1978, Act 392, Imd. Eff. Aug. 1, 1978.

Constitutionality: Act 392 of 1978, which purported to validate unauthorized field audits of corporate books by the Department of Treasury and recomputation of the corporate franchise fee liability and to validate payment of the recomputed fees, as applied by the department in denying refunds to taxpayers that paid the recomputed fees and sought refunds while excusing payment of the fees by corporations that withheld or refused payment unconstitutionally denied the taxpayers equal protection of the law. Armco Steel v. Department of Treasury, 419 Mich 582; 358 NW2d 839 (1984).

Compiler's note: Act 85 of 1921, referred to in this section, was repealed by Act 144 of 1954, Act 284 of 1972, and Act 230 of 1975.

REPORTS OF CERTAIN FOREIGN CORPORATIONS AND JOINT STOCK COMPANIES
Act 226 of 1885

450.351-450.354 Repealed. 1972, Act 284, Eff. Jan. 1, 1973.

EXTENSION OF CORPORATE LIFE
Act 16 of 1932 (1st Ex. Sess.)

450.361-450.363 Repealed. 1972, Act 284, Eff. Jan. 1, 1973.

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TERM OF EXISTENCE OF DOMESTIC CORPORATIONS
Act 26 of 1963 (2nd Ex. Sess.)

AN ACT to provide for the term of existence of domestic corporations.

History: 1963, 2nd Ex. Sess., Act 26, Eff. Jan. 1, 1964.

The People of the State of Michigan enact:

450.371 Domestic corporations; terms of existence.

Sec. 1. Notwithstanding any other provision of law, the term of existence of every domestic corporation heretofore incorporated or hereafter incorporating under any law of this state may be perpetual or may be for a limited period of time, as fixed by its articles, or amendment thereto made before the expiration of its corporate term, or by a certificate of extension of its corporate term, or by a certificate of renewal of its corporate term.

History: 1963, 2nd Ex. Sess., Act 26, Eff. Jan. 1, 1964.

450.372 Effective date of act.

Sec. 2. This act shall take effect on January 1, 1964.

History: 1963, 2nd Ex. Sess., Act 26, Eff. Jan. 1, 1964.

REINSTATEMENT OF NONPROFIT CORPORATIONS
Act 213 of 1935

450.401,450.402 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

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REVIVAL OF NONPROFIT CORPORATIONS
Act 2 of 1945

AN ACT to provide for the revival and extension of the existence of certain non-profit corporations whose corporate term has expired.

History: 1945, Act 2, Imd. Eff. Feb. 8, 1945.

The People of the State of Michigan enact:

450.411 Nonprofit corporations; renewal of corporate existence; new articles; reports; fees; penalty.

Sec. 1. Any nonprofit corporation organized under the laws of this state, now or heretofore in force, whose charter has become void under section 92 of Act No. 327 of the Public Acts of 1931, being section 450.92 of the Compiled Laws of 1948, for failure to file reports or to pay fees or both, and whose term of existence has subsequently expired and the time limitation provided by statute for filing an extension of corporate term has expired, but which has not been wound up or dissolved and which has nevertheless continued as a de facto corporation or has continued to hold real estate in its corporate name beyond such term may, by resolution adopted by a majority of its members present and voting at a meeting of the corporation duly called and held, in accordance with its last bylaws, or if the corporation has continued as a de facto corporation, in accordance with its bylaws currently in effect, direct the renewal of its corporate existence for such further term as permitted by law. Upon the adoption of such resolution the last president or vice-president and secretary or assistant secretary, or if a de facto corporation with newly elected officers, the currently elected de facto president or vice-president and the currently elected de facto secretary or assistant secretary, shall make, sign and acknowledge new articles to which shall be appended a copy of the proceedings of such meeting, verified by oath of the secretary of the meeting, which new articles shall be filed in the same manner as the original articles or in the manner provided by section 5 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.5 of the Compiled Laws of 1948. At the time of filing such new articles the corporation shall also file reports and pay filing fees for any years in which it may be delinquent, and pay a penalty of $5.00 for each year or major part of a year that such delinquency existed.

History: 1945, Act 2, Imd. Eff. Feb. 8, 1945;—Am. 1947, Act 23, Imd. Eff. Apr. 1, 1947;—CL 1948, 450.411;—Am. 1965, Act 394, Imd. Eff. Oct. 26, 1965;—Am. 1971, Act 108, Imd. Eff. Sept. 10, 1971.

450.412 Nonprofit corporations; revival of charter; extension of corporate term; validity of corporate acts.

Sec. 2. Upon the filing of such new articles and reports and the payments of such fees, the charter of the corporation shall be revived and shall be in full force and effect and the corporate term shall be extended from the date of expiration of its original term or the date of the last extension of corporate existence. The validity of all corporate acts during such period of default shall not be affected by such default, forfeiture or prior expiration. Compliance with this act shall be made before January 1, 1975.

History: 1945, Act 2, Imd. Eff. Feb. 8, 1945;—Am. 1947, Act 23, Imd. Eff. Apr. 1, 1947;—Am. 1948, 1st Ex. Sess., Act 37, Imd. Eff. May 10, 1948;—CL 1948, 450.412;—Am. 1951, Act 84, Imd. Eff. May 28, 1951;—Am. 1965, Act 394, Imd. Eff. Oct. 26, 1965;—Am. 1969, Act 283, Imd. Eff. Aug. 11, 1969;—Am. 1971, Act 108, Imd. Eff. Sept. 10, 1971.

REINSTATEMENT OF ECCLESIASTICAL CORPORATIONS
Act 161 of 1947

450.421,450.422 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

REINSTATEMENT OF PROFIT CORPORATIONS
Act 48 of 1947

450.431,450.432 Repealed. 1972, Act 284, Eff. Jan. 1, 1973.

REINSTATEMENT OF NONPROFIT CORPORATIONS
Act 90 of 1954

450.441,450.442 Repealed. 1982, Act 162, Eff. Jan. 1, 1983.

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REINSTATEMENT OF CEMETERY ASSOCIATIONS
Act 138 of 1941

AN ACT to provide the terms and conditions upon which nonprofit cemetery associations, the charters of which have become void through operation of law, may be reinstated and the filing of delinquent reports and fees and a voidance of charter waived; and to direct the county clerk to furnish a written list to the Michigan corporation and securities commission of all nonprofit cemetery associations located within the counties.

History: 1941, Act 138, Eff. May 29, 1941.

The People of the State of Michigan enact:

450.471 Nonprofit cemetery association; reinstatement of charter; report; penalty; certificate; filing articles of association.

Sec. 1. The charter of a nonprofit cemetery association which has become void or shall become void before December 31, 1974, under statutes of this state, requiring the filing of reports or the payment of fees, may be reinstated upon the payment before December 31, 1974, upon the filing of a current year's report, and the payment of a penalty of $10.00 to the department of treasury. Upon the filing of the report and payment of the penalty, the voidance of charter of the association and all delinquent reports and fees shall be waived and the charter thereof shall be revived in full force and effect. Attached to the report shall be a certificate, duly acknowledged before a notary public by an officer of the cemetery association which desires to revive its charter, stating that the association has continued in existence since the date on which the charter was forfeited and setting forth the names of those who will serve as directors or trustees of the association upon the revival of its charter.

If a nonprofit cemetery association has not heretofore filed in the office of the department of treasury its articles of association, a true copy of the articles, authenticated by the county clerk or other proper officer issuing the charter, shall be filed in the office of the department of treasury at the time of filing the current year's report, as a condition precedent to acceptance of the report by the department.

History: 1941, Act 138, Eff. May 29, 1941;—Am. 1947, Act 22, Imd. Eff. Apr. 1, 1947;—CL 1948, 450.471;—Am. 1949, Act 105, Eff. Sept. 23, 1949;—Am. 1957, Act 102, Eff. Sept. 27, 1957;—Am. 1972, Act 67, Imd. Eff. Mar. 1, 1972;—Am. 1974, Act 8, Imd. Eff. Jan. 30, 1974.

450.472 Non-profit cemetery associations; right restoration; contracts validation.

Sec. 2. Upon compliance with the provisions of this act, the rights of such association shall be the same as though no forfeiture had been operative, and all contracts entered into and conveyances made by or to such association during such interval shall become valid.

History: 1941, Act 138, Eff. May 29, 1941;—CL 1948, 450.472.

450.473 Non-profit cemetery associations; county clerk, duties.

Sec. 3. The clerk of each county of this state shall, within 90 days from the effective date of this act, prepare and forward to the Michigan corporation and securities commission a written list taken from his records containing the names and addresses of all nonprofit cemetery associations located within his county, together with the dates when the certificates of organization of such associations were accepted for recording by his county.

History: 1941, Act 138, Eff. May 29, 1941;—CL 1948, 450.473.

REVISED STATUTES OF 1846

CHAPTER 55

CHAPTER 55. GENERAL PROVISIONS RELATING TO CORPORATIONS.

CORPORATIONS

450.504 Absence or death of person authorized to call or preside at legal meeting of corporation; application; warrant to call meeting.

Sec. 4. If by reason of the death, absence, or other legal impediment of the officers of any corporation, there is no person duly authorized to call or preside at a legal meeting of the corporation, the district or municipal court of the judicial district or municipality where the corporation is established may, on a written application of 3 or more of the members of the corporation, issue a warrant to 1 of the members, directing him or her to call a meeting of the corporation, by giving notice as shall have been previously required by law; and

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the judge may, in the same warrant, direct the person to preside at the meeting until a clerk is duly chosen and qualified, if there is no other officer present legally authorized to preside at the meeting.

History: R.S. 1846, Ch. 55;—CL 1857, 2146;—CL 1871, 3431;—How. 4863;—CL 1897, 8530;—CL 1915, 11331;—CL 1929, 10156;—CL 1948, 450.504;—Am. 1991, Act 150, Imd. Eff. Nov. 25, 1991.

450.507 Holding of land; subscriptions; donations; stock transfer; articles, amendment.

Sec. 7. Every such corporation may hold land to an amount authorized by law, and may convey the same and may receive subscriptions to its capital stock in lands situate in the state of Michigan, or may receive donations of lands situate in the state of Michigan, to assist or enable such corporation to perform or complete any work of public improvement in which such company may be engaged in pursuance of its charter, and may sell and convey the same; and whenever the capital stock of such corporation is divided into shares, and certificates thereof are issued, such shares may be transferred by indorsement and delivery of the certificate thereof, such indorsement being by the signature of the proprietor, or his attorney or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer. Where no other provision is especially made any corporation organized for profit and having a capital stock, may at any annual meeting of its stockholders, or at any special meeting duly called for that purpose, amend its articles of association in any manner not inconsistent with the act or acts under which such corporation may be organized, by a resolution adopted by a vote of 2/3 in interest of its capital stock; but such amendment shall not become operative until a certificate showing it to have been adopted as herein required, signed by the president and secretary of the corporation shall have been filed or recorded or both filed and recorded in the same manner as required in case of original articles of such corporation. And any corporation not organized for profit, and having no capital stock may amend its articles of association by a vote of a majority of the members of such corporation at any regular meeting, or at any special meeting called for that purpose, but such amendment shall not become operative until a certificate showing it to have been regularly adopted in the manner herein prescribed, signed by the president, or other chief officer, and a majority of the directors or trustees of such corporation shall have been filed, or recorded or both filed and recorded, in the same manner as required in case of original articles of such corporation.

History: R.S. 1846, Ch. 55;—CL 1857, 2149;—Am. 1871, Act 86, Imd. Eff. Apr. 8, 1871;—CL 1871, 3434;—How. 4866;—CL 1897, 8533;—Am. 1901, Act 176, Eff. Sept. 5, 1901;—Am. 1905, Act 317, Eff. Sept. 16, 1905;—CL 1915, 11334;—CL 1929, 10159;—CL 1948, 450.507.

450.519 Contributions; recovery in chancery.

Sec. 19. When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members shall be liable to contribute, for money paid by any other or others of them, on account of any such debt or acts, the money may be recovered by a bill in chancery; and the said court may make all such orders and decrees therein, as may be necessary to do justice between the parties.

History: R.S. 1846, Ch. 55;—CL 1857, 2161;—CL 1871, 3446;—How. 4878;—CL 1897, 8545;—CL 1915, 11336;—CL 1929, 10161;—CL 1948, 450.519.

450.520 Acts of incorporation; amendment, alteration or repeal.

Sec. 20. Every act of incorporation passed since the twentieth day of April, in the year 1839, or which shall be hereafter passed, shall at any time be subject to amendment, alteration or repeal, at the pleasure of the legislature: Provided, That no act of incorporation shall be repealed, unless for some violation of its charter or other default, when such charter shall contain an express provision limiting the duration of the same.

History: R.S. 1846, Ch. 55;—CL 1857, 2162;—CL 1871, 3447;—How. 4879;—CL 1897, 8546;—CL 1915, 11337;—CL 1929, 10162;—CL 1948, 450.520.

Former law: For law prior to 1846, see Section 11 of Act 115 of 1839.

450.521 Assessing officers; returns, contents.

Sec. 21. It shall be the duty of the clerk of every corporation within this state, whose capital stock is or shall be subject to taxation for county or township purposes, and if there be no such clerk, then of the directors of such corporation, annually, between the fifteenth day of March and the first day of April, to make returns in person or by mail, to the supervisor of each township, and the assessors of each ward or district in any city in this state, in which any shareholder in such corporation shall reside; which return shall state the name of each owner residing in such township or city, the number of shares belonging to each on the fifteenth

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day of March of that year, and the par value of such shares.

History: R.S. 1846, Ch. 55;—CL 1857, 2163;—CL 1871, 3448;—How. 4880;—CL 1897, 8547;—CL 1915, 11338;—CL 1929, 10163;—CL 1948, 450.521.

450.522 Assessing officers; returns, default; penalty.

Sec. 22. If any clerk or director mentioned in the preceding section, shall refuse or neglect to make such return, or shall wilfully make a false return, he shall forfeit the sum of 50 dollars.

History: R.S. 1846, Ch. 55;—CL 1857, 2164;—CL 1871, 3449;—How. 4881;—CL 1897, 8548;—CL 1915, 11339;—CL 1929, 10164;—CL 1948, 450.522.

450.523 Fraudulent transfer of shares to avoid taxation; penalty.

Sec. 23. If any shareholder shall fraudulently transfer any share in either of the corporations mentioned in the twenty-third section of this chapter, for the purpose of avoiding taxation, he shall forfeit a sum equal to 1/2 the par value of the shares so transferred.

History: R.S. 1846, Ch. 55;—CL 1857, 2165;—CL 1871, 3450;—How. 4882;—CL 1897, 8549;—CL 1915, 11340;—CL 1929, 10165;—CL 1948, 450.523.

Compiler's note: In this section, "twenty-third" evidently should read "twenty-first."

450.524 Returns to state treasurer; default, computation, state tax.

Sec. 24. The cashier of each bank and the secretary or clerk of each incorporated railroad, canal or turnpike company shall, on the first Monday of October in each year, or within 15 days previous thereto, make a return to the state treasurer, verified by his oath, stating the amount of capital stock of such bank or railroad, canal or turnpike company then actually paid in, and in default thereof, the whole capital stock mentioned in the act of incorporation of such bank or company shall, for the purpose of computing the state tax payable by such bank or company, be deemed to have been paid in.

History: R.S. 1846, Ch. 55;—CL 1857, 2166;—CL 1871, 3451;—How. 4883;—CL 1897, 8550;—CL 1915, 11341;—CL 1929, 10166;—CL 1948, 450.524.

450.525 Attorney general and legislature; examination.

Sec. 25. It shall be the duty of the attorney general whenever and as often as he shall be required by the governor, to examine into the affairs and conditions of any bank or banks or other corporations in this state, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature, and for that purpose the said attorney general shall have power to administer all necessary oaths to the directors and officers of any such bank or other corporation and to examine them on oath in relation to the affairs and conditions thereof, and to examine the vaults, books, papers and documents belonging to such bank, or pertaining to its affairs and condition; and the legislature, or either branch thereof shall have full power to examine into the affairs and condition of any bank or other corporation in this state at all times and for that purpose any committee appointed by the legislature or either branch thereof, shall have full power to administer all necessary oaths, to the directors, officers and stockholders of such bank or other corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, safes, books, papers and documents belonging to such corporation or pertaining to its affairs and conditions, and to compel the production of all keys, books, papers, and documents by summary process to be issued on application to any court of record, or any judge thereof, under such rules and regulations as the said court may prescribe.

History: R.S. 1846, Ch. 55;—CL 1857, 2167;—CL 1871, 3452;—How. 4884;—CL 1897, 8551;—CL 1915, 11342;—CL 1929, 10167;—CL 1948, 450.525.

CHANGE IN CORPORATE NAME
Act 139 of 1895

450.601 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

SALE OF CORPORATE PROPERTY, FRANCHISES, RIGHTS, AND PRIVILEGES
Act 112 of 1889

450.631,450.632 Repealed. 1980, Act 180, Imd. Eff. July 2, 1980.

ELECTION OF CORPORATE DIRECTORS

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450.651 Repealed. 1967, Act 67, Eff. Nov. 2, 1967.

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PRACTICE OF LAW BY CORPORATIONS AND VOLUNTARY ASSOCIATIONS
Act 354 of 1917

AN ACT to prohibit the practice of law by corporations and voluntary associations and to provide penalties for violations.

History: 1917, Act 354, Eff. Aug. 10, 1917.

The People of the State of Michigan enact:

450.681 Practice of law by corporations and voluntary associations prohibited; exceptions; penalty.

Sec. 1. It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself, in any of said courts or to hold itself out to the public as being entitled to practice law, or render or furnish legal services or advice, or to furnish attorneys or counsel or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law, or to furnish legal advice, services or counsel, or to advertise that either alone or together with or by or through any person whether a duly and regularly admitted attorney-at-law, or not, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel. It shall be unlawful further for any corporation or voluntary association to solicit itself or by or through its officers, agents or employes any claim or demand for the purpose of bringing an action thereon or of representing as attorney-at-law, or for furnishing legal advice, services or counsel to a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy. Any corporation or voluntary association violating the provisions of this section, and every officer, trustee, director, agent or employe of such corporation or voluntary association who directly or indirectly engages in any of the acts herein prohibited or assists such corporation or voluntary association to do such prohibited acts shall be guilty of a misdemeanor, and shall be punished by a fine of not to exceed 1,000 dollars or by imprisonment for a period of not to exceed 6 months, or by both such fine and imprisonment, in the discretion of the court. The fact that such officer, trustee, director, agent or employe shall be a duly and regularly admitted attorney-at-law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section. This section shall not apply to any corporation or voluntary association lawfully engaged in a business authorized by the provisions of any existing statute, nor to a corporation or voluntary association lawfully engaged in the examination and insuring of titles of real property, nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a party, or from employing an attorney or attorneys to render legal aid without charge to any employes of such corporation or voluntary association, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the circuit court of the circuit in which the principal office of said corporation or voluntary association may be located. Nothing herein contained shall be construed to prevent a corporation from furnishing to any person, lawfully engaged in the practice of the law, such information or such clerical services in and about his professional work as, except for the provisions of this act, may be lawful: Provided, That at all times the lawyer receiving such information or such services shall maintain full professional and direct responsibility to his clients for the information and services so received. But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly professional employment for a lawyer.

History: 1917, Act 354, Eff. Aug. 10, 1917;—CL 1929, 10175;—CL 1948, 450.681.

REVISED STATUTES OF 1846

CHAPTER 53

CHAPTER 53. OF LIBRARIES AND LYCEUMS.

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450.691 Incorporation of library by proprietors; meeting; notice.

Sec. 1. Any 7 or more proprietors of a library may form themselves into a corporation, under such corporate name as they may adopt, for the purpose of enlarging, regulating, and using such library; and for that purpose the district or municipal court of the judicial district or municipality in which the library is located may, on the application of 5 or more of the proprietors, issue a warrant to 1 of them, directing him or her to call a meeting of the proprietors at the time and place expressed in the warrant, for the purpose of forming such corporation, and such meeting shall be called by posting up a notice containing the substance of such warrant, in at least 2 public places in the township where such library is kept, at least 7 days before the time of meeting.

History: R.S. 1846, Ch. 53;—CL 1857, 1782;—CL 1871, 3146;—How. 4407;—CL 1897, 8164;—CL 1915, 10683;—CL 1929, 10176;—CL 1948, 450.691;—Am. 1991, Act 146, Imd. Eff. Nov. 25, 1991.

450.692 Libraries; proprietors; powers; proceedings, certificate; recording.

Sec. 2. Any 7 or more of the proprietors of such library, met in pursuance of such notice, may choose a president, a clerk, a librarian, collector, treasurer, and such other officers as they may deem necessary; and they may also determine upon the mode of calling future meetings of the proprietors; and the proceedings of such first meeting, containing a specification of the corporate name adopted by such proprietors, shall be certified by the clerk of such corporation, and recorded by the county clerk of the county within which the same is formed, who shall be entitled to receive 75 cents for recording the same.

History: R.S. 1846, Ch. 53;—CL 1857, 1783;—CL 1871, 3147;—How. 4408;—CL 1897, 8165;—CL 1915, 10684;—CL 1929, 10177;—CL 1948, 450.692.

450.693 Libraries; powers of corporation; governing law.

Sec. 3. When such proprietors shall be organized as a corporation in the manner hereinbefore provided, they shall have all the powers and privileges, and be subject to all the duties of a corporation, according to the provisions of chapter 55, so far as such provisions shall be applicable in such case, and not inconsistent with the provisions of this chapter.

History: R.S. 1846, Ch. 53;—CL 1857, 1784;—CL 1871, 3148;—How. 4409;—CL 1897, 8166;—CL 1915, 10685;—CL 1929, 10178;—CL 1948, 450.693.

Compiler's note: For provisions of chapter 55, referred to in this section, see MCL 450.504 et seq.

450.694 Libraries; collector and treasurer, bond.

Sec. 4. The treasurer and collector shall give bond to such corporation, with sufficient sureties, to the satisfaction of the president, for the faithful discharge of their duties.

History: R.S. 1846, Ch. 53;—CL 1857, 1785;—CL 1871, 3149;—How. 4410;—CL 1897, 8167;—CL 1915, 10686;—CL 1929, 10179;—CL 1948, 450.694.

450.695 Libraries; shares, assessment and transfer; holding of property.

Sec. 5. The said proprietors may raise such sums of money by assessment on the shares as they shall judge necessary for the purpose of preserving, enlarging and using the library; and the shares may be transferred according to such regulations as they may prescribe, and such corporation may hold (and may acquire by gift, grant, bequest or devise) real and personal estate to any amount not exceeding (25,000 dollars), in addition to the value of their books; (and may hold in trust property granted, bequeathed or devised as may be prescribed by the grantor or testator; and may be the beneficiaries of trusts created for their benefit.)

History: R.S. 1846, Ch. 53;—CL 1857, 1786;—CL 1871, 3150;—How. 4411;—CL 1897, 8168;—Am. 1899, Act 10, Imd. Eff. Mar. 2, 1899;—CL 1915, 10687;—CL 1929, 10180;—CL 1948, 450.695.

OF LYCEUMS.

450.696 Libraries; organization; powers.

Sec. 6. Any 15 or more persons, in any township or county within this state, who shall by writing associate for the purpose of mental improvement, and the promotion of education, may form themselves into a corporation by the name of “the lyceum of .....,” (the name of the place where the meetings of the corporation are to be holden) by calling their first meeting and being organized in like manner as is provided in this chapter, in the case of library corporations, and every lyceum, upon becoming a corporation as aforesaid, shall have, during the pleasure of the legislature, all the like rights, powers, and privileges, as the proprietors of

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such libraries, and may hold real and personal estate, not exceeding 6,000 dollars.

History: R.S. 1846, Ch. 53;—CL 1857, 1787;—CL 1871, 3151;—How. 4412;—CL 1897, 8169;—CL 1915, 10688;—CL 1929, 10181;—CL 1948, 450.696.

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ATTORNEY IN FACT FOR SERVICE OF PROCESS
Act 156 of 1955

AN ACT to require directors, managers, trustees and other officers of corporations organized under the laws of the state of Michigan to appoint the resident agent of such corporation as their attorney in fact for the service of process in certain actions; to provide for the method of service in such cases; to provide for continuances to afford reasonable opportunity to defend said actions; and to provide for the resignation of any such director, manager, trustee or other officer so that this act shall not be applicable as to any such resigning director, manager, trustee or other officer.

History: 1955, Act 156, Eff. Oct. 14, 1955.

The People of the State of Michigan enact:

450.701 Corporation director, manager, trustee or officer; resident agent, attorney; appointment, duration.

Sec. 1. Every person, whether a resident or nonresident of this state, by the acceptance of election, appointment or employment as a director, manager, trustee or other officer of any corporation organized under the laws of the state of Michigan, or by continuance as such director, manager, trustee or other officer for a period of 30 days following approval of this act, shall be held, by such acceptance or continuance, to have appointed the resident agent of such corporation as his true and lawful attorney in fact upon whom service of process may be made while such person is a director, manager, trustee or other officer and after he has ceased to be such a director, manager, trustee or other officer, as long as such cause of action is not barred by the statute of limitations, in any action commenced in any court of general jurisdiction in the state of Michigan, arising out of or founded upon any action of such a domestic corporation or of such a person as a director, manager, trustee or other officer of such a domestic corporation.

History: 1955, Act 156, Eff. Oct. 14, 1955.

450.702 Corporation director, manager, trustee or officer; resident agent; service of process, copy forwarded.

Sec. 2. Any such director, manager, trustee or other officer may be served with process in such actions while he holds office as such and after he has ceased to be such a director, manager, trustee or other officer, as long as such actions are not barred by the statute of limitations, by serving the resident agent of such corporation with 2 copies of the summons and pleadings. Such resident agent shall forthwith forward 1 copy of such summons and pleadings to the director, manager, trustee or other officer so served, by registered mail, directed to such director, manager, trustee or other officer at his last known address.

History: 1955, Act 156, Eff. Oct. 14, 1955.

450.703 Corporation director, manager, trustee or officer; continuance.

Sec. 3. In any action in which any director, manager, trustee or other officer of a domestic corporation has been served with process as hereinabove provided, the court in which such action has been commenced shall order such continuance or continuances as may be necessary to afford such director, manager, trustee or other officer reasonable opportunity to defend the action.

History: 1955, Act 156, Eff. Oct. 14, 1955.

450.704 Corporation director, manager, trustee or officer; resignation.

Sec. 4. Any person, director, manager, trustee or other officer of any corporation organized under the laws of the state of Michigan who, within 30 days from the date of approval of this act, shall resign in good faith as such director, manager, trustee or other officer, and shall file with the resident agent of such corporation a copy of such signed resignation, shall not be subject to the provisions of this act.

History: 1955, Act 156, Eff. Oct. 14, 1955.

SCHOLARSHIP CORPORATIONS
Act 368 of 1965

450.711-450.728 Repealed. 1978, Act 32, Imd. Eff. Feb. 24, 1978.

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THE EMPLOYEE-OWNED CORPORATION ACT
Act 152 of 1985

AN ACT to prescribe the powers and duties of the department of labor and the department of commerce relative to the formation of employee-owned corporations.

History: 1985, Act 152, Eff. Jan. 10, 1986.

The People of the State of Michigan enact:

450.731 Short title.

Sec. 1. This act shall be known and may be cited as "the employee-owned corporation act".

History: 1985, Act 152, Eff. Jan. 10, 1986.

450.732 Definitions.

Sec. 2. As used in this act:

(a) "Closing" means the permanent shutting down of operations at any establishment at which at least 25 persons are employed.

(b) "Department" means the department of labor.

(c) "Employee-owned corporation" means a business operation that is controlled by, and designed to maintain control by, its employees, and in which control is distributed among its employees according to a democratic formula, if the business operation is 1 of the following:

(*i*) A business operation the management rights of which are represented by voting stock that may be owned only by: employees of the operation, a nonprofit community development corporation, or an employee-owned stock ownership plan in which not less than 50% of the employees participate in each portion of the plan. The operation shall be controlled by a board of directors which is selected by the shareholders on the basis of 1 vote per shareholder or on the basis of 1 vote per share.

(*ii*) A corporation operating pursuant to a cooperative plan as described in section 99 of Act No. 327 of the Public Acts of 1931, being section 450.99 of the Michigan Compiled Laws.

(*iii*) A business operation in which not less than 3/4 of each class of voting security is owned by an employee stock ownership trust set up under an employee stock ownership plan as defined in the internal revenue code, 26 U.S.C. 4975(e)(7), if that employee stock ownership plan requires pass-through of all voting rights possessed by voting securities as the securities are allocated to accounts of individual participants.

(*iv*) A worker cooperative.

(*v*) An industrial cooperative.

If a business operation adopts a plan by which it will become under this section an employee-owned corporation within 5 years after the adoption of the plan, it shall be considered an employee-owned corporation.

(d) "Establishment" includes a factory, plant, office, or other facility, but does not include a construction site or other work place that was intended to be a temporary work place.

(e) "Relocation" means the transfer of a part of a corporation's operation from 1 establishment to another existing or proposed establishment located at a distance from the first establishment which results in at least a 25-person reduction in the number of employees at the first establishment, but does not include a transfer from an establishment in 1 part of a political subdivision to an establishment in another part of the same political subdivision.

(f) "Worker cooperative" or "industrial cooperative" means an establishment in which the owners or members all work in the establishment and are the only persons who work in the establishment. In a worker cooperative or industrial cooperative the workers hold the basic ownership or membership rights of the establishment which consist of the voting rights to elect the board of directors, which in turn appoints the management or staff, and the rights to the profits or net income of the establishment. Each worker has an equal vote in accordance with the democratic principle of 1-person, 1-vote. The net income, which may be positive or negative, is shared among the workers pursuant to an agreed upon formula.

History: 1985, Act 152, Eff. Jan. 10, 1986.

450.733 Program to assist in developing employee-owned corporations; establishment; operation; duty of department.

Sec. 3. The department, in cooperation with the department of commerce, shall establish a program to assist in developing employee-owned corporations. The program may operate when an establishment is closing or transferring operations resulting in a loss of jobs and when a request for assistance is made by an

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affected individual or group of individuals. When such a request is made, it shall be held in confidence by the department. The program also shall operate when workers of an existing or new establishment wish to develop an employee-owned corporation and request assistance. The department shall inform local government, business organizations, labor organizations, and others in the state of the availability of this program and services authorized by this act.

History: 1985, Act 152, Eff. Jan. 10, 1986.

450.734 Powers of department generally.

Sec. 4. The department may do all of the following:

(a) Develop, collect, and disseminate information useful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of employee-owned corporations.

(b) Evaluate the feasibility and economic viability of a proposed employee-owned corporation.

(c) Provide technical assistance and counseling services to persons who seek to form an employee-owned corporation.

(d) Provide assistance, counseling, and training in the operation of an employee-owned corporation.

(e) Assist persons in obtaining financing for the purchase and operation of an employee-owned corporation.

(f) Promote and coordinate the efforts of local, state, federal, and private agencies to assist in the formation or operation of an employee-owned corporation.

(g) Recommend appropriate legislative or executive action to enhance opportunities for employee-owned corporations in this state.

History: 1985, Act 152, Eff. Jan. 10, 1986.

450.735 Assistance in implementing MCL 450.734.

Sec. 5. Each principal department and the economic advisory council, as established by law, shall assist the department of labor, upon its request, in implementing section 4.

History: 1985, Act 152, Eff. Jan. 10, 1986.

450.736 Notice of decision to close or relocate operations.

Sec. 6. The department shall encourage those business establishments considering a decision to effect a closing or relocation of operations relative to an establishment located in this state to give notice of that decision as early as possible to the department, the employees of the affected establishment, any employee organization representing the employees, and the community in which the affected establishment is located.

History: 1985, Act 152, Eff. Jan. 10, 1986.

450.737 Feasibility study; informational meeting.

Sec. 7. If the department becomes aware pursuant to a request that a business establishment is closing or relocating operations, the department may conduct an initial study of the feasibility of the employees of the corporation establishing an employee-owned corporation to continue the operations of the affected establishment or to operate another business and may call an informational meeting of representatives of the local community, the corporation involved, representatives of any employee bargaining unit, and affected employees to explain the services available from the department relative to the formation of an employee-owned corporation.

History: 1985, Act 152, Eff. Jan. 10, 1986.

450.738 Conditional effective date.

Sec. 8. This act shall not take effect unless House Bill No. 4614 of the 83rd Legislature is enacted into law.

History: 1985, Act 152, Eff. Jan. 10, 1986.

Compiler's note: House Bill No. 4614, referred to in Sec. 8, was filed with the Secretary of State Jan. 10, 1986, and became P.A. 1985, No. 217, Eff. Jan. 31, 1986.

EMPLOYEE-OWNED CORPORATIONS
Act 44 of 1979

450.751-450.759 Expired. 1979, Act 44, Eff. July 2, 1984.

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STATE PROCUREMENTS FOR MINORITY OWNED AND WOMAN OWNED BUSINESSES
Act 428 of 1980

AN ACT to provide for the designation of state procurements of goods, services, and construction for minority owned and woman owned businesses; to provide powers and duties of the governor; to prescribe powers and duties of certain state departments and agencies; and to provide penalties.

History: 1980, Act 428, Imd. Eff. Jan. 13, 1981.

The People of the State of Michigan enact:

450.771 Definitions.

Sec. 1. As used in this act:

(a) "Controlled" means exercising the power to make policy decisions in a business.

(b) "Department" means a principal department of the executive branch of the state government.

(c) "Expenditures" means payments and contracts for goods, services, and construction which may be acquired competitively and are not regulated by separate authority, and, where the department acts as the sole or primary contracting officer and has selective discretion as to the supplier, vendor, or contractor.

(d) "Joint venture" means an agreement that combines 2 or more businesses for specified purposes involving 1 or more minority owned or woman owned businesses and 1 or more businesses other than a minority owned or woman owned business.

(e) "Minority" means a person who is black, hispanic, oriental, eskimo, or an American Indian who is not less than 1/4 quantum Indian blood as certified by the person's tribal association and verified by the Indian affairs commission.

(f) "Minority owned business" means a business enterprise of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by individuals who are members of a minority and with respect to which more than 50% of the net profit or loss attributable to the business accrues to shareholders who are members of a minority.

(g) "Operated" means the activity of being involved in the day to day management of a business.

(h) "Person" means an individual, sole proprietorship, partnership, association, or corporation.

(i) "Subcontract" means an agreement to share a prime contract between a prime contractor, who is not a minority owned business or a woman owned business, and a minority owned or woman owned business.

(j) "Woman owned business" means a business of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by women and with respect to which more than 50% of the net profit or loss attributable to the business accrues to the women shareholders.

History: 1980, Act 428, Imd. Eff. Jan. 13, 1981.

450.772 Construction, goods, and services procurement policy; minority owned and woman owned businesses; provisions; program changes; portion of prime contract reflecting minority owned or woman owned business participation; bidder requirements; contract award.

Sec. 2. (1) The construction, goods, and services procurement policy for each department shall provide for the following percentage of expenditures to be awarded to minority owned and woman owned businesses by each department except as provided in subsection (6):

(a) For minority owned business, the goal for 1980-81 shall be 150% of the actual expenditures for 1979-80, the goal for 1981-82 shall be 200% of the actual expenditures for 1980-81, the goal for 1982-83 shall be 200% of the actual expenditures for 1981-82, the goal for 1983-84 shall be 116% of the actual expenditures for 1982-83, and this level of effort at not less than 7% of expenditures shall be maintained thereafter.

(b) For woman owned business, the goal for 1980-81 shall be 150% of the actual expenditures for 1979-80, the goal for 1981-82 shall be 200% of the actual expenditures for 1980-81, the goal for 1982-83 shall be 200% of the actual expenditures for 1981-82, the goal for 1983-84 shall be 200% of the actual expenditures for 1982-83, the goal for 1984-85 shall be 140% of the expenditures for 1983-84, and this level of effort at not less than 5% of expenditures shall be maintained thereafter.

(2) If the first year goals are not achieved, the governor shall recommend to the legislature changes in programs to assist minority and woman owned businesses.

(3) Each department, to assist in meeting the construction, goods, and services procurement expenditures percentages set forth in subsection (1), shall include provisions for the accommodation of subcontracts and joint ventures. The provisions shall be established by the governor and shall require a bidder to indicate the

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extent of minority owned or woman owned business participation.

(4) Only the portion of a prime contract that reflects minority owned or woman owned business participation shall be considered in meeting the requirements of subsection (1).

(5) Minority owned or woman owned businesses shall comply with the same requirements expected of other bidders including, but not limited to, being adequately bonded.

(6) If the bidders for any contract do not include a qualified minority owned and operated or woman owned and operated business, the contract shall be awarded to the lowest bidder otherwise qualified to perform the contract.

History: 1980, Act 428, Imd. Eff. Jan. 13, 1981.

450.773 Establishing procurement policy for meeting projected goals; report; staff.

Sec. 3. (1) The governor shall establish a procurement policy for each executive department to implement and establish the method of meeting the projected goals established in section 2.

(2) The governor shall submit a report to the legislature every 3 months during the first year of operation and every 6 months during succeeding years. The report shall detail the results of the governor's procurement policy including the specific contracts awarded by each department and the type of business engaged in by the person awarded the contract.

(3) Appropriate staff to implement the governor's policy shall be provided by the department of management and budget.

History: 1980, Act 428, Imd. Eff. Jan. 13, 1981.

450.774 Certification as minority owned or woman owned business; affidavit; filing.

Sec. 4. A person who wishes to be certified as a minority owned or woman owned business shall complete a sworn affidavit that the person is a minority owned or woman owned business and is prepared to bid on state contracts. All ownership interests in the business shall be specifically identified in the affidavit. The affidavit shall be filed with the governor or a department designated by the governor.

History: 1980, Act 428, Imd. Eff. Jan. 13, 1981.

450.775 Violating or conspiring to violate act; fraudulent procurement of contract; felony; penalty; barring violator from obtaining future contracts.

Sec. 5. A person who knowingly violates or conspires to violate this act, or who knowingly and fraudulently procures or attempts to procure a contract with this state as a minority owned or woman owned business is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of not less than $5,000.00, or both. A person who violates this act shall be barred from obtaining future contracts with the state.

History: 1980, Act 428, Imd. Eff. Jan. 13, 1981.

450.776 Minority owned or woman owned business as prime contractor.

Sec. 6. If a minority owned or woman owned business receives a contract, the minority owned or woman owned business shall be the prime contractor through its duration.

History: 1980, Act 428, Imd. Eff. Jan. 13, 1981.

SMALL BUSINESS DEVELOPMENT PROGRAM
Act 464 of 1980

450.781-450.787 Expired. 1980, Act 464, Eff. Dec. 31, 1983.

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BUSINESS OPPORTUNITY ACT FOR PERSONS WITH DISABILITIES
Act 112 of 1988

AN ACT to provide competitive opportunity in state procurements of goods, services, and construction for businesses owned by persons with disabilities; to provide powers and duties of the governor; to prescribe powers and duties of certain state departments and agencies; and to provide penalties.

History: 1988, Act 112, Eff. Mar. 30, 1989;—Am. 1998, Act 73, Imd. Eff. May 4, 1998.

The People of the State of Michigan enact:

450.791 Short title.

Sec. 1. This act shall be known and may be cited as "the business opportunity act for persons with disabilities".

History: 1988, Act 112, Eff. Mar. 30, 1989;—Am. 1998, Act 73, Imd. Eff. May 4, 1998.

450.792 Definitions.

Sec. 2. As used in this act:

(a) "Business owned by persons with disabilities" means a business in which all of the following apply:

(*i*) More than 50% of the voting shares or interest in the business is owned, controlled, and operated by 1 or more persons with disabilities.

(*ii*) More than 50% of the net profit or loss attributable to the business accrues to shareholders who are persons with disabilities.

(*iii*) More than 50% of the employees of the business are residents of this state.

(b) "Controlled" means exercising the power to make policy decisions in a business.

(c) "Department" means a principal department of the executive branch of the state government.

(d) "Disability" means a determinable physical or mental impairment of an individual or the history of an impairment that may result from disease, injury, congenital condition of birth, or functional disorder.

(e) "Expenditures" means payments and contracts for goods, services, and construction which may be acquired competitively and are not regulated by separate authority, and, where the department acts as the sole or primary contracting officer and has selective discretion as to the supplier, vendor, or contractor. This definition does not apply to expenditures by the department of transportation for road and bridge construction projects which receive federal funds under section 112(b) of title 23 of the United States Code, 23 U.S.C. 112, 23 C.F.R. 635.104(a), and other applicable federal law until federal law recognizes small businesses owned by persons with disabilities.

(f) "Joint venture" means an agreement that combines 2 or more businesses for specified purposes involving 1 or more businesses owned by persons with disabilities and 1 or more businesses other than a business owned by persons with disabilities.

(g) "Operated" means the activity of being involved in the day-to-day management of a business.

(h) "Person" means an individual, sole proprietorship, partnership, association, or corporation.

(i) "Person with disabilities" means an individual with 1 or more disabilities.

(j) "Subcontract" means an agreement to share a prime contract between a prime contractor and a business owned by persons with disabilities.

History: 1988, Act 112, Eff. Mar. 30, 1989;—Am. 1998, Act 73, Imd. Eff. May 4, 1998.

450.793 Departmental goals; review of progress; recommendations; changes in programs; consideration of subcontracts and joint ventures; consideration in meeting requirements of subsections (1) and (3); award of contract to lowest qualified bidder; report.

Sec. 3. (1) It shall be the goal of each department to award each year not less than 3% of its total expenditures for construction, goods, and services, less expenditures to sole source vendors, to businesses owned by persons with disabilities.

(2) Each year, the department of management and budget shall review the progress of the departments in meeting the 3% goal with input from the business community, including businesses owned by persons with disabilities, and shall make recommendations to each house of the legislature regarding continuation, increases or decreases in the percentage goal. The recommendations shall be based upon the number of businesses that are owned by persons with disabilities and on the continued need to encourage and promote businesses owned by persons with disabilities. The department of management and budget may combine the recommendations described in this subsection with the report required under subsection (8).

(3) It shall be the goal of each department or agency that does not meet the goal provided in subsection (1)

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to award each year to businesses owned by persons with disabilities not less than 150% of the actual expenditures it awarded to businesses owned by persons with disabilities in the preceding year until not less than 3% of total expenditures is achieved as provided in subsection (1).

(4) To assist in reaching the goals set in subsections (1) and (3), the governor shall recommend to the legislature changes in programs to assist businesses owned by persons with disabilities.

(5) To assist in meeting the goals set forth in subsections (1) and (3), each department shall include provisions for the consideration of subcontracts and joint ventures. The provisions shall require a bidder to indicate the extent of participation of a business owned by persons with disabilities.

(6) Only the portion of a prime contract that reflects participation of a business owned by persons with disabilities shall be considered in meeting the requirements of subsections (1) and (3).

(7) Except as otherwise provided by statute, if the bidders for any contract for construction, goods, or services do not include a qualified business owned by persons with disabilities, the contract shall be awarded to the lowest bidder qualified to perform the contract.

(8) In addition to the recommendations described in subsection (2), each year each department shall report to each house of the legislature on all of the following for the immediately preceding 12-month period:

(a) The number of businesses owned by persons with disabilities who submitted a bid for a state procurement contract.

(b) The number of businesses owned by persons with disabilities who entered into procurement contracts with this state and the total value of those procurement contracts.

(c) Whether the department achieved the goal described in this subsection.

History: 1988, Act 112, Eff. Mar. 30, 1989;—Am. 1998, Act 73, Imd. Eff. May 4, 1998;—Am. 2005, Act 90, Imd. Eff. July 20, 2005
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450.794 Designation of certifying agency by governor; acceptable documentation; verification; application form; affidavit and documentation; proof required.

Sec. 4. (1) The governor shall designate a department responsible for certifying that a person meets the requirements of this act.

(2) Unless subsection (3) applies, in determining whether a person seeking certification is a person with disabilities, the certifying agency may accept documentation from 1 or more of the following:

(a) The Michigan commission for the blind, Michigan rehabilitation services, or the social security administration SSI or SSDI programs. The documents shall show that the current disability was the basis for eligibility in the program within the last 5 years.

(b) The veterans administration. The documents shall show that the person has a 30% or greater disability rating.

(c) A licensed physician or psychiatrist, who shall certify that the person has a significant disability.

(3) The certifying department may require any person seeking certification to obtain verification pursuant to subsection (2)(c) to insure that the applicant currently meets the definition of a person with disabilities.

(4) An applicant seeking certification as a business owned by a person with disabilities shall complete an application form developed by the certifying department and submit to the certifying department an affidavit and documentation that the applicant is a business owned by a person with disabilities and is prepared to bid on state contracts. Proof of ownership interest, control, operational involvement, and profit and loss shall be specifically identified and provided with the affidavit.

History: 1988, Act 112, Eff. Mar. 30, 1989;—Am. 1998, Act 73, Imd. Eff. May 4, 1998.

Compiler's note: For transfer of powers and duties of the commission for the blind from family independence agency to department of labor and economic growth by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

450.795 Fraudulent procurement of contract prohibited; violation as felony; penalty.

Sec. 5. (1) A person shall not fraudulently procure or attempt to procure a contract under this act.

(2) A person who knowingly violates this act is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of not less than $5,000.00, or both.

(3) A person found guilty of violating this act shall be barred from obtaining future contracts with the state.

History: 1988, Act 112, Eff. Mar. 30, 1989;—Am. 1998, Act 73, Imd. Eff. May 4, 1998.

EMPLOYEE-OWNED CORPORATION REVOLVING LOAN FUND
Act 217 of 1985

450.801-450.815 Repealed. 2002, Act 196, Imd. Eff. Apr. 29, 2002.

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UNIFORM ELECTRONIC TRANSACTIONS ACT
Act 305 of 2000

AN ACT to authorize and provide the terms and conditions under which information and signatures can be transmitted, received, and stored by electronic means.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

The People of the State of Michigan enact:

450.831 Short title.

Sec. 1. This act shall be known and may be cited as the "uniform electronic transactions act".

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.832 Definitions.

Sec. 2. As used in this act:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of 1 or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

(e) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(f) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(g) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(h) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(i) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal, state, or local government.

(j) "Information" means, but is not limited to, data, text, images, sounds, codes, computer programs, software and databases.

(k) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(*l*) "Person" means an individual, corporation, partnership, limited liability company, association, governmental entity, or any other legal entity.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(o) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(p) "Transaction" means an action or set of actions occurring between 2 or more persons relating to the conduct of business, commercial, or governmental affairs.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.833 Applicability of act to electronic records and signatures.

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Sec. 3. (1) Except as otherwise provided in subsection (2) and section 4, this act applies to electronic records and electronic signatures relating to a transaction.

(2) This act does not apply to a transaction to the extent it is governed by either of the following:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts.

(b) Except as otherwise provided in subsection (3), the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(3) This act does apply to a transaction to the extent it is governed by section 1107 or 1206 or article 2 or 2A of the uniform commercial code, 1962 PA 174, MCL 440.1107, 440.1206, and 440.2101 to 440.2982.

(4) A transaction subject to this act is also subject to other applicable substantive law.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.834 Applicability of act; commencement.

Sec. 4. This act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this act.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.835 Scope of act; terms.

Sec. 5. (1) This act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) This act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Unless otherwise prohibited by this act, a provision of this act may be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by this act and other applicable law.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.836 Construction of act.

Sec. 6. This act shall be construed and applied to all of the following:

(a) Electronic transactions consistent with other applicable law.

(b) Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.

(c) Effectuate its general purpose to make uniform the law with respect to electronic transactions among the states.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.837 Record or signature in electronic form; legal effect; enforcement.

Sec. 7. (1) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a law requires a record to be in writing, an electronic record satisfies the law.

(4) If a law requires a signature, an electronic signature satisfies the law.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.838 Agreement to conduct transaction by electronic means; satisfaction of legal requirement.

Sec. 8. (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, all of the following rules apply:

(a) The record must be posted or displayed in the manner specified by law.

(b) Except as otherwise provided in subsection (4)(b), the record shall be sent, communicated, or

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transmitted by the method specified by law.

(c) The record shall contain the information formatted in the manner specified by law.

(3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may be varied by either of the following:

(a) To the same extent a law other than this act that requires information to be provided, sent, or delivered in writing allows that requirement to be varied by agreement.

(b) To the same extent a law other than this act that requires a record be sent, communicated, or transmitted by regular United States mail allows that requirement to be varied by agreement.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.839 Attribution of electronic record or signature.

Sec. 9. (1) An electronic record or electronic signature is attributable to a person if it is the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including any agreements of the parties, and otherwise as provided by law.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.840 Change or error in transmission of electronic record.

Sec. 10. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(a) If the parties have agreed to use a security procedure to detect changes or errors and 1 party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may void the effect of the changed or erroneous electronic record.

(b) In an automated transaction involving an individual, the individual may void the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide for the prevention or correction of the error and, at the time the individual learns of the error, all of the following apply:

(*i*) The individual promptly notified the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.

(*ii*) The individual takes reasonable steps to return to the other person or to destroy any consideration received as a result of the erroneous electronic record.

(*iii*) The individual has not used or received any benefit or value from any consideration received from the other person.

(c) If neither subdivision (a) nor (b) applies, the error has the same effect as provided by law.

(d) Subdivisions (b) and (c) cannot be varied by agreement.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.841 Signature notarized, acknowledged, verified, or made under oath; satisfaction of requirement.

Sec. 11. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.842 Retention of record.

Sec. 12. (1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information if the record does both of the following:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.

(b) Remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

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(3) A person may satisfy subsection (1) by using the services of another person if the requirements of subsection (1) are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1).

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1).

(6) A record retained as an electronic record in accordance with subsection (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or similar purposes, unless a law enacted after the effective date of this act specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.843 Evidence of record or signature in criminal or civil proceeding.

Sec. 13. In a criminal or civil proceeding, evidence of a record or signature shall not be excluded solely because it is in electronic form.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.844 Automated transaction; applicable rules.

Sec. 14. In an automated transaction, all of the following rules apply:

(a) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(b) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(c) The terms of the contract are determined by the substantive law applicable to the contract.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.845 Electronic record considered sent or received.

Sec. 15. (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it complies with all of the following:

(a) It is addressed properly or otherwise directed properly to an information processing system that the recipient uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

(b) It is in a form capable of being processed by that system.

(c) The record enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system used by the recipient that is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when it complies with all of the following:

(a) It enters an information processing system that the recipient uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.

(b) It is in a form capable of being processed by that system.

(3) Subsection (2) applies even if the place the information processing system is located is different from the place the electronic record is considered to be received under subsection (4).

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is considered to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, all of the following rules apply:

(a) If the sender or recipient has more than 1 place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence.

(5) An electronic record is received under subsection (2) even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

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(7) If a person is aware that an electronic record purportedly sent under subsection (1), or purportedly received under subsection (2), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.846 "Transferable record" explained.

Sec. 16. (1) As used in this section, "transferable record" means an electronic record that is both of the following:

(a) Would be a note under sections 3101 to 3801 of the uniform commercial code, 1962 PA 174, MCL 440.3101 to 440.3801, or a document under sections 7101 to 7603 of the uniform commercial code, 1962 PA 174, MCL 440.7101 to 440.7603, if the electronic record were in writing.

(b) The issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in a manner that all of the following apply:

(a) A single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in subdivisions (d), (e), and (f), unalterable.

(b) The authoritative copy identifies the person asserting control as 1 of the following:

(*i*) The person to which the transferable record was issued.

(*ii*) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

(c) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian.

(d) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control.

(e) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

(f) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, including, if the applicable statutory requirements under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record. The department of management and budget shall determine for each department whether, and the extent to which, the department will create and retain electronic records and convert written records to electronic records.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.848 Use of electronic records and signatures by governmental agency; determination by department of management and budget.

Sec. 18. (1) Except as otherwise provided in section 12(6), the department of management and budget shall determine whether, and the extent to which, each state department will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under

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subsection (1), the department of management and budget, giving due consideration to security, may specify any or all of the following:

(a) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes.

(b) If an electronic record is required to be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature is to be affixed to the electronic record, and the identity of or criteria that is to be met by any third party used by a person filing a document.

(c) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

(d) Any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in section 12(6), this act does not require a governmental agency or official of this state to use or permit the use of electronic records or electronic signatures.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

450.849 Standards adopted by other governmental agencies.

Sec. 19. (1) The department of management and budget may encourage and promote consistency and interoperability with similar standards adopted by other governmental agencies of this state and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state.

(2) If appropriate, the standards established under subsection (1) may specify differing requirements from which governmental agencies and officials of this state may choose in implementing the most appropriate standard for a particular application.

History: 2000, Act 305, Imd. Eff. Oct. 16, 2000.

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BUSINESS CORPORATION ACT
Act 284 of 1972

AN ACT to provide for the organization and regulation of corporations; to prescribe their duties, rights, powers, immunities and liabilities; to provide for the authorization of foreign corporations within this state; to prescribe the functions of the administrator of this act; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts.

History: 1972, Act 284, Eff. Jan. 1, 1973.

The People of the State of Michigan enact:

CHAPTER 1
GENERAL PROVISIONS

450.1101 Short title.

Sec. 101. This act shall be known and may be cited as the “business corporation act”.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1103 Liberal construction; purposes and policies of act.

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

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

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

(c) To give special recognition to the legitimate needs of close corporations.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1104 Definitions controlling interpretation of act.

Sec. 104. The definitions contained in sections 105 through 109 shall control the interpretation of this act, unless the context otherwise requires.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1105 Definitions; A, B.

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

(2) “Articles of incorporation” includes any of the following:

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

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

(3) “Authorized shares” means shares of all classes that a corporation is authorized to issue.

(4) “Board” means board of directors or other governing board of a corporation.

(5) “Bonds” includes secured and unsecured bonds, debentures, and notes.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1106 Definitions; C to E.

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

(2) "Department" means the department of labor and economic growth.

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

(4) "Distribution" means a direct or indirect transfer of money or other property, except the corporation's shares, or the incurrence of indebtedness by the corporation to or for the benefit of its shareholders in respect to the corporation's shares. A distribution may be in the form of a dividend, a purchase, redemption or other acquisition of shares, an issuance of indebtedness, or any other declaration or payment to or for the benefit of the shareholders.

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2006, Act 68, Imd. Eff. Mar. 20, 2006.

450.1107 Definitions; F to I.

Sec. 107. (1) “Foreign corporation” means a corporation for profit formed under laws other than the laws of this state, which includes in its purposes a purpose for which a corporation may be formed under this act.

(2) “Foreign nonprofit corporation” means a corporation organized under laws other than the laws of this state, which includes in its purposes a purpose for which a corporation may be organized under the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws.

(3) “Independent director” means a director who meets all of the following requirements:

(a) Is elected by the shareholders.

(b) Is designated as an independent director by the board or the shareholders.

(c) Has at least 5 years of business, legal, or financial experience, or other equivalent experience. For a corporation with securities registered under section 12 of the securities exchange act of 1934, chapter 404, 48 Stat. 881, 15 U.S.C. 78L, “experience” shall mean experience as a senior executive, director, or attorney, or other equivalent experience, for a corporation with registered securities.

(d) Is not and during the 3 years prior to being designated as an independent director has not been any of the following:

(*i*) An officer or employee of the corporation or any affiliate of the corporation.

(*ii*) Engaged in any business transaction for profit or series of transactions for profit, including banking, legal, or consulting services, involving more than $10,000.00 with the corporation or any affiliate of the corporation.

(*iii*) An affiliate, executive officer, general partner, or member of the immediate family of any person that had the status or engaged in a transaction described in subparagraph (*i*) or (*ii*).

(e) Does not propose to enter into a relationship or transaction described in subdivision (d)(*i*) through (*iii*).

(f) Does not have an aggregate of more than 3 years of service as a director of the corporation, whether or not as an independent director.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1108 Definitions; N to P.

Sec. 108. (1) “Nonprofit corporation” or “domestic nonprofit corporation” means a nonprofit corporation subject to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws.

(2) “Person” means an individual, a partnership, a domestic or foreign corporation, or any other association, corporation, trust, or legal entity.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1109 Definitions; S.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1110 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section contained definitions.

450.1121 Applicability of act to domestic and foreign corporations.

Sec. 121. This act applies to every domestic corporation and to every foreign corporation which is authorized to or does transact business in this state except as otherwise provided in this act or by other law. This act also applies to any other domestic corporation or foreign corporation not formed under this act to the

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extent, if any, provided under this act or any law governing the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1122 References to repealed acts; statutes inapplicable to corporations defined in MCL 450.1106; uniform fraudulent transfer act inapplicable to distributions.

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

(2) The following statutes do not apply to a corporation as defined in section 106:

(a) 1846 RS 55, MCL 450.504 to 450.525.

(b) 1955 PA 156, MCL 450.701 to 450.704.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1123 Applicability of act generally.

Sec. 123. (1) Unless otherwise provided in, or inconsistent with, the act under which a corporation is or has been formed, this act applies to deposit and security companies, summer resort associations, brine pipeline companies, telegraph companies, telephone companies, safety and collateral deposit companies, canal, river, and harbor improvement companies, cemetery, burial, and cremation associations, railroad, bridge, and tunnel companies, agricultural and horticultural fair societies, and professional service corporations formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235. The entities specified in this subsection shall not be incorporated under this act.

(2) This act does not apply to insurance, surety, savings and loan associations, fraternal benefit societies, and banking corporations.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 357, Imd. Eff. Jan. 14, 1994;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1125 Applicability to foreign commerce, interstate commerce, and federal corporations.

Sec. 125. This act applies to commerce with foreign nations and among the several states and to corporations formed by or under any act of congress, only to the extent permitted under the constitution and laws of the United States.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1127 Applicability to existing corporations; saving clause.

Sec. 127. (1) This act does not affect the duration of a corporation which exists on the effective date of this act. An existing corporation and its shareholders, directors and officers have the same rights and are subject to the same limitations, restrictions, liabilities and penalties as a corporation formed under this act, and its shareholders, directors and officers.

(2) This act does not affect a cause of action, liability, penalty or action or special proceeding, which on the effective date of this act is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted or defended as if this act had not been enacted.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1129 Amendment or repeal of act.

Sec. 129. This act may be supplemented, altered, amended or repealed by the legislature and every corporation, domestic or foreign, to which this act applies is bound thereby.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1131 Submission of document; delivery; filing; return of copy; public inspection; maintaining records or files; copies of documents and destroying originals; facsimile or electronic transmission as original; effective date of document; fees.

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

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(2) If a document submitted under subsection (1) substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in the endorsement on the document.

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

(4) The records and files of the administrator relating to domestic and foreign corporations shall be open to reasonable inspection by the public. The administrator may maintain records or files either in their original form or in photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(5) The administrator may make copies of any documents filed under this act or any predecessor act by photostatic, micrographic, photographic, optical disc media, or other reproduced form and may destroy the originals of the copied documents. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, including a copy sent by facsimile or other electronic transmission, is considered an original for all purposes and is admissible in evidence in like manner as an original.

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

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

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

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

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974 ;—Am. 1989, Act 121, Eff. Oct.1, 1989;—Am. 1992, Act 199, Imd. Eff. Oct. 5, 1992;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2005, Act 217, Eff. Jan. 1, 2006;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1132 Filed documents; language, form, execution, and contents.

Sec. 132. (1) A document filed with the administrator shall be in the English language, except that the corporate name need not be in the English language if written in English letters or Arabic or Roman numerals.

(2) A document required or permitted to be filed under this act that is also required by this act to be executed on behalf of the domestic or foreign corporation shall be signed by an authorized officer or agent of the domestic or foreign corporation. If the board has not yet met, the document shall be signed by the incorporator or the majority of incorporators if there are more than 1. If the domestic or foreign corporation is in the hands of a receiver, trustee, or other court appointed officer, the document shall be signed by the fiduciary or the majority of the fiduciaries, if there are more than 1. The name of a person signing the document and the capacity in which he or she signs shall be stated beneath or opposite his or her signature.

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The document may, but need not, contain any of the following:

(a) The corporate seal.

(b) An attestation by the secretary or an assistant secretary of the corporation.

(c) An acknowledgment or proof.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1133 Correction of document relating to domestic or foreign corporation; signing and filing of certificate of correction; contents of certificate; effective date of corrected document.

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

History: Add. 1974, Act 303, Imd. Eff. Oct. 21, 1974;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1141 Corporate action without notice or lapse of prescribed time period.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1142 Notice or communication where communication unlawful or where notice or communication not required; statement.

Sec. 142. When a notice or communication is required to be given to a person by this act, by the articles of incorporation or bylaws, or by the terms of an agreement or instrument relating to the internal affairs of the corporation, or as a condition precedent to taking corporate action, and communication with the person is then unlawful under a statute of this state or the United States or a rule, regulation, proclamation or order issued under any of those statutes, the giving of the notice or communication to the person is not required and there is no duty to apply for a license or other permission to do so. An affidavit, certificate or other instrument which is required to be made or filed as proof of the giving of a notice or communication required by this chapter, if the notice or communication to any person is dispensed with under this section, shall include a statement that the notice or communication was not given to any person with whom communication is unlawful. The affidavit, certificate or other instrument is as effective for all purposes as though such notice or communication had been personally given to the person.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1143 Mailing notice or communication; delivery; electronic transmission; "address" defined.

Sec. 143. (1) If a notice or communication is required or permitted by this act to be given by mail, it shall be mailed, except as otherwise provided in this act, to the person to whom it is directed at the address designated by him or her for that purpose or, if none is designated, at his or her last known address. The notice or communication is given when deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. Unless the corporation has securities registered under section 12 of title 1 of the securities exchange act of 1934, 15 USC 78*l*, the mailing shall be registered, certified, or other first-class mail except where otherwise provided in this act.

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

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

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

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

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

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

(5) As used in subsection (2), "address" means a street address, post office box, electronic mail address for electronic transmissions by electronic mail, or telephone facsimile number for electronic transmissions by facsimile.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2006, Act 47, Imd. Eff. Mar. 9, 2006.

450.1151 Notice of refusal to file document; refusing or revoking authorization of foreign corporation to transact business; judicial review.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

CHAPTER 2
FORMATION; PURPOSES AND POWERS

450.1201 Incorporators.

Sec. 201. One or more persons may be the incorporators of a corporation by signing and filing articles of incorporation for the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1202 Articles of incorporation; contents.

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

(a) The name of the corporation.

(b) The purposes for which the corporation is formed. It is a sufficient compliance with this subdivision to state substantially, alone or with specifically enumerated purposes, that the corporation may engage in any activity within the purposes for which corporations may be formed under the business corporation act, and all activities shall by the statement be considered within the purposes of the corporation, subject to expressed

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limitations. Any corporation which proposes to conduct educational purposes shall state the purposes and shall comply with all requirements of sections 170 to 177 of Act No. 327 of the Public Acts of 1931, being sections 450.170 to 450.177 of the Michigan Compiled Laws.

(c) The aggregate number of shares which the corporation has authority to issue.

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

(e) If any class of shares is to be divided into series, a statement of any authority vested in the board to divide the class of shares into series, and to determine or change for any series its designation, number of shares, relative rights, preferences and limitations.

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

(g) The names and addresses of the incorporators.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1204 Articles of incorporation; provision as to compromise, arrangement, or plan of reorganization.

Sec. 204. The articles of incorporation may contain the following provision or the substance thereof: When a compromise or arrangement or a plan of reorganization of this corporation is proposed between this corporation and its creditors or any class of them or between this corporation and its shareholders or any class of them, a court of equity jurisdiction within the state, on application of this corporation or of a creditor or shareholder thereof, or on application of a receiver appointed for the corporation, may order a meeting of the creditors or class of creditors or of the shareholders or class of shareholders to be affected by the proposed compromise or arrangement or reorganization, to be summoned in such manner as the court directs. If a majority in number representing 3/4 in value of the creditors or class of creditors, or of the shareholders or class of shareholders to be affected by the proposed compromise or arrangement or a reorganization, agree to a compromise or arrangement or a reorganization of this corporation as a consequence of the compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, or on all the shareholders or class of shareholders and also on this corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1205 Articles of incorporation; effect of provision as to compromise, arrangement, or plan of reorganization.

Sec. 205. (1) When the provision of section 204 is included in the original articles of incorporation of a corporation, all persons who become creditors or shareholders thereof are deemed to have become creditors or shareholders subject in all respects to that provision, and it shall be binding upon them.

(2) When that provision is inserted in the articles of a corporation, by an amendment of the articles, all persons who become creditors or shareholders of the corporation after the amendment becomes effective are deemed to have become creditors or shareholders subject in all respects to that provision, and it shall be binding upon them.

(3) The circuit court may administer and enforce the provision and restrain, pendente lite, actions and proceedings against the corporation with respect to which the court so restraining has begun the administration or enforcement of the provision, and appoint a temporary receiver for the corporation and grant the receiver such powers as are deemed proper.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1209 Articles of incorporation; permissible provisions.

Sec. 209. (1) The articles of incorporation may contain any provision not inconsistent with this act or another statute of this state, including any of the following:

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

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

(c) A provision eliminating or limiting a director's liability to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director, except liability for any of the

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following:

(*i*) The amount of a financial benefit received by a director to which he or she is not entitled.

(*ii*) Intentional infliction of harm on the corporation or the shareholders.

(*iii*) A violation of section 551.

(*iv*) An intentional criminal act.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1211 Corporate name; required words and abbreviations.

Sec. 211. The corporate name of a domestic corporation shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain 1 of the following abbreviations: corp., co., inc., or ltd., with or without periods.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1212 Corporate name; conformity; noncompliance of corporate name of foreign corporation as bar to certificate of authority; rights to use of corporate name not created.

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

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

(b) Shall distinguish the corporate name upon the records in the office of the administrator from all of the following:

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

(*ii*) The corporate name of any corporation subject to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, or any corporation authorized to conduct affairs in this state under that act.

(*iii*) A corporate name currently reserved, registered, or assumed under this act or the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

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

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1213 Assumption of name implying banking, insurance, surety, or trust company; prohibited letters or words; corporation licensed as nursing home; use of terms.

Sec. 213. (1) A corporation formed or existing under or subject to this act other than a bank holding company registered or to be registered as a bank holding company under the bank holding company act of

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1956, chapter 240, 70 Stat. 133, shall not assume a name that implies that it is a banking corporation, an insurance or surety company, or a trust company, and the corporation shall not use the word “bank”, “industrial bank”, “deposit”, “surety”, “security”, “trust”, or “trust company” in its corporate name or use a combination of the letters or words with other letters or words in its corporate name to indicate or convey the idea of a bank or banking or industrial banking activity or security unless from the other words constituting the name it is clear that the business conducted does not include the business of banking.

(2) A corporation formed or existing under or subject to this act that is licensed or is to be licensed as a nursing home under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, may use the term “health center” or “health care center” or a term conveying a meaning substantially similar to those terms, or the term “rehabilitation center”, as long as those terms do not conflict with the terms prohibited by section 21712 of the public health code, 1978 PA 368, MCL 333.21712.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 2001, Act 276, Imd. Eff. Jan. 11, 2002
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450.1215 Corporate name; reservation of right to use; transfer of right.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1217 Transacting business under assumed name; certificate.

Sec. 217. (1) A domestic or foreign corporation may transact business under any assumed name or names other than its corporate name, if not precluded from use by section 212, by filing a certificate stating the true name of the corporation and the assumed name under which the business is to be transacted. The certificate is effective, unless sooner terminated by filing a certificate of termination or by the dissolution or withdrawal of the corporation, for a period expiring on December 31 of the fifth full calendar year following the year in which it was filed. The certificate of assumed name may be extended for additional consecutive periods of 5 full calendar years each by filing similar certificates not earlier than 90 days before the expiration of the initial or a subsequent 5-year period. The administrator shall notify the corporation of the impending expiration of the certificate of assumed name not later than 90 days before the expiration of the initial or a subsequent 5-year period. A certificate of assumed name filed under this section does not create substantive rights to the use of a particular assumed name.

(2) The same name may be assumed by 2 or more corporations, or by 1 or more corporations and 1 or more limited partnerships or other enterprises participating together in a partnership or joint venture. Each participant corporation shall file a certificate under this section.

(3) A corporation participating in a merger, or any other entity participating in a merger under section 736, may transfer to the surviving entity the use of an assumed name for which a certificate of assumed name is on file with the administrator before the merger, if the transfer is noted in the certificate of merger as provided in section 707(1)(g), 712(1)(c), or 736(7)(f), or other applicable statute. The use of an assumed name transferred under this subsection may continue for the remaining effective period of the certificate of assumed name on file before the merger, and the surviving entity may terminate or extend the certificate of assumed name in accordance with subsection (1).

(4) A corporation surviving a merger may use as an assumed name the corporate name of a merging corporation, or the name of any other entity participating in the merger under section 736, by filing a certificate of assumed name under subsection (1) or by providing for the use of the name as an assumed name in the certificate of merger. The surviving corporation also may file a certificate of assumed name under subsection (1) or provide in the certificate of merger for the use as an assumed name of an assumed name of a merging entity not transferred under subsection (3). A provision in a certificate of merger under this subsection shall be treated as a new certificate of assumed name.

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

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business organization may terminate or extend the certificate of assumed name in the manner described in subsection (1).

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1221 Beginning of corporate existence; filing of articles as evidence.

Sec. 221. The corporate existence shall begin on the effective date of the articles of incorporation as provided in section 131. Filing is conclusive evidence that all conditions precedent required to be performed under this act have been fulfilled and that the corporation has been formed under this act, except in an action or special proceeding by the attorney general.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1223 Selection of board; adoption of bylaws; first meeting; quorum; election of officers; transaction of business.

Sec. 223. Before or after filing of the articles of incorporation a majority of the incorporators, at a meeting or by written instrument, shall select a board and may adopt bylaws. On or after the filing date of the articles any member of the board may call the first meeting of the board upon not less than 3 days notice by mail to each director. A majority of the directors constitutes a quorum for the first meeting of the board. At the first meeting, the board may adopt bylaws, elect officers and transact such other business as may come before the meeting.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1231 Adoption, amendment, or repeal of bylaws; contents of bylaws.

Sec. 231. The initial bylaws of a corporation shall be adopted by its incorporators, its shareholders, or its board. The shareholders or the board may amend or repeal the bylaws or adopt new bylaws unless the articles of incorporation or bylaws provide that the power to adopt new bylaws is reserved exclusively to the shareholders or that the bylaws or any particular bylaw shall not be altered or repealed by the board. The bylaws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1241 Registered office and resident agent required.

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

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

(b) A resident agent. A resident agent may be either an individual resident in this state whose business office or residence is identical with the registered office; a domestic corporation or a limited liability company; or a foreign corporation or limited liability company authorized to transact business in this state that has a business office identical with the registered office.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1242 Changing registered office or resident agent; statement; changing address of registered office.

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

(a) The corporate name.

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

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

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(d) The name of the corporation's then resident agent.

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

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

(g) That the change was authorized by resolution duly adopted by the corporation's board.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1243 Resignation of resident agent.

Sec. 243. A resident agent of a domestic or foreign corporation may resign by filing a written notice of resignation with the president or a vice president of the corporation and with the administrator. The corporation shall promptly appoint a successor resident agent. The appointment of the resigning agent terminates upon appointment of a successor or upon expiration of 30 days after receipt of the notice by the administrator, whichever first occurs. Upon the resignation becoming effective, the business or residence address of the resigned agent shall no longer be the registered office of the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1246 Service of process.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1251 Formation of corporation for lawful purpose; exception; aiding national emergency.

Sec. 251. (1) A corporation may be formed under this act for any lawful purpose, except to engage in a business for which a corporation may be formed under any other statute of this state unless that statute permits formation under this act.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1261 Corporate powers.

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

(a) Have perpetual duration.

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

(c) Have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed, or reproduced in any other manner.

(d) Adopt, amend, or repeal bylaws, including emergency bylaws, relating to the business of the corporation, the conduct of its affairs, its rights and powers and the rights and powers of its shareholders, directors, or officers.

(e) Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and the compensation of directors, and indemnify corporate directors, officers, employees, and agents.

(f) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own,

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hold, improve, employ, use and otherwise deal in and with, real or personal property, or an interest in real or personal property, wherever situated.

(g) Sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, or create a security interest in any of its property or an interest in its property, wherever situated.

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

(i) Make contracts, give guarantees and incur liabilities, borrow money at rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest in its property, wherever situated. This power shall include the power to give guarantees that are necessary or convenient to the conduct, promotion, or attainment of the business of any of the following corporations, whether or not subject to this act, and domestic or foreign limited liability companies, and those guarantees shall be considered to be in furtherance of the corporate purposes of the contracting corporation:

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

(*ii*) A corporation or limited liability company that owns, directly or indirectly, all of the outstanding shares of the contracting corporation.

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

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

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

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

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

(n) Participate with others in any corporation, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking, or agreement which the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

(o) Cease its corporate activities and dissolve.

(p) Transact business, carry on its operations, and have offices and exercise the powers granted by this act in any jurisdiction in or outside the United States.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2006, Act 68, Imd. Eff. Mar. 20, 2006.

450.1271 Asserting lack of corporate capacity or power.

Sec. 271. An act of a corporation and a transfer of real or personal property to or by a corporation, otherwise lawful, is not invalid because the corporation was without capacity or power to do the act or make or receive the transfer. However the lack of capacity or power may be asserted:

(a) In an action by a shareholder against the corporation to enjoin the doing of an act or the transfer of real or personal property by or to the corporation.

(b) In an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized act.

(c) In an action or special proceeding by the attorney general to dissolve the corporation or to enjoin it from the transacting of unauthorized business.

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History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1275 Agreement to pay interest in excess of legal rate; defense of usury prohibited.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

CHAPTER 3
CAPITAL STRUCTURE AND CORPORATE FINANCE

450.1301 Issuance and classes of shares; rights, preferences, and limitations.

Sec. 301. (1) A corporation may issue the number of shares authorized in its articles of incorporation. The shares may be all of 1 class or may be divided into 2 or more classes. Each class shall consist of shares having the designations and relative voting, distribution, dividend, liquidation, and other rights, preferences, and limitations, consistent with this act, as stated in the articles of incorporation. The articles of incorporation may deny, limit, or otherwise prescribe the voting rights and may limit or otherwise prescribe the distribution, dividend, or liquidation rights of shares of any class.

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

(3) Subject to the designations, relative rights, preferences, and limitations applicable to separate series, each share shall be equal to every other share of the same class.

(4) Any of the voting, distribution, liquidation, or other rights, preferences, or limitations of a class or series may be made dependent upon facts or events ascertainable outside of the articles of incorporation or the resolution of the board adopted pursuant to section 302(3), if the manner in which the facts or events operate on the rights, preferences, or limitations is set forth in the articles of incorporation or board resolution.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1301a Amendment deleting reference to par value.

Sec. 301a. The board by resolution may adopt and file an amendment of the articles of incorporation deleting any reference to par value.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1302 Class of shares; division and issuance in series; rights and preferences; certificate; amendment eliminating series of shares.

Sec. 302. (1) If provided for in the articles of incorporation, a class of shares may be divided into and issued in series. The shares of each series shall be designated to distinguish them from the shares of the other series and classes.

(2) Any series of any class and the variations in the relative rights and preferences among different series may be prescribed by the articles of incorporation.

(3) If the articles of incorporation authorize the board, to the extent that the articles of incorporation have not established series and prescribed variations in the relative rights and preferences among series, the board may divide any class into series, and, within the limitations set forth in the articles of incorporation, prescribe the relative rights and preferences of the shares of any series.

(4) A certificate containing the resolution of the board establishing and designating the series and prescribing the relative rights and preferences shall be filed, and when filed shall constitute an amendment to the articles of incorporation.

(5) Unless otherwise provided in the articles of incorporation, the board may adopt and file an amendment of the articles of incorporation eliminating a series of shares if there are no outstanding shares of the series, no outstanding shares or bonds convertible into shares of the series, or other rights, options, or warrants issued by the corporation that could require issuing shares of the series.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1303 Convertible shares and bonds; increase in shares to satisfy conversion privileges.

Sec. 303. (1) If the articles of incorporation provide, subject to restrictions in section 304, a corporation may issue shares convertible at the option of the holder or the corporation or upon the happening of a specified event into shares of any class, into shares of any series of any class, or into bonds. Shares may be converted into bonds only if the corporation could at the time of conversion have purchased, redeemed, or otherwise acquired the shares by issuing the bonds under the restrictions of section 345. Authorized shares,

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issued or unissued, may be made convertible as provided in this subsection within the period and upon terms and conditions authorized in the articles of incorporation.

(2) Unless otherwise provided in the articles of incorporation, and subject to the restrictions of section 304, a corporation may issue its bonds convertible at the option of the holder into other bonds or into shares of the corporation within the period and upon terms and conditions as fixed by the board.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1304 Convertible shares and bonds; conditions to issuance; disposition of convertible bonds or shares.

Sec. 304. (1) Bonds or shares convertible into shares of a corporation shall not be issued unless 1 of the following conditions is satisfied:

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

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

(2) Bonds which have been converted shall be canceled. Shares which have been converted shall be restored to the status of authorized but unissued shares, unless otherwise provided in the articles of incorporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1304a Redeemable shares.

Sec. 304a. The articles of incorporation may provide for 1 or more classes or series of shares which are redeemable, in whole or in part, at the option of the shareholder, the corporation, or upon the happening of a specified event. Subject to restrictions imposed by section 345, the shares may be redeemable in cash, bonds, securities, or other property at prices, within the periods, and under conditions as are stated in the articles.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1305 Subscription for shares.

Sec. 305. (1) A subscription for shares made before or after organization of a corporation is not enforceable unless in writing and signed by the subscriber.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1306 Subscription for shares; payment; call; security interest.

Sec. 306. (1) Unless otherwise provided in the subscription agreement:

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

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

(c) A corporation may retain a security interest in any shares as security for performance by the subscriber of his or her obligations under a subscription agreement and subject to the power of sale or rescission upon default provided in section 307.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1307 Subscription agreement; default in payment; rights and duties of corporation.

Sec. 307. (1) In case of default in payment of an installment or call or other amount due under a

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subscription agreement, including an amount which may become due as a result of a default in performance of any provision of a subscription agreement, the corporation has the following rights and duties:

(a) It may collect the amount due in the same manner as any other debt owing to it. At any time before full satisfaction of the claim or a judgment, it may proceed as provided in subdivision (b).

(b) It may sell the shares in any reasonable manner. Notice of the time and place of a public sale or of the time after which a private sale may be had, together with a statement of the amount due upon each share, shall be given in writing to the subscriber personally or by registered or certified mail at least 20 days before any time stated in the notice. Any excess of net proceeds realized over the amount due plus interest shall be paid to the subscriber. If the sale is made in good faith, in a reasonable manner and upon notice, the corporation may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value acquires title to the sold shares free of any right of the subscriber even though the corporation fails to comply with 1 or more of the requirements of this subdivision.

(c) It may rescind the subscription, with the effect provided in section 308, and may recover damages for breach of contract. Unless special circumstances show proximate damages of a different amount, the measure of damages shall be the difference between the market price at the time and place of tender of the shares and the unpaid contract price. Liquidated damages may be provided for in the subscription agreement. The subscriber may have restitution of the amount by which the sum of his or her payments exceeds the corporation's damages for breach of contract, whether fixed by agreement or judgment.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1308 Cancellation of shares upon rescission of subscription.

Sec. 308. Rescission by a corporation of a subscription under which a part of the shares subscribed for have been issued and in which the corporation retains a security interest, as provided in subdivision (c) of section 306, effects the cancellation of such shares.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1311, 450.1313 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed sections pertained to consideration for issuance of shares.

450.1314 Reservation of powers to shareholders; consideration for authorized issuance of shares; determination of adequacy; shares fully paid and nonassessable; rights and privileges of subscriber.

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

(2) The board may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including but not limited to cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1315 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to payment of consideration for issuance of shares.

450.1317 Liability of purchaser, holder, subscriber, assignee, transferee, pledgee, or shareholder.

Sec. 317. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were to be issued.

(2) A person holding stock in a fiduciary or representative capacity is not personally liable to the corporation as the holder of or subscriber for shares of a corporation but the estate and funds in his or her

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hands are liable to the corporation.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1321 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to rights or options to purchase shares.

450.1327 Expenses of organization and reorganization; expenses of sale or underwriting of shares.

Sec. 327. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby rendering the shares not fully paid or assessable.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1331 Share certificates.

Sec. 331. Except as provided in section 336, the shares of a corporation shall be represented by certificates which shall be signed by the chairperson of the board, vice-chairperson of the board, president or a vice-president and which also may be signed by another officer of the corporation. The certificate may be sealed with the seal of the corporation or a facsimile of the seal. The signatures of the officers may be facsimiles. If an officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if he or she were the officer at the date of issue.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1994, Act 318, Imd. Eff. Oct. 6, 1994.

450.1332 Share certificates; contents.

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

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

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

(c) The number and class of shares, and the designation of the series, if any, which the certificate represents.

(2) A certificate representing shares issued by a corporation which is authorized to issue shares of more than 1 class shall set forth on its face or back or state on its face or back that the corporation will furnish to a shareholder upon request and without charge a full statement of the designation, relative rights, preferences, and limitations of the shares of each class authorized to be issued, and if the corporation is authorized to issue any class of shares in series, the designation, relative rights, preferences, and limitations of each series so far as the same have been prescribed and the authority of the board to designate and prescribe the relative rights, preferences, and limitations of other series.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1334 Share certificates; loss or destruction; bond.

Sec. 334. A corporation may issue a new certificate for shares or fractional shares in place of a certificate theretofore issued by it, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or his legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged lost or destroyed certificate or the issuance of such a new certificate.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1335 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to shares or securities listed on national securities exchange.

450.1336 Issuance or transfer of shares without certificates; statement.

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1338 Fractions of share or scrip.

Sec. 338. (1) A corporation may issue fractions of shares and may do 1 of the following:

(a) Issue certificates for fractions of shares that entitle the holders to exercise voting rights and to receive dividends and distributions in proportion to their fractional holdings.

(b) Pay in cash the fair value of fractions of shares as of the time when those entitled to receive the fractions are determined.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1341 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to consideration for shares as capital or capital surplus.

450.1341a Issuance of shares pro rata and without consideration; share dividend.

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

(2) Shares of 1 class or series may not be issued as a share dividend in respect of shares of another class or series unless the articles so authorize, a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or there are no outstanding shares of the class or series to be issued.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1342 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to earned surplus and transfer of surplus.

450.1342a Rights, options, or warrants.

Sec. 342a. (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

(2) The terms and conditions of any right, option, or warrant issued under subsection (1), including those outstanding on the effective date of the amendatory act that added this subsection, may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of the right, option, or warrant by any person owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of a corporation, or any transferee or transferees of that person, or that invalidate or void the right, option, or warrant held by a person or his or her transferee.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1343 Preemptive rights.

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

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

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(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board to provide a fair and reasonable opportunity to exercise the right to acquire proportional amounts of the corporation's unissued shares upon the decision of the board to issue them.

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

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

(*i*) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates.

(*ii*) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or affiliates.

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

(*iv*) Shares issued otherwise than for money.

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

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

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

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1344 Acquisition of own shares by corporation; shares as authorized but unissued; reducing number of authorized shares if reissuance prohibited; restriction on acquisition.

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

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

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

(4) A corporation that acquires its own shares may grant a security interest in the shares as security for the payment of the purchase price of the shares. Any shares acquired by the corporation in which it has granted a security interest are not canceled and do not constitute authorized but unissued shares until the corporation pays the purchase price. If the corporation has granted a security interest in the shares, the shares shall not be voted directly or indirectly and shall not be counted in determining the total number of issued shares entitled to vote at any given time, except to the extent provided by the agreement creating the security interest in the event of default. Upon payment of the purchase price, the shares shall be canceled and constitute authorized but unissued shares. If the articles of incorporation prohibit reissue of canceled shares, then the amendment required by subsection (2) shall be filed.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1345 Distributions to shareholders; record date for determining entitlement; prohibited distribution; determination; measuring effect of distribution; indebtedness to shareholder; obligation to make future payments; enforceability of guaranty or other undertaking by third party; asserting right of rescission or other legal or equitable rights.

Sec. 345. (1) A board may authorize and the corporation may make distributions to its shareholders subject

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to restriction by the articles of incorporation and the limitation in subsection (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1351-450.1367 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed sections pertained to dividends, purchase, or redemption of shares.

450.1368 Repealed. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

Compiler's note: The repealed section pertained to purchase by corporation of shares listed on national securities exchange from certain persons.

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450.1371-450.1381 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed sections pertained to cancellation or retention of shares, and reduction of stated capital.

450.1391 Inspection and voting rights of bondholders; facsimile signatures.

Sec. 391. (1) A corporation, in its articles of incorporation, may confer upon the holders of bonds issued or to be issued by it, rights to inspect the corporate books and records and to vote in the election of directors and on any other matters on which shareholders of the corporation may vote to the extent, in the manner, and subject to the conditions prescribed in the articles. The articles may grant to the board the power to confer such voting or inspection rights under the terms of any bonds issued or to be issued by the corporation.

(2) The signatures of the officers upon a bond may be facsimiles.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1392 Chapter inapplicable to distributions in dissolution.

Sec. 392. This chapter shall not apply to distributions in dissolution under chapter 8.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

CHAPTER 4
SHAREHOLDERS

450.1401 Meetings of shareholders; place.

Sec. 401. Meetings of shareholders 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: 1972, Act 284, Eff. Jan. 1, 1973.

450.1402 Annual meeting of shareholders.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1403 Special meeting of shareholders.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1404 Meetings of shareholders; notice; adjournment; result of shareholder's attendance at meeting.

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 shall be given not less than 10 nor more than 60 days before the date of the meeting to each shareholder of record entitled to vote at the meeting. Notice may be given personally, by mail, or by electronic transmission. If a shareholder or proxy holder may be present and vote at the meeting

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by remote communication, the means of remote communication allowed shall be included in the notice.

(2) Unless the corporation has securities registered under section 12 of title I of the securities exchange act of 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78*l*, notice of the purposes of a meeting shall include notice of shareholder proposals that are proper subjects for shareholder action and are intended to be presented by shareholders who have notified the corporation in writing of their intention to present the proposals at the meeting. The bylaws may establish reasonable procedures for the submission of proposals to the corporation in advance of the meeting.

(3) If a meeting 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 if any, to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. A shareholder or proxy holder may be present and vote at the adjourned meeting by a means of remote communication if he or she was permitted to be present and vote by that means of remote communication in the original meeting notice. At the adjourned meeting, only business that might have been transacted at the original meeting may be transacted if a notice of the adjourned meeting is not given. If after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice under subsection (1).

(4) A shareholder's attendance at a meeting will result in both of the following:

(a) Waiver of objection to lack of notice or defective notice of the meeting, unless the shareholder 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 objects to considering the matter when it is presented.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1405 Participating in meeting of shareholders by conference telephone or remote communications.

Sec. 405. (1) Unless otherwise restricted by the articles of incorporation or bylaws, a shareholder may participate in a meeting of shareholders by a conference telephone or by other means of remote communication through which all persons participating in the meeting may communicate with the other participants. All participants shall be advised of the means of remote communication and the names of the participants in the meeting shall be divulged to all participants.

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

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

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

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

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

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

History: Add. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1406 Meeting of shareholders; duties of chairperson.

Sec. 406. (1) At each meeting of shareholders, 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) The chairperson, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting. Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(3) The chairperson of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall close upon the final adjournment of the meeting.

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After the polls close, no ballots, proxies, or votes nor any revocations or changes to ballots, proxies, or votes may be accepted.

History: Add. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1406a Electronic transmission as notice; consent.

Sec. 406a. In addition to any other form of notice to a shareholder permitted by the articles of incorporation, the bylaws, or this chapter, any notice given to a shareholder by a form of electronic transmission to which the shareholder has consented is effective.

History: Add. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1407 Corporate action without meeting of shareholders.

Sec. 407. (1) The articles of incorporation may provide that any action required or permitted by this act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. A written consent shall bear the date of signature of the shareholder who signs the consent. Written consents are not effective to take corporate action unless within 60 days after the record date for determining shareholders entitled to express consent to or to dissent from a proposal without a meeting, written consents dated not more than 10 days before the record date and signed by a sufficient number of shareholders to take the action are delivered to the corporation. Delivery shall be to the corporation's registered office, its principal place of business, or an officer or agent of the corporation having custody of the minutes of the proceedings of its shareholders. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to shareholders who would have been entitled to notice of the shareholder meeting if the action had been taken at a meeting and who have not consented to the action in writing. If the action consented to would have required filing of a certificate under any other section of this act if the action had been voted upon by shareholders at a meeting of the shareholders, the certificate filed under the other section shall state, in lieu of any statement required by the section concerning a vote of shareholders, that both written consent and written notice have been given as provided in this section.

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

(3) An electronic transmission consenting to an action transmitted by a shareholder or proxy holder, or by a person authorized to act for the shareholder or proxy holder, is written, signed, and dated for the purposes of this section if the electronic transmission is delivered with information from which the corporation can determine that the electronic transmission was transmitted by the shareholder or proxy holder, or by the person authorized to act for the shareholder or proxy holder, and the date on which the electronic transmission was transmitted. The date on which an electronic transmission is transmitted is the date on which the consent was signed for purposes of this section. A consent given by electronic transmission is not delivered until reproduced in paper form and the paper form delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders 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 place of business or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders 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: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1411 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to record date for determination of shareholders.

450.1412 Fixing record dates for certain purposes.

Sec. 412. (1) For the purpose of determining shareholders entitled to notice of and to vote at a meeting of

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shareholders or an adjournment of a meeting, the bylaws may provide for fixing, or in the absence of a provision the board may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted by the board. The date shall not be more than 60 nor less than 10 days before the date of the meeting. If a record date is not fixed, the record date for determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be the close of business on the day next preceding the day on which notice is given, or if no notice is given, the day next preceding the day on which the meeting is held. When a determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders has been made as provided in this section, the determination applies to any adjournment of the meeting, unless the board fixes a new record date under this section for the adjourned meeting.

(2) For the purpose of determining shareholders entitled to express consent to or to dissent from a proposal without a meeting, the bylaws may provide for fixing a record date, which shall not be more than 60 days before effectuation of the action proposed to be taken. In the absence of a provision, the board may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted by the board and shall not be more than 10 days after the board resolution. If a record date is not fixed and prior action by the board is required with respect to the corporate action to be taken without a meeting, the record date shall be 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 shall be the first date on which a signed written consent is delivered to the corporation as provided in section 407.

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1413 List of shareholders entitled to vote.

Sec. 413. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make and certify a complete list of the shareholders entitled to vote at a shareholders' meeting or any adjourned shareholders' meeting. The list shall be all of the following:

(a) Arranged alphabetically within each class and series, with the address of and the number of shares held by each shareholder.

(b) Produced at the time and place of the meeting.

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

(d) Prima facie evidence as to who are the shareholders entitled to examine the list or to vote at the meeting.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1415 Shareholder meeting; quorum.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—

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Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1421 Proxy; expiration; means; use of reproduction of writing or transmission; revocability; incompetence or death of shareholder.

Sec. 421. (1) A shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize other persons to act for him or her by proxy.

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

(3) Without limiting the manner in which a shareholder may authorize another person or persons to act for him or her as proxy pursuant to subsection (1), the following methods constitute a valid means by which a shareholder may grant authority to another person to act as proxy:

(a) The execution of a writing authorizing another person or persons to act for the shareholder as proxy. Execution may be accomplished by the shareholder or by an authorized officer, director, employee, or agent signing the writing or causing his or her signature to be affixed to the writing by any reasonable means including, but not limited to, facsimile signature.

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

(4) A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to subsection (3) 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.

(5) A proxy is revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section and sections 422 and 423.

(6) The authority of the holder of a proxy to act is not revoked by the incompetence or death of the shareholder 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 responsible for maintaining the list of shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1422 Irrevocable proxy.

Sec. 422. A proxy which is entitled "irrevocable proxy", and which 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) A pledgee of or other holder of a security interest in the shares.

(b) A person who has purchased or agreed to purchase the shares.

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1423 Revocable proxy.

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

(2) A proxy is revocable, notwithstanding a provision making it irrevocable, by a purchaser of shares who did not know of the existence of the provision unless the existence of the proxy and its irrevocability are noted

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conspicuously on the face or back of the certificate representing the shares.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1431 Inspectors at shareholders' meetings.

Sec. 431. (1) If the bylaws require inspectors at a shareholders' meeting, the requirement is waived unless compliance therewith is requested by a shareholder 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' 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' meeting may, and on request of a shareholder entitled to vote thereat 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 thereat.

(2) The inspectors shall determine the number of shares outstanding and the voting power of each, the shares 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. On request of the person presiding at the meeting or a shareholder entitled to vote thereat, 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: 1972, Act 284, Eff. Jan. 1, 1973.

450.1432 Procedure recognizing beneficial owner of shares as shareholder.

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

(2) The procedure may set forth any of the following:

(a) The types of nominees to which it applies.

(b) The rights or privileges that the corporation recognizes in a beneficial owner.

(c) The manner in which the procedure is selected by the nominee.

(d) The information that must be provided when the procedure is selected.

(e) The period for which selection of the procedure is effective.

(f) Other aspects of the rights and duties created.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1441 Voting by shareholders.

Sec. 441. (1) Each outstanding share is entitled to 1 vote on each matter submitted to a vote of the shareholders, unless otherwise provided in the articles of incorporation. A vote may be cast either orally or in writing, unless otherwise provided in the bylaws.

(2) Other than the election of directors, if an action is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote on the action, unless a greater vote is required in the articles of incorporation or another section of this act. Unless otherwise provided in 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. Unless otherwise provided in the articles, directors shall be elected by a plurality of the votes cast at an election.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1988, Act 58, Eff. Apr. 1, 1988;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2006, Act 66, Imd. Eff. Mar. 20, 2006.

Compiler's note: Section 2 of Act 58 of 1988 provides: “This amendatory act shall not apply to any domestic corporation before June 1, 1989, unless the corporation's board of directors adopts a resolution, pursuant to this section, electing to have this act apply to the corporation. The resolution shall specify the date after January 1, 1988 and before June 1, 1989 on which this act will apply to the corporation. The resolution shall be filed with the department of commerce, corporation and securities bureau, on or before the date that the act will apply to the corporation.”

450.1442 Voting as a class or series.

Sec. 442. (1) The articles of incorporation may provide that a class or series of shares shall vote as a class or series to authorize any action, including amendment to the articles. Any voting as a class or series shall be in addition to any other vote required by this act. If voting as a class or series is provided in the articles, it shall be by the proportionate vote provided in the articles 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 of

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that class or series entitled to vote on that action.

(2) If voting as a class or series is required by this act to authorize an action, the action shall be authorized by a majority of the votes cast by the holders of shares of each class or series entitled to vote on that action, unless a greater vote is required by the articles of incorporation or another section of this act. Any voting as a class or series shall be in addition to any other vote required by this act.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2006, Act 67, Imd. Eff. Mar. 20, 2006.

450.1444 Voting shares standing in name of another corporation; voting pledged shares.

Sec. 444. (1) Shares standing in the name of another domestic or foreign corporation, whether or not the corporation is subject to this act, may be voted by an officer or agent, or by proxy appointed by an officer or agent or by some other person, who by action of its board or pursuant to its bylaws, shall be appointed to vote the shares.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1445 Voting shares held by representatives or fiduciaries.

Sec. 445. (1) Shares held by a person in a representative or fiduciary capacity may be voted by him without a transfer of the shares into his name.

(2) Shares held jointly by fiduciaries, where the instrument or order appointing the fiduciaries does not otherwise direct, shall be voted as follows:

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

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

(c) If the fiduciaries are equally divided as to how the shares shall be voted, 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 stock shall be voted by the majority of such fiduciaries and such additional person.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1446 Voting by joint tenants or tenants in common.

Sec. 446. Shares held by 2 or more persons as joint tenants or as tenants in common may be voted at a meeting of shareholders by any of such persons, unless another joint tenant or tenant in common seeks to vote any of such shares in person or by proxy. In the latter event, the written agreement, if any, which governs the manner in which the shares shall be voted, controls if presented at the meeting. If no such agreement is presented at the meeting, the majority in interest of the joint tenants or tenants in common present shall control the manner of voting. If there is no such majority, the shares, for the purpose of voting, shall be divided among such joint tenants or tenants in common in accordance with their interest in the shares.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1447 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to voting of treasury shares or shares sufficient to elect majority of directors of another corporation.

450.1447a Voting shares owned by second corporation.

Sec. 447a. Absent an order of a court of competent jurisdiction based upon a determination that special circumstances exist and the best interests of the corporation would be served, the shares of a corporation shall not be voted on any matter or considered to be outstanding shares for any purpose related to voting if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1448 Voting of redeemable shares.

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.

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History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1451 Cumulative voting.

Sec. 451. The articles of incorporation may provide that a shareholder entitled to vote at an election for directors may vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving 1 candidate as many votes as the number of such directors multiplied by the number of his shares, or by distributing his votes on the same principle among any number of the candidates.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1455 Articles control where voting requirements exceed those of act.

Sec. 455. With respect to an action to be taken by the shareholders, if the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of a class or series of shares, than required by this act with respect to the action, the articles shall control. An amendment of the articles which changes or deletes such a provision shall be authorized by the vote required to amend the articles pursuant to section 611, or by the same vote as would be required to take action under the provision, whichever is greater. The failure to include a provision of the kind described in this section in the articles shall not invalidate any bylaw or agreement which would otherwise be considered valid.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1461 Voting agreements between shareholders.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1463 Repealed. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

Compiler's note: The repealed section pertained to management provision in articles of incorporation.

450.1466 Voting trust agreement; certificates.

Sec. 466. A shareholder may confer upon a trustee the right to vote or otherwise represent his shares for not to exceed 10 years, by entering into a written voting trust agreement setting forth the terms and conditions of the voting trust, by filing an executed counterpart of the agreement at the registered office of the corporation, and by transferring his shares to the trustee for purposes of the agreement. After filing of the agreement, certificates for shares so transferred shall be surrendered and canceled and new certificates therefor issued to the trustee stating that they are issued under the agreement. In the entry of such ownership in the records of the corporation that fact shall also be noted, and the trustee may vote the transferred shares during the term of the agreement. The filed copy of the voting trust agreement is subject to inspection at any reasonable time by a shareholder or a holder of a beneficial interest in the voting trust, in person or by agent or attorney. Voting trust certificates shall be issued to evidence beneficial interests in the voting trust.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1467 Responsibility of voting trustee; determination of right to vote and manner of voting.

Sec. 467. (1) A trustee who votes shares subject to a voting trust incurs no responsibility as shareholder, trustee or otherwise, except for his malfeasance.

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

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1468 Extending duration of voting trust agreement.

Sec. 468. (1) At any time within 12 months before expiration of a voting trust agreement as originally fixed or as extended as herein provided, 1 or more beneficiaries of the voting trust, by agreement in writing and

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with written consent of the voting trustees, may extend the duration of the voting trust agreement with regard to the shares subject to their beneficial interest for an additional period not exceeding 10 years. The voting trustees, before expiration of the voting trust agreement as originally fixed or as previously extended, shall file in the registered office of the corporation an executed counterpart of the extension agreement and of their consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement. An extension agreement does not affect the rights or obligations of persons not parties thereto.

(2) The validity of a voting trust or of an extension thereof, otherwise lawful, is not affected during a period of 10 years from the date of its commencement by the fact that by its terms it will or may last beyond such 10-year period; but it shall become inoperative at the end of such 10-year period.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1471 Shares as personal property; shares transferable.

Sec. 471. The shares of a corporation are personal property and are transferable in accordance with article 8 of the uniform commercial code, 1962 PA 174, MCL 440.8101 to 440.8601, except as otherwise provided in this act.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2000, Act 358, Eff. Mar. 28, 2001.

450.1472 Restriction on transfer or registration of transfer of bond or share; imposition; enforcement.

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

(2) A written restriction on the transfer or registration of transfer of a bond or share of a corporation, if permitted by this section or section 473 and noted conspicuously on the face or back of the instrument 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 a personal representative, administrator, trustee, guardian, or other fiduciary entrusted with responsibility for the person or estate of the holder. Unless the existence of the restriction is noted conspicuously on the face or back of the instrument or on the information statement required under section 336, the restriction, even though permitted by this section or section 473, is ineffective except against a person with actual knowledge of the restriction.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1473 Permissible restrictions on transfer or registration of transfer of bonds or shares.

Sec. 473. In particular and without limitation of the generality of the power granted by subsection (1) of section 472 to impose restrictions, a restriction on the transfer or registration of transfer of bonds or shares of a corporation 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 or shares of the corporation or to any other person or to any combination thereof, a prior opportunity to acquire the restricted instruments.

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

(c) Requires the corporation or the holders of a class of bonds or shares 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 as a corporation under subchapter S of the United States internal revenue code.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1481 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to preemptive rights.

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450.1485 Corporate books, records, and minutes.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1487 Request for balance sheet, statement of income, and statement of source and application of funds; inspection of records; court order; definition; holder of voting trust certificate deemed shareholder.

Sec. 487. (1) Upon written request of a shareholder, a corporation shall mail to the shareholder its balance sheet as at the end of the preceding fiscal year; its statement of income for the fiscal year; and, if prepared by the corporation, its statement of source and application of funds for the fiscal year.

(2) Any shareholder of record, in person or by attorney or other agent, shall have the right during the usual hours of business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, if the shareholder gives the corporation written demand describing with reasonable particularity his or her purpose and the records he or she desires to inspect, and the records sought are directly connected with the purpose. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder. The demand shall be delivered to the corporation at its registered office in this state or at its principal place of business. In every instance where an attorney or other agent shall be the person who seeks to inspect, the demand shall be accompanied by a power of attorney or other writing which authorizes the attorney or other agent to act on behalf of the shareholder.

(3) If the corporation does not permit an inspection within 5 business days after a demand has been received in compliance with subsection (2), or imposes unreasonable conditions upon the inspection, the shareholder may apply to the circuit court of the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. If the shareholder seeks to inspect the corporation's books and records other than its stock ledger or list of shareholders, he or she shall first establish that he or she has complied with this section respecting the form and manner of making demand for inspection of the documents, that the inspection he or she seeks is for a proper purpose, and that the documents sought are directly connected with the purpose. If the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and has established compliance with this section respecting the form and manner of making demand for the inspection of the documents, the burden of proof shall be upon the corporation 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. The court may, in its discretion, order the corporation to permit the shareholder to inspect the corporation's stock ledger, a list of shareholders, and its other books and records on conditions and with limitations as the court may prescribe and may award other or further relief as the court may consider just and proper. The court may order books, documents and records, pertinent extracts, or duly authenticated copies, to be brought within this state and kept in this state upon terms and conditions as the court may prescribe.

(4) A director shall have the right to 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. The court may, in its discretion, order the corporation to permit the director to inspect any and all books and records, on conditions and with limitations as the court may prescribe and may award other and further relief as the court may consider 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 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 or director to inspect the records demanded.

(6) As used in this section, “the right to inspect records” includes the right to copy and make extracts from the records and, if reasonable, the right to require the corporation to supply copies made by photographic, xerographic, or other means. The corporation may require the shareholder to pay a reasonable charge,

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covering the costs of labor and material, for copies of the documents provided to the shareholder.

(7) A holder of a voting trust certificate representing shares of the corporation is deemed a shareholder for the purpose of this section and section 485.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1488 Shareholder agreement.

Sec. 488. (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with this act in 1 or more of the following ways:

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

(b) It governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations in sections 345 and 855a pertaining to the protection of creditors.

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

(d) In general or in regard to specific matters, it governs the exercise or division of voting power by or between the shareholders and directors or by or among any of the shareholders or directors, including use of weighted voting rights or director proxies.

(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 shareholder, director, officer, or employee of the corporation or among the shareholders, directors, officers, or employees of the corporation.

(f) It transfers to 1 or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders.

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

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

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

(a) Be set forth in a provision of the articles of incorporation or bylaws approved by all persons who are shareholders at the time of the agreement, or in a written agreement that is signed by all persons who are shareholders at the time of the agreement and made known to the corporation.

(b) Be subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the face or back of a certificate for shares issued by the corporation or on the information statement required by section 336. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who did not have knowledge of the existence of the agreement at the time ownership is transferred is entitled to rescission of the purchase. A purchaser has knowledge of the existence of the agreement at the time ownership is transferred if the agreement's existence is noted on the certificate or information statement in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time ownership of the shares is transferred. An action to enforce the right of rescission authorized by this subsection must be commenced within 90 days after discovery of the existence of the agreement or 2 years after the shares are transferred, whichever is earlier.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by 1 or more members of a national or affiliated securities association.

(5) If the agreement 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 action adopt an amendment to the articles of incorporation or bylaws to delete the agreement and any references to it.

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

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209(1)(c).

(7) The existence or performance of an agreement authorized by this section is not grounds for imposing personal liability on any shareholder 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) Dissolution pursuant to an agreement authorized in subsection (1)(g) shall be implemented by filing a certificate of dissolution under section 805.

(9) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(10) The failure to satisfy the unanimity requirement of subsection (2) with respect to an agreement authorized by this section does not invalidate any agreement that would otherwise be considered valid.

History: Add. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1489 Action by shareholder.

Sec. 489. (1) A shareholder 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 or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder. If the shareholder establishes grounds for relief, the circuit court may make an order or grant relief as it considers appropriate, including, without limitation, an order providing for any of the following:

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

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

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

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

(e) The purchase at fair value of the shares of a shareholder, either by the corporation or by the officers, directors, or other shareholders responsible for the wrongful acts.

(f) An award of damages to the corporation or a shareholder. An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued, or within 2 years after the shareholder discovers or reasonably should have discovered the cause of action under this section, whichever occurs first.

(2) No action under this section shall be brought by a shareholder whose shares are listed on a national securities exchange or regularly traded in a market maintained by 1 or more members of a national or affiliated securities association.

(3) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected 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. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2006, Act 68, Imd. Eff. Mar. 20, 2006.

450.1491 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to parties and complaint in derivative action.

450.1491a 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 transact business in this state.

(b) “Shareholder” means a record or beneficial owner of shares and includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf.

(c) “Disinterested director” means a director who is not a party to a derivative proceeding, or a director who is a party if the corporation demonstrates that the claim asserted against the director is frivolous or insubstantial.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

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450.1492 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to discontinuance, compromise, or settlement of derivative action.

450.1492a Commencement of derivative proceeding by shareholder; criteria.

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

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

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1493 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to expenses of derivative action.

450.1493a Commencement of derivative proceeding by shareholder; criteria.

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

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1494 Stay of derivative proceeding; condition.

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1495 Dismissal of derivative proceeding; determination.

Sec. 495. (1) The court shall dismiss a derivative proceeding if, on motion by the corporation, the court finds that 1 of the groups specified in subsection (2) has made a determination in good faith after conducting a reasonable investigation upon 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 pursuant to subsection (2)(a) or (b), the corporation shall have the burden of proving the good faith of the group making the determination and the reasonableness of the investigation. If the determination is made pursuant to subsection (2)(c) or (d), the plaintiff shall have the burden of proving that the determination was not made in good faith or that the investigation was not reasonable.

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

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

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

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

(d) By all disinterested independent directors.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1496 Discontinuance or settlement of derivative proceeding; judicial approval; notice; expense.

Sec. 496. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected. If notice is directed to be given to the affected shareholders, the court may determine

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whether 1 or more of the parties to the action shall bear the expense of giving the notice, in the amount as the court determines and finds to be reasonable under the circumstances. The amount of expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1497 Termination of derivative proceeding; order of court.

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

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

(b) The corporation to pay the plaintiff's reasonable expenses, including reasonable attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation. The court shall direct the plaintiff to account to the corporation for any proceeds received by the plaintiff in excess of expenses awarded by the court, except that this shall not apply to a judgment rendered for the benefit of an injured shareholder only and limited to a recovery of the loss or damage sustained by him or her.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

CHAPTER 5
DIRECTORS AND OFFICERS

450.1501 Management of corporation; qualifications of director.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983.

450.1505 Number, election, and term of directors; resignation; designation, compensation, and expenses of independent director; communication of independent director with shareholders.

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1506 Division of directors into classes; terms of directors in first, second, or third class; election.

Sec. 506. (1) The articles of incorporation or a bylaw adopted by the shareholders or incorporators may provide that in lieu of annual election of all directors the directors be divided into 2 or 3 classes, each to be as nearly equal in number as possible. The term of office of directors in the first class shall expire at the first annual meeting of shareholders after their election, that of the second class shall expire at the second annual meeting after their election, and that of the third class, if any, shall expire at the third annual meeting after their election. At each annual meeting after such classification, a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are 2 classes, or until the third succeeding annual meeting if there are 3 classes.

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(2) A corporation having more than 1 class or series of shares may provide in its articles for election of 1 or more directors by shareholders of a class or series, to the exclusion of other shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1511 Removal of directors by shareholders.

Sec. 511. (1) The shareholders may remove 1 or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares entitled to vote at an election of directors except that the articles may require a higher vote for removal without cause. This section shall not invalidate any bylaw adopted before the effective date of the act which added this sentence insofar as the bylaw applies to removal without cause.

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

(3) If holders of a class or series of stock or of bonds are entitled by the articles to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class or series of stock or the holders of those bonds.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1514 Removal of director by court.

Sec. 514. (1) The circuit court of the county in which the principal place of business or registered office of the corporation is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that the director engaged in fraudulent, illegal, or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, and removal is in the best interest of the corporation.

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1515 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to vacancy on board of directors.

450.1515a Filling vacancy in board.

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

(a) The shareholders may fill the vacancy.

(b) The board may fill the vacancy.

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

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

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

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

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

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

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450.1521 Regular or special meetings of board.

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

(2) A regular meeting may be held with or without notice as prescribed in the bylaws. A special meeting shall be held upon notice as prescribed in the bylaws. A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting. Unless required by the bylaws, neither the business to be transacted at, nor the purpose of, a regular or special meeting need be specified in the notice or waiver of notice of the meeting.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1523 Quorum; majority vote as constituting action of board.

Sec. 523. (1) A majority of the members of the board then in office, or of the members of a committee of the board, constitutes a quorum for transaction of business, unless the articles of incorporation or bylaws, or in the case of a committee, the board resolution establishing the committee, provide for a larger or smaller number. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee, unless the vote of a larger number is required by this act, the articles, or the bylaws, or in the case of a committee, the board resolution establishing the committee.

(2) Amendment of the bylaws by the board requires the vote of not less than a majority of the members of the board then in office.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1525 Consent to action of board without meeting.

Sec. 525. Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board, may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1527 Committees; designation by board; membership; absence or disqualification of member; terms.

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

(2) A committee, and each member thereof, shall serve at the pleasure of the board.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1528 Committees; powers and authority; limitations; subcommittees.

Sec. 528. (1) A committee designated pursuant to section 527, to the extent provided in a resolution of the board or in the bylaws, may exercise all powers and authority of the board in management of the business and affairs of the corporation. A committee does not have power or authority to do any of the following:

(a) Amend the articles of incorporation, except that a committee may prescribe the relative rights and preferences of the shares of a series pursuant to section 302(3).

(b) Adopt an agreement of merger or share exchange.

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

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

(e) Amend the bylaws of the corporation.

(f) Fill vacancies in the board.

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

(3) Unless otherwise provided in a resolution of the board, the articles of incorporation, or the bylaws, a committee may create 1 or more subcommittees. Each subcommittee shall consist of 1 or more members of the committee. The committee may delegate all or part of its power or authority to a subcommittee.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2006, Act 65, Imd. Eff. Mar. 20, 2006.

450.1531 Officers of corporation; election or appointment; holding 2 or more offices; authority and duties.

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1535 Removal or resignation of officers; contract rights.

Sec. 535. (1) An officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause.

(2) The removal of an officer shall be without prejudice to his contract rights, if any. The election or appointment of an officer does not of itself create contract rights.

(3) An officer may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or at a subsequent time specified in the notice of resignation.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1541 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to discharge of duties by director or officer.

450.1541a Director or officer; manner of discharging duties; reliance on information, opinions, reports, or statements; action against director or officer; limitations.

Sec. 541a. (1) A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:

(a) In good faith.

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

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

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

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

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

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

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believes the committee merits confidence.

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1545 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to contracts or transactions involving interested directors or officers.

450.1545a Interest of director or officer in transaction; compensation of directors.

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

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

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

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

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

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

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

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1546 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to validity of contract involving interested directors or officers.

450.1548 Loan, guaranty, or assistance by corporation to director, officer, or employee.

Sec. 548. (1) A corporation may lend money to, guarantee an obligation of, or otherwise assist an officer or employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or subsidiary, if, in the judgment of the board, the loan, guaranty, or assistance may reasonably be expected to benefit the corporation, or is pursuant to a plan authorizing loans, guaranties, or assistance that the board has reasonably determined will benefit the corporation.

(2) The loan, guaranty, or assistance may be with or without interest and may be unsecured or secured in a manner as the board approves, including a pledge of shares of stock of the corporation.

(3) A loan under this section to an officer or employee to purchase shares of the corporation or a subsidiary may be made at any rate of interest not exceeding the rate of interest allowed under Act No. 259 of the Public

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Acts of 1968, being sections 438.41 to 438.42 of the Michigan Compiled Laws.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1996, Act 113, Imd. Eff. Mar. 6, 1996.

450.1551 Liability of directors for corporate actions; liability of shareholders accepting or receiving share dividend or distribution.

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

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

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

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

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

(3) A shareholder who accepts or receives a share dividend or distribution with knowledge of facts indicating it is contrary to this act, or any restriction in the articles of incorporation, is liable to the corporation for the amount accepted or received in excess of the shareholder's share of the amount that lawfully could have been distributed.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1552 Rights of director against whom claim is successfully asserted under MCL 450.1551.

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

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

(a) Upon payment to the corporation of any amount of an improper share dividend or distribution, to be subrogated to the rights of the corporation against shareholders who received the share dividend or distribution in proportion to the amounts received by them respectively.

(b) Upon payment to the corporation of any amount of the purchase price of an improper purchase of shares to have the corporation rescind the purchase and recover for his or her benefit, but at his or her expense, the amount of the purchase price from any seller who sold the shares with knowledge of facts indicating that the purchase of shares by the corporation was not authorized by this act, or to have the corporation assign to the director the shares and any claim against the seller.

(c) Upon payment to the corporation of the claim of a creditor because of a violation of subdivision (1)(b) of section 551, to be subrogated to the rights of the corporation against shareholders who received an improper distribution of assets.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1553 Presumption of concurrence by director in corporation action; effect of dissent.

Sec. 553. A director who is present at a meeting of the board, or a committee thereof of which he is a member, at which action on a corporate matter referred to in section 551 is taken is presumed to have concurred in that action unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as secretary of the meeting before or promptly after the adjournment thereof. The right to dissent does not apply to a director who voted in favor of the action. A director who is absent from a meeting of the board, or a committee thereof of which he is a member, at which any such action is taken is presumed to have concurred in the action unless he files his dissent with the secretary of the corporation within a reasonable time after he has knowledge of the action.

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History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1554 Action against director or shareholder; limitation.

Sec. 554. An action against a director or shareholder for recovery upon a liability imposed by section 551 shall be commenced within 3 years after the cause of action accrues. An action under section 552 shall be commenced within 3 years after payment by the director to the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1561 Indemnification of certain persons generally.

Sec. 561. A corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding, if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and, with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987.

450.1562 Additional provisions for indemnification of certain persons.

Sec. 562. A corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the corporation except to the extent authorized in section 564c.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1563 Indemnification against actual and reasonable expenses.

Sec. 563. To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in section 561 or 562, or in defense of a claim, issue, or matter in the action, suit, or proceeding, the corporation shall indemnify him or her against actual and reasonable expenses, including attorneys' fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this section.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1564 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to payment of defense expenses in advance.

450.1564a Indemnification under MCL 450.1561, MCL 450.1562, or MCL 450.1563; determination and evaluation; designation of committee or selection of independent legal counsel; partial indemnification; payment authorization; indemnification for expenses and liabilities.

Sec. 564a. (1) Except as otherwise provided in subsection (5), an indemnification under section 561 or 562, unless ordered by the court or required under section 563, shall be made by the corporation only as authorized

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in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in sections 561 and 562 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

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

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

(c) In a written opinion by independent legal counsel selected in 1 of the following ways:

(*i*) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(*ii*) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

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

(2) In the designation of a committee under subsection (1)(b) or in the selection of independent legal counsel under subsection (1)(c)(*ii*), all directors may participate.

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

(4) An authorization of payment of indemnification under this section shall be made in any of the following ways:

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

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

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

(*iii*) If the corporation has 1 or more independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all independent directors who are not parties or are threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(*iv*) If there are no independent directors and less than 2 directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by the vote necessary for action by the board in accordance with section 523, in which authorization all directors may participate.

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

(5) To the extent that the articles of incorporation include a provision eliminating or limiting the liability of a director pursuant to section 209(1)(c), a corporation may indemnify a director for the expenses and liabilities described in this subsection without a determination that the director has met the standard of conduct set forth in sections 561 and 562, but no indemnification may be made except to the extent authorized in section 564c if the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders, violated section 551, or intentionally committed a criminal act. In connection with an action or suit by or in the right of the corporation described in section 562, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred. In connection with an action, suit, or proceeding other than an action, suit, or proceeding by or in the right of the corporation, as described in section 561, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred, and for judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1564b Payment or reimbursement of party in advance of final disposition of proceeding; undertaking as unlimited general obligation; evaluation of reasonableness; advancement of expenses.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer,

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employee, or agent who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the person furnishes the corporation a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the applicable standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the person but may be unsecured and may be accepted without reference to the financial ability of the person to make repayment.

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

(4) A provision in the articles of incorporation or bylaws, a resolution of the board or shareholders, or an agreement making indemnification mandatory shall also make the advancement of expenses mandatory unless the provision, resolution, or agreement specifically provides otherwise.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1564c Application for indemnification to court; determination.

Sec. 564c. A director, officer, employee, or agent of the corporation who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in sections 561 and 562 or was adjudged liable as described in section 562, but if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1565 Limitation on total amount of expenses advanced or indemnified; duration of indemnification.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1567 Liability insurance.

Sec. 567. (1) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have power to indemnify him or her against liability under sections 561 to 565.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

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450.1569 "Corporation" defined for purposes of MCL 450.1561 to 450.1567.

Sec. 569. For purposes of sections 561 to 567, "corporation" includes all constituent corporations absorbed in a consolidation or merger and the resulting or surviving corporation, so that a person who is or was a director, officer, employee, or agent of the constituent corporation or is or was serving at the request of the constituent corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise whether for profit or not shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as the person would if he or she had served the resulting or surviving corporation in the same capacity.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987.

450.1571 Definitions.

Sec. 571. For the purposes of sections 561 to 567:

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

(b) "Other enterprises" shall include employee benefit plans.

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

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

History: Add. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

CHAPTER 6
AMENDMENTS TO ARTICLES OF INCORPORATION

450.1601 General power of amendment.

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

(2) A corporation may amend its articles of incorporation to become a nonprofit corporation by adopting restated articles in accordance with section 641 which shall so amend the articles to contain only those provisions that might be lawfully contained in original articles of a nonprofit corporation formed under the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws. The amendment does not constitute a dissolution of the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1602 Specific powers of amendment.

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

(a) Change its corporate name.

(b) Enlarge, limit, or otherwise change its corporate purposes or powers.

(c) Change the duration of the corporation.

(d) Increase or decrease the aggregate number of shares, or shares of any class or series of any class, which the corporation has authority to issue.

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

(f) Change the designation of any of its issued or unissued shares, and change the preferences, limitations, and relative rights in respect of any of its issued or unissued shares.

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

(h) Create new classes or series of shares having rights and preferences superior or inferior to, or equal with, the issued or unissued shares of any class or series then authorized.

(i) Cancel or otherwise affect the right of the holders of the shares of any class or series to receive dividends that have accrued but have not been declared.

(j) Divide any class of issued or unissued shares into series and fix the designations of the series and the preferences, limitations, and relative rights of the shares of the series.

(k) Authorize the board to divide authorized but unissued shares of any class into series and fix the designations and number of shares of the series and the preferences, limitations, and relative rights of the

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shares of the series.

(*l*) Authorize the board to fix or change the designation, number of, preferences, limitations, or relative rights of the shares of an established series the shares of which have not been issued.

(m) Revoke, diminish, or enlarge the authority of the board to take any action set forth in subdivisions (k) and (*l*).

(n) Limit, deny, or grant to shareholders of a class the preemptive right to acquire shares of the corporation.

(o) Change its registered office or change its resident agent.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1611 Articles of incorporation; amendment procedure.

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

(2) Unless the articles of incorporation provide otherwise, the board may adopt 1 or more of the following amendments to the corporation's articles of incorporation without shareholder action:

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

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

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

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

(e) Change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the corporate name, or by adding, deleting, or changing a geographical attribution for the corporate name.

(f) Any other change expressly permitted by this act to be made without shareholder action.

(3) Other amendments of the articles of incorporation, except as otherwise provided in this act, shall be proposed by the board and approved by the shareholders as provided in this section. The board may condition its submission of the amendment to the shareholders on any basis.

(4) Notice of a meeting setting forth the proposed amendment or a summary of the changes to be effected by the proposed amendment shall be given to each shareholder of record entitled to vote on the proposed amendment within the time and in the manner provided in this act for giving notice of meetings of shareholders.

(5) At the meeting, a vote of shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the outstanding shares entitled to vote on the proposed amendment and, in addition, if any class or series of shares is entitled to vote on the proposed amendment as a class, the affirmative vote of a majority of the outstanding shares of that class or series. The voting requirements of this section are subject to any higher voting requirements provided in this act for specific amendments or provided in the articles of incorporation.

(6) Any number of amendments may be acted upon at 1 meeting.

(7) Upon adoption of an amendment, a certificate of amendment shall be filed as provided in section 631.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2006, Act 64, Imd. Eff. Mar. 20, 2006.

450.1615 Class vote on amendment.

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

(2) If a proposed amendment would alter or change the powers, preferences or special rights of a class so as to affect adversely 1 or more series of a class, but not the entire class, then only the shares of the 1 or more series affected by the amendment shall as a group be considered a single class for the purposes of this section.

History: 1972, Act 284, Eff. Jan. 1, 1973.

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450.1621 Dissent of shareholder to amendment; payment to dissenting shareholder.

Sec. 621. (1) A holder of adversely affected shares who does not vote for or consent in writing to a proposed amendment may dissent, pursuant to section 762, and receive payment for the shares, if the amendment does either of the following:

(a) Materially alters or abolishes a preferential right of the shares having preferences.

(b) Creates, alters, or abolishes a material provision or right in respect of the redemption of the shares or a sinking fund for the redemption or purchase of the shares.

(2) A dissenting shareholder shall not receive payment in excess of the sum payable upon redemption of the shares or liquidation of the corporation, whichever is less.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1631 Certificate of amendment.

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

(2) If the amendment is made as provided in section 611(2), a certificate of amendment shall be filed on behalf of the corporation, setting forth the amendment and certifying that it was adopted by the board of directors.

(3) In case of any other amendment, except as otherwise provided in this act, a certificate of amendment shall be executed and filed on behalf of the corporation, setting forth the amendment and certifying that the amendment has been adopted in accordance with section 611(3).

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1641 Adoption of restated articles of incorporation; amendment.

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

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

(3) Other restated articles of incorporation shall be approved by the directors or shareholders as provided in subsection (4).

(4) If the restated articles of incorporation merely restate and integrate, but do not further amend the articles as amended, the restated articles of incorporation may be adopted by the board without a vote of the shareholders, or by the shareholders, in which case the procedure and vote required by section 611(3) is applicable. If the restated articles of incorporation restate and integrate and also further amend in any material respect the articles of incorporation, as amended, the restated articles of incorporation shall be adopted by the shareholders pursuant to section 611(3).

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1642 Designation and contents of restated articles.

Sec. 642. Restated articles of incorporation shall be specifically designated as such in the heading thereof. They shall state, either in the heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, all of its former names and the date of filing of its original articles. Restated articles shall state that they were duly adopted by the incorporators, the directors, or the shareholders in accordance with this section. If adopted by the incorporators, the restated articles shall state that they were duly adopted by unanimous consent of the incorporators before the first meeting of the board. If adopted by the board without a vote of the shareholders, the restated articles shall state that they only restate and integrate and do not further amend the articles as theretofore amended, and that there is no material discrepancy between those provisions and the provisions of the restated articles. Restated articles of incorporation may omit such

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provisions of the original articles which named the incorporators, the initial board, or original subscribers for shares, and the omission shall not be considered a further amendment.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983.

450.1643 Execution and filing of restated articles; original articles superseded; status of restated articles.

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1651 Abandonment of amendment; certificate of abandonment.

Sec. 651. Before the effective date of an amendment to the articles of incorporation for which shareholder approval is required by this act, the amendment may be abandoned pursuant to provisions therefor, if any, set forth in the resolution of the shareholders approving the amendment. If a certificate of amendment has been filed by the corporation, it shall file a certificate of abandonment, but not later than the proposed effective date within 10 days after the abandonment.

History: 1972, Act 284, Eff. Jan. 1, 1973.

CHAPTER 7
CORPORATE COMBINATIONS AND DISPOSITIONS

450.1701 Merger of domestic corporations; adoption and contents of plan of merger.

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

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

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

(b) As to each constituent corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote; each class and series entitled to vote as a class; and, if the number of shares is subject to change before the effective date of the merger, the manner in which the change may occur.

(c) The terms and conditions of the proposed merger, including the manner and basis of converting the shares of each constituent corporation into shares, bonds, or other securities of the surviving corporation, or into cash or other consideration, which may include shares, bonds, rights, or other property or securities of a corporation whether or not a party to the merger, or into a combination thereof.

(d) A statement of any amendment to the articles of incorporation of the surviving corporation to be effected by the merger or any restatement of the articles as provided in section 641(1), which shall be in the form of restated articles as provided in section 642.

(e) Other provisions with respect to the proposed merger as the board considers necessary or desirable.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1702 Plan of share exchange; approval; contents; power of corporation not limited.

Sec. 702. (1) A corporation may acquire all of the outstanding shares of 1 or more classes or series of another corporation pursuant to a plan of share exchange approved in the manner provided by this act.

(2) The board of each corporation proposing to participate in a share exchange shall adopt a plan of share exchange setting forth all of the following:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation.

(b) The terms and conditions of the exchange, including the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) Other provisions with respect to the proposed exchange as the board considers necessary or desirable.

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1703 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to plan of merger or consolidation.

450.1703a Plan of merger or share exchange; approval.

Sec. 703a. (1) A plan of merger or share exchange adopted by the board of each constituent corporation shall, except as provided in subsection (2)(e) and (f), be submitted for approval at a meeting of the shareholders.

(2) For a plan of merger or share exchange to be approved all of the following shall apply:

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

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

(c) Notice of the shareholder meeting shall be given to each shareholder of record, whether or not entitled to vote at the meeting, within the time and in the manner provided in this act for giving notice of meetings of shareholders. The notice shall include or be accompanied by all of the following:

(*i*) A copy or summary of the plan of merger or share exchange. If a summary of the plan is given, the notice shall state that a copy of the plan is available upon request.

(*ii*) A statement informing shareholders who are entitled to dissent under section 762 that they have the right to dissent and to be paid the fair value of their shares by complying with the procedures set forth in sections 764 to 772.

(d) At the meeting, a vote of the shareholders shall be taken on the proposed plan of merger or share exchange. The plan is approved if it receives the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote on the plan, and if a class or series is entitled to vote on the plan as a class, the affirmative vote of the holders of a majority of the outstanding shares of the class or series. A class or series of shares is entitled to vote as a class in the case of a merger, if the plan of merger contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class or series of shares to vote as a class, or, in the case of a share exchange, if the class or series is included in the exchange. A class or series of shares is not entitled to vote as a class in the case of a merger or share exchange, if the board of directors determines on a reasonable basis that the class or series is to receive consideration under the plan of merger or share exchange that has a fair value that is not less than the fair value of the shares of the class or series on the date of adoption of the plan.

(e) Except as provided in section 754 or unless required by the articles of incorporation, action by the shareholders of the surviving corporation on a plan of merger is not required if all of the following apply:

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

(*ii*) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger.

(f) Except as provided in section 754, action by the shareholders of the acquiring corporation on a plan of share exchange is not required.

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1704 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to authorization of merger.

450.1706 Merger with domestic or foreign corporation; execution of certificate by incorporators; compliance.

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

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incorporators.

(2) In order to effect the merger, the majority of incorporators shall execute a certificate of merger in accordance with section 707.

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

History: Add. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1707 Certificate of merger or share exchange.

Sec. 707. (1) After a plan of merger or share exchange is approved, a certificate of merger or share exchange shall be executed and filed on behalf of each corporation. The certificate shall set forth the following:

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

(b) In the case of a share exchange, the statement required by section 702(2)(a), and the manner and basis of exchanging the shares to be acquired as set forth in the plan of exchange.

(c) A statement that the plan of merger or share exchange has been adopted by the boards in accordance with section 701 or 702.

(d) A statement that the plan of merger or share exchange will be furnished by the surviving or acquiring corporation, on request and without cost, to any shareholder of any constituent corporation.

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

(f) In the case of a merger governed by section 706, a statement that the merging corporation has not commenced business, has not issued any shares, has not elected a board, and that the plan of merger was approved by the unanimous consent of the incorporators.

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

(2) The certificate of merger or share exchange shall become effective in accordance with section 131.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1711 Merger of parent and subsidiary corporations; approval; mailing copy or summary of plan of merger to minority shareholders; waiver; compliance; effectuation of merger under other provisions.

Sec. 711. (1) A domestic corporation owning not less than 90% of the outstanding shares of each class of another domestic corporation or corporations may merge the other corporation or corporations into itself, or may merge itself, or itself and any such subsidiary corporation or corporations, into any such subsidiary corporation, without approval of the shareholders of any of the corporations, except as provided in section 713. The board of the parent corporation shall approve a plan of merger setting forth those matters required to be set forth in a plan of merger under section 701. Approval by the board of any such subsidiary corporation is not required.

(2) If the parent corporation owns less than 100% of the outstanding shares of any constituent subsidiary corporation, the parent corporation shall mail promptly after the filing of the certificate of merger to each minority shareholder of record of each such subsidiary corporation, unless waived in writing, a copy or summary of the plan of merger and shall comply with the provisions of this chapter respecting dissenters' rights.

(3) The grant of power to merge under this section does not preclude the effectuation of a merger as elsewhere provided in this act.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1712 Merger of parent and subsidiary corporations; certificate of merger.

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

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1713 Merger of parent and subsidiary corporations; approval of shareholders.

Sec. 713. (1) Approval by shareholders of a subsidiary corporation shall be obtained pursuant to its articles of incorporation, if the articles require approval of a merger by the affirmative vote of holders of more than the percentage of the shares of any class or series of the corporation then owned by the parent corporation.

(2) Approval of the shareholders of the parent corporation shall be obtained in either of the following cases:

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1721-450.1723 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed sections pertained to surviving or new corporation, the effect of merger or consolidation on articles of incorporation.

450.1724 Merger; applicable provisions; share exchange.

Sec. 724. (1) When a merger takes effect, all of the following apply:

(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation party to the merger except the surviving corporation ceases.

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

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

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

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

(f) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

(g) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1731-450.1734 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed sections pertained to merger or consolidation of foreign and domestic corporations, and application of MCL 450.1704 to surviving domestic corporation.

450.1735 Foreign corporations and domestic corporations; merger or share exchange; compliance; liability; power of foreign corporation not limited.

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

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger. If the parent corporation in a merger conducted pursuant to section 711 is a foreign corporation, it shall comply, notwithstanding the provisions of the laws of its jurisdiction of incorporation, with both of the following:

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(*i*) Section 711(2) with respect to notice to shareholders of a domestic subsidiary corporation that is a party to the merger.

(*ii*) Section 712 with respect to the certificate of merger.

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

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

(d) Each foreign corporation authorized to transact business in this state complies with section 1021 or 1035, as applicable.

(2) If the surviving corporation of a merger or the acquiring corporation in a share exchange is to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of this act with respect to foreign corporations if it is to transact business in this state. The surviving corporation in a merger is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is party to the merger, and in a proceeding for the enforcement of a right of a dissenting shareholder of a domestic corporation against the surviving corporation.

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

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2006, Act 72, Imd. Eff. Mar. 20, 2006.

Compiler's note: Former MCL 450.1735, which pertained to certificate of merger or consolidation of domestic and foreign corporations, was repealed by Act 303 of 1974, Imd. Eff. Oct. 21, 1974.

450.1736 Merger of domestic corporation with business organization.

Sec. 736. (1) As used in this section:

(a) “Business organization” means a domestic or foreign limited liability company, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic corporation.

(b) “Entity” means a business organization or domestic corporation.

(c) “Obligated person” means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise who, under applicable law, is generally liable for the obligations of the business enterprise.

(2) One or more domestic corporations may merge with 1 or more business organizations if the requirements of this section are satisfied. If all of the business organizations are foreign corporations, the merger shall proceed under section 735, without regard to this section.

(3) The merger is permitted by the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger, and each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(4) The board of each domestic corporation proposing to participate in a merger shall adopt a plan of merger, setting forth all of the following:

(a) The name of each constituent entity, the name of the constituent entity that will be the surviving entity, the street address of the surviving entity's principal place of business, and the type of organization of the surviving entity.

(b) For the domestic corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote, each class and series entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the merger, the manner in which the change may occur.

(c) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests or obligations of the surviving entity, or into cash or other consideration, which may include ownership interests or obligations of an entity not a party to the merger, or into a combination thereof.

(d) If the surviving entity is to be a domestic corporation, a statement of any amendment to the articles of incorporation of the surviving corporation to be effected by the merger or any restatement of the articles as provided in section 641(1), which shall be in the form of restated articles as provided in section 642.

(e) Other provisions with respect to the proposed merger as the board considers necessary or desirable.

(5) A plan of merger adopted by the board of each constituent domestic corporation shall be submitted for approval at a meeting of the shareholders as provided in section 703a(2).

(6) A domestic corporation that has not commenced business, has not issued any shares, and has not

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elected a board may merge with any domestic or foreign entity by unanimous consent of its incorporators. To effect the merger, the majority of the incorporators shall execute a certificate of merger in accordance with subsection (7).

(7) After a plan of merger is approved, a certificate of merger shall be executed and filed on behalf of each domestic corporation. The certificate shall set forth all of the following:

(a) A statement of the requirements set forth in subsection (4)(a), (b), and (d), and the manner and basis of converting the ownership interests of each constituent entity as set forth in the plan of merger.

(b) A statement that the plan of merger has been adopted by the board in accordance with subsection (4).

(c) A statement that the plan of merger will be furnished by the surviving entity, on request and without cost, to any shareholder of the domestic corporation.

(d) If approval of the shareholders of the domestic corporation was required, a statement that the plan was approved by the shareholders in accordance with subsection (5).

(e) In the case of a merger governed by subsection (6), a statement that the corporation has not commenced business, has not issued any shares, has not elected a board, and that the plan of merger was approved by the unanimous consent of the incorporators.

(f) A statement of any assumed names of merging entities transferred to the surviving entity as authorized by section 217(3), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic corporation or a foreign corporation authorized to transact business in this state, the certificate may include a statement of the names or assumed names of merging entities that are to be treated as newly filed assumed names of the surviving corporation pursuant to section 217(4).

(8) The certificate of merger shall become effective in accordance with section 131.

(9) When a merger takes effect, all of the following apply:

(a) Every other entity party to the merger merges into the surviving entity and the separate existence of every entity party to the merger except the surviving entity ceases.

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

(c) The surviving entity may use the name and the assumed names of any merging entity, if the filings required by section 217(3) or (4) or other applicable statute are made.

(d) The surviving entity has all liabilities of each constituent entity. This section does not affect the liability, if any, of a person who was an obligated person with respect to a merging entity for acts or omissions that occurred before the merger.

(e) A proceeding pending against any entity party to the merger may be continued as if the merger did not occur, or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of incorporation of a surviving domestic corporation are amended to the extent provided in the plan of merger.

(g) The ownership interests of each entity party to the merger that are to be converted into ownership interests or obligations of the surviving entity or into cash or other property are converted.

(10) If the surviving entity is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state if it transacts business in this state. The surviving entity is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is party to the merger, and in a proceeding for the enforcement of a right of a dissenting shareholder of a domestic corporation against the surviving entity.

History: Add. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1741 Abandonment of merger or share exchange.

Sec. 741. At any time before the effective date of a certificate of merger or share exchange, the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board. If a certificate of merger or share exchange has been filed by a corporation, it shall file a certificate of abandonment within 10 days after the abandonment, but not later than the proposed effective day.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1745 Conversion of domestic corporation into business organization; requirements; "business organization" and "entity" defined.

Sec. 745. (1) A domestic corporation may convert into a business organization if all of the following requirements are satisfied:

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(a) The conversion is permitted by the law that will govern the internal affairs of the business organization after conversion and the surviving business organization complies with that law in converting.

(b) Unless subdivision (d) applies, the board of the domestic corporation proposing to convert adopts a plan of conversion that includes all of the following:

(*i*) The name of the domestic corporation, the name of the business organization into which the domestic corporation is converting, the type of business organization into which the domestic corporation is converting, identification of the statute that will govern the internal affairs of the surviving business organization, the street address of the surviving business organization, the street address of the domestic corporation if different from the street address of the surviving business organization, and the principal place of business of the surviving business organization.

(*ii*) For the domestic corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote, each class and series entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the conversion, the manner in which the change may occur.

(*iii*) The terms and conditions of the proposed conversion, including the manner and basis of converting the shares into ownership interests or obligations of the surviving business organization, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(*iv*) The terms and conditions of the organizational documents that are to govern the surviving business organization.

(*v*) Any other provisions with respect to the proposed conversion that the board considers necessary or desirable.

(c) If the board adopts the plan of conversion under subdivision (b), the plan of conversion is submitted for approval in the same manner required for a merger under section 703a(2), including the procedures pertaining to dissenters' rights if any shareholder has the right to dissent under section 762.

(d) If the domestic corporation has not commenced business, has not issued any shares, and has not elected a board, subdivisions (b) and (c) do not apply and the incorporators may approve of the conversion of the corporation into a business organization by unanimous consent. To effect the conversion, the majority of the incorporators must execute and file a certificate of conversion under subdivision (e).

(e) After the plan of conversion is approved under subdivisions (b) and (c) or the conversion is approved under subdivision (d), the domestic corporation files any formation documents required to be filed under the laws governing the internal affairs of the surviving business organization, in the manner prescribed by those laws, and files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(*i*) Unless subdivision (d) applies, all of the information described in subdivision (b)(*i*) and (*ii*) and the manner and basis of converting the shares of the domestic corporation contained in the plan of conversion.

(*ii*) Unless subdivision (d) applies, a statement that the board has adopted the plan of conversion by the board under subdivision (c), or if subdivision (d) applies to the conversion, a statement that the domestic corporation has not commenced business, has not issued any shares, and has not elected a board and that the plan of conversion was approved by the unanimous consent of the incorporators.

(*iii*) A statement that the surviving business organization will furnish a copy of the plan of conversion, on request and without cost, to any shareholder of the domestic corporation.

(*iv*) If approval of the shareholders of the domestic corporation was required, a statement that the plan was approved by the shareholders under subdivision (c).

(*v*) A statement specifying each assumed name of the domestic corporation to be used by the surviving business organization and authorized under section 217(5).

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The domestic corporation converts into the surviving business organization, and the articles of incorporation of the domestic corporation are canceled. Except as otherwise provided in this section, the surviving business organization is organized under and subject to the organizational laws of the jurisdiction of the surviving business organization as stated in the certificate of conversion.

(b) The surviving business organization has all of the liabilities of the domestic corporation. The conversion of the domestic corporation into a business organization under this section shall not be considered to affect any obligations or liabilities of the domestic corporation incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the domestic corporation with respect to matters arising before the

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conversion.

(c) The title to all real estate and other property and rights owned by the domestic corporation remain vested in the surviving business organization without reversion or impairment. The rights, privileges, powers, and interests in property of the domestic corporation, as well as the debts, liabilities, and duties of the domestic corporation, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving business organization to which the domestic corporation has converted for any purpose of the laws of this state.

(d) The surviving business organization may use the name and the assumed names of the domestic corporation if the filings required under section 217(5) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A proceeding pending against the domestic corporation may be continued as if the conversion had not occurred, or the surviving business organization may be substituted in the proceeding for the domestic corporation.

(f) The surviving business organization is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the domestic corporation was originally incorporated.

(g) The shares of the domestic corporation that were to be converted into ownership interests or obligations of the surviving business organization or into cash or other property are converted.

(h) Unless otherwise provided in a plan of conversion adopted in accordance with this section, the domestic corporation is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the domestic corporation.

(4) If the surviving business organization of a conversion under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state if it transacts business in this state. The surviving business organization is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of the domestic corporation, and in a proceeding for the enforcement of a right of a dissenting shareholder of the domestic corporation against the surviving business organization.

(5) As used in this section and section 746, "business organization" and "entity" mean those terms as defined in section 736(1).

History: Add. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1746 Conversion of business organization into domestic corporation; requirements.

Sec. 746. (1) A business organization may convert into a domestic corporation if all of the following requirements are satisfied:

(a) The conversion is permitted by the law that governs the internal affairs of the business organization and the business organization complies with that law in converting.

(b) The business organization proposing to convert into a domestic corporation adopts a plan of conversion that includes all of the following:

(*i*) The name of the business organization, the type of business organization that is converting, identification of the statute that governs the internal affairs of the business organization, the name of the surviving domestic corporation into which the business organization is converting, the street address of the surviving domestic corporation, and the principal place of business of the surviving domestic corporation.

(*ii*) A description of all of the ownership interests in the business organization, specifying the interests entitled to vote, any rights those interests have to vote collectively or as a class, and if the ownership interests are subject to change before the effective date of the conversion, the manner in which the change may occur.

(*iii*) The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the business organization into shares or obligations of the surviving domestic corporation, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(*iv*) The terms and conditions of the articles and bylaws that are to govern the surviving domestic corporation.

(*v*) Any other provisions with respect to the proposed conversion that the business organization considers necessary or desirable.

(c) If a plan of conversion is adopted by the business organization under subdivision (b), the plan of conversion is submitted for approval in the manner required by the law governing the internal affairs of that business organization.

(d) After the plan of conversion is approved under subdivisions (b) and (c), the business organization files a certificate of conversion with the administrator. The certificate of conversion shall include all of the

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following:

(*i*) All of the information described in subdivision (b)(*i*) and (*ii*) and the manner and basis of converting the ownership interests of the business organization contained in the plan of conversion.

(*ii*) A statement that the business organization has adopted the plan of conversion under subdivision (c).

(*iii*) A statement that the surviving business corporation will furnish a copy of the plan of conversion, on request and without cost, to any owner of the business organization.

(*iv*) A statement specifying each assumed name of the business organization to be used by the surviving domestic corporation and authorized under section 217(6).

(*v*) Articles of incorporation for the surviving domestic corporation that meet all of the requirements of this act applicable to articles of incorporation.

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The business organization converts into the surviving domestic corporation. Except as otherwise provided in this section, the surviving domestic corporation is organized under and subject to this act.

(b) The surviving domestic corporation has all of the liabilities of the business organization. The conversion of the business organization into a domestic corporation under this section shall not be considered to affect any obligations or liabilities of the business organization incurred before the conversion or the personal liability of any person incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the business organization with respect to matters arising before the conversion.

(c) The title to all real estate and other property and rights owned by the business organization remain vested in the surviving domestic corporation without reversion or impairment. The rights, privileges, powers, and interests in property of the business organization, as well as the debts, liabilities, and duties of the business organization, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving domestic corporation to which the business organization has converted for any purpose of the laws of this state.

(d) The surviving domestic corporation may use the name and the assumed names of the business organization if the filings required under section 217(6) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A proceeding pending against the business organization may be continued as if the conversion had not occurred, or the surviving domestic corporation may be substituted in the proceeding for the business organization.

(f) The surviving domestic corporation is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the business organization was originally organized.

(g) The ownership interests of the business organization that were to be converted into shares or obligations of the surviving domestic corporation or into cash or other property are converted.

(h) Unless otherwise provided in a plan of conversion adopted in accordance with this section, the business organization is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the business organization.

History: Add. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1751 Disposition of corporate property and assets; approval by shareholders.

Sec. 751. (1) A corporation may take any of the following actions upon the terms and conditions and for a consideration, which may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other domestic or foreign corporation authorized by its board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets in the usual and regular course of its business.

(b) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets following shareholder approval of dissolution under section 804 if either of the following applies:

(*i*) The shares held by the shareholders who would be entitled to vote on a sale of assets under section 753 satisfy the requirements of section 762(2)(a) on the effective date of the dissolution.

(*ii*) The disposition of assets is pursuant to a plan of dissolution providing for the distribution of substantially all of the corporation's net assets to shareholders in accordance with their respective interests within 1 year after the date of the closing of the sale or other disposition, and the disposition is for cash or for shares that satisfy the requirements of section 762(2)(a) on the date of closing, or for any combination thereof.

(c) Transfer any or all of its property and assets to another corporation all of the shares of which are

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owned, or to another entity wholly owned, by the corporation, whether or not in the usual and regular course of business.

(d) Mortgage or pledge any or all of its property and assets whether or not in the usual and regular course of business.

(2) Unless otherwise provided in the articles of incorporation, approval by the shareholders of a transaction described in subsection (1) is not required.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1753 Disposition of corporate property and assets not in usual and regular course of business.

Sec. 753. (1) Except as provided in section 751, a corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets, with or without the goodwill, if not in the usual and regular course of its business as conducted by the corporation, upon terms and conditions and for a consideration, which may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other corporation, domestic or foreign, as authorized as provided in this section. A corporation has not disposed of all or substantially all of its property and assets if it retains a significant continuing business activity. For purposes of this subsection, it is conclusively presumed that a corporation has retained a significant continuing business activity if the corporation retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis.

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

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

(4) The proposed transaction shall be submitted for approval at a meeting of shareholders. Notice of the meeting shall be given to each shareholder of record whether or not entitled to vote at the meeting within the time and in the manner provided in this act for giving notice of meetings of shareholders. The notice shall include or be accompanied by both of the following:

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

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

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

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

(7) A sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of a corporation or other entity a majority of the shares or beneficial interests of which are owned by a second corporation, including a change in shares of the corporation or beneficial interest in another entity held by the second corporation because of a merger or share exchange, is a disposition by the second corporation of its pro rata share of the property and assets of the corporation or other entity on a consolidated basis for purposes of this section.

(8) A transaction that is a distribution is governed by section 345 and not by this section or section 751.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1754 Rights of shareholders.

Sec. 754. Shareholders of a corporation that proposes to issue, directly or through a subsidiary, its shares, obligations, or securities in the course of a merger, acquisition of some or all of the outstanding shares of another corporation or interests in another entity, or acquisition of some or all of the assets other than cash of a corporation or other entity, have the rights to receive notice and to vote on the proposed merger or acquisition provided in section 703a(2) and to receive dissenters' rights as provided in section 762 if both of

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the following apply:

(a) The securities to be issued or delivered in the acquisition are or may be converted into shares of the acquiring corporation's common stock.

(b) The number of the acquiring corporation's common shares to be issued or delivered, plus those initially issuable upon conversion or exchange of any other securities to be issued or delivered, will exceed 100% of the number of its common shares outstanding immediately prior to the acquisition plus the number of its common shares, if any, initially issuable upon conversion or exchange of any other securities then outstanding.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1761 Definitions.

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

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

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

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

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

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

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

(g) “Shareholder” means the record or beneficial shareholder.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1988, Act 58, Eff. Apr. 1, 1988;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

Compiler's note: Section 2 of Act 58 of 1988 provides: “This amendatory act shall not apply to any domestic corporation before June 1, 1989, unless the corporation's board of directors adopts a resolution, pursuant to this section, electing to have this act apply to the corporation. The resolution shall specify the date after January 1, 1988 and before June 1, 1989 on which this act will apply to the corporation. The resolution shall be filed with the department of commerce, corporation and securities bureau, on or before the date that the act will apply to the corporation.”

450.1762 Right of shareholder to dissent and obtain payment for shares.

Sec. 762. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger under section 703a or 736(5) or the articles of incorporation and the shareholder is entitled to vote on the merger, or the corporation is a subsidiary that is merged with its parent under section 711.

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order.

(d) Consummation of a plan of conversion to which the corporation is a party as the corporation that is being converted, if the shareholder is entitled to vote on the plan. However, any rights provided under this section are not available if that corporation is converted into a foreign corporation and the shareholder receives shares that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the conversion.

(e) An amendment of the articles of incorporation giving rise to a right to dissent under section 621.

(f) A transaction giving rise to a right to dissent under section 754.

(g) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

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(2) Unless otherwise provided in the articles of incorporation, bylaws, or a resolution of the board, a shareholder may not dissent from any of the following:

(a) Any corporate action set forth in subsection (1)(a) to (e) as to shares that are listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, on the record date fixed to vote on the corporate action or on the date the resolution of the parent corporation's board is adopted in the case of a merger under section 711 that does not require a shareholder vote under section 713.

(b) A transaction described in subsection (1)(a) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the merger, or any combination of cash and those shares.

(c) A transaction described in subsection (1)(b) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the share exchange, or any combination of cash and those shares.

(d) A transaction described in subsection (1)(c) that is conducted pursuant to a plan of dissolution providing for distribution of substantially all of the corporation's net assets to shareholders in accordance with their respective interests within 1 year after the date of closing of the transaction, if the transaction is for cash, shares that satisfy the requirements of subdivision (a) on the date of closing, or any combination of cash and those shares.

(e) A transaction described in subsection (1)(d) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the conversion, or any combination of cash and those shares.

(3) A shareholder entitled to dissent and obtain payment for his or her shares under subsection (1)(a) to (f) may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(4) A shareholder who exercises his or her right to dissent and seek payment for his or her shares under subsection (1)(g) may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1988, Act 58, Eff. Apr. 1, 1988;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

Compiler's note: Section 2 of Act 58 of 1988 provides: "This amendatory act shall not apply to any domestic corporation before June 1, 1989, unless the corporation's board of directors adopts a resolution, pursuant to this section, electing to have this act apply to the corporation. The resolution shall specify the date after January 1, 1988 and before June 1, 1989 on which this act will apply to the corporation. The resolution shall be filed with the department of commerce, corporation and securities bureau, on or before the date that the act will apply to the corporation."

450.1763 Rights of partial dissenter; assertion of dissenters' rights by beneficial shareholder.

Sec. 763. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his or her name only if he or she dissents with respect to all shares beneficially owned by any 1 person and notifies the corporation in writing of the name and address of each person on whose behalf he or she asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he or she dissents and his or her other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if all of the following apply:

(a) He or she submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights.

(b) He or she does so with respect to all shares of which he or she is the beneficial shareholder or over which he or she has power to direct the vote.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1764 Corporate action creating dissenters' rights; vote of shareholders; notice.

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

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

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History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1765 Notice of intent to demand payment for shares.

Sec. 765. (1) If proposed corporate action creating dissenters' rights under section 762 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must deliver to the corporation before the vote is taken written notice of his or her intent to demand payment for his or her shares if the proposed action is effectuated and must not vote his or her shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) is not entitled to payment for his or her shares under this act.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1766 Dissenters' notice; delivery to shareholders; contents.

Sec. 766. (1) If proposed corporate action creating dissenters' rights under section 762 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 765.

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken, and must provide all of the following:

(a) State where the payment demand must be sent and where and when certificates for shares represented by certificates must be deposited.

(b) Inform holders of shares without certificates to what extent transfer of the shares will be restricted after the payment demand is received.

(c) Supply a form for the payment demand that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether he or she acquired beneficial ownership of the shares before the date.

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (1) notice is delivered.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1767 Duties of shareholder sent dissenter's notice; retention of rights; failure to demand payment or deposit share certificates.

Sec. 767. (1) A shareholder sent a dissenter's notice described in section 766 must demand payment, certify whether he or she acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to section 766(2)(c), and deposit his or her certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his or her share certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit his or her share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his or her shares under this act.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1985, Act 76, Imd. Eff. July 5, 1985;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1768 Restriction on transfer of shares without certificates; retention of rights.

Sec. 768. (1) The corporation may restrict the transfer of shares without certificates from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 770.

(2) The person for whom dissenters' rights are asserted as to shares without certificates retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1985, Act 76, Imd. Eff. July 5, 1985;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1768a Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to referees.

450.1769 Payment by corporation to dissenter; accompanying documents.

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

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

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1770 Return of deposited certificates and release of transfer restrictions; effect of corporation taking proposed action.

Sec. 770. (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on shares without certificates.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 766 and repeat the payment demand procedure.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1771 Election to withhold payment from dissenter; offer to pay estimated fair value of shares, plus accrued interest; statements; explanation.

Sec. 771. (1) A corporation may elect to withhold payment required by section 769 from a dissenter unless he or she was the beneficial owner of the shares before the date set forth in the dissenters' notice pursuant to section 766(2)(c).

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall offer to pay this amount to each dissenter who shall agree to accept it in full satisfaction of his or her demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 772.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1772 Demand for payment of dissenter's estimate or rejection of corporation's offer and demand for payment of fair value and interest due; waiver.

Sec. 772. (1) A dissenter may notify the corporation in writing of his or her own estimate of the fair value of his or her shares and amount of interest due, and demand payment of his or her estimate, less any payment under section 769, or reject the corporation's offer under section 771 and demand payment of the fair value of his or her shares and interest due, if any 1 of the following applies:

(a) The dissenter believes that the amount paid under section 769 or offered under section 771 is less than the fair value of his or her shares or that the interest due is incorrectly calculated.

(b) The corporation fails to make payment under section 769 within 60 days after the date set for demanding payment.

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on shares without certificates within 60 days after the date set for demanding payment.

(2) A dissenter waives his or her right to demand payment under this section unless he or she notifies the corporation of his or her demand in writing under subsection (1) within 30 days after the corporation made or offered payment for his or her shares.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1773 Petitioning court to determine fair value of shares and accrued interest; failure of corporation to commence proceeding; venue; parties; service; jurisdiction; appraisers; discovery rights; judgment.

Sec. 773. (1) If a demand for payment under section 772 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the circuit court of the county in which the

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corporation's principal place of business or registered office is located. If the corporation is a foreign corporation without a registered office or principal place of business in this state, it shall commence the proceeding in the county in this state where the principal place of business or registered office of the domestic corporation whose shares are to be valued was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint 1 or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the corporation or for the fair value, plus accrued interest, of his or her after-acquired shares for which the corporation elected to withhold payment under section 771.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1773a Referee; appointment; powers; compensation; duties; objections to report; application to court for action; adoption, modification, or recommitment of report; further evidence; judgment; review.

Sec. 773a. (1) In a proceeding brought pursuant to section 773, the court may, pursuant to the agreement of the parties, appoint a referee selected by the parties and subject to the approval of the court. The referee may conduct proceedings within the state, or outside the state by stipulation of the parties with the referee's consent, and pursuant to the Michigan court rules. The referee shall have powers that include, but are not limited to, the following:

(a) To hear all pretrial motions and submit proposed orders to the court. In ruling on the pretrial motion and proposed orders, the court shall consider only those documents, pleadings, and arguments that were presented to the referee.

(b) To require the production of evidence, including the production of all books, papers, documents, and writings applicable to the proceeding, and to permit entry upon designated land or other property in the possession or control of the corporation.

(c) To rule upon the admissibility of evidence pursuant to the Michigan rules of evidence.

(d) To place witnesses under oath and to examine witnesses.

(e) To provide for the taking of testimony by deposition.

(f) To regulate the course of the proceeding.

(g) To issue subpoenas, when a written request is made by any of the parties, requiring the attendance and testimony of any witness and the production of evidence including books, records, correspondence, and documents in the possession of the witness or under his or her control, at a hearing before the referee or at a deposition convened pursuant to subdivision (e). In case of a refusal to comply with a subpoena, the party on whose behalf the subpoena was issued may file a petition in the court for an order requiring compliance.

(2) The amount and manner of payment of the referee's compensation shall be determined by agreement between the referee and the parties, subject to the court's allocation of compensation between the parties at the end of the proceeding pursuant to equitable principles, notwithstanding section 774.

(3) The referee shall do all of the following:

(a) Make a record and reporter's transcript of the proceeding.

(b) Prepare a report, including proposed findings of fact and conclusions of law, and a recommended judgment.

(c) File the report with the court, together with all original exhibits and the reporter's transcript of the proceeding.

(4) Unless the court provides for a longer period, not more than 45 days after being served with notice of the filing of the report described in subsection (3), any party may serve written objections to the report upon the other party. Application to the court for action upon the report and objections to the report shall be made by motion upon notice. The court, after hearing, may adopt the report, may receive further evidence, may modify the report, or may recommit the report to the referee with instructions. Upon adoption of the report, judgment shall be entered in the same manner as if the action had been tried by the court and shall be subject to review in the same manner as any other judgment of the court.

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History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1774 Costs of appraisal proceeding.

Sec. 774. (1) The court in an appraisal proceeding commenced under section 773 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 772.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable in the following manner:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 764 through 772.

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this act.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to those counsel reasonable fees paid out of the amounts awarded the dissenters who were benefited.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

CHAPTER 7A

450.1775 Meanings of words and phrases; inconsistent provisions.

Sec. 775. (1) For purposes of this chapter, the words and phrases in sections 776, 777, 778, and 779 have the meanings ascribed to them in those sections.

(2) To the extent that the provisions of this chapter alter voting rights or are otherwise inconsistent with other provisions of this act, the provisions of this chapter shall control.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1776 Definitions; A, B.

Sec. 776. (1) “Affiliate” or “affiliated person” means a person who directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(2) “Announcement date” means the first general public announcement or the first communication generally to shareholders of the corporation, whichever is earlier, of the proposal or intention to make a proposal concerning a business combination.

(3) “Associate”, when used to indicate a relationship with any person, means any 1 of the following:

(a) Any corporation or organization, other than the corporation or a subsidiary of the corporation, in which the person is an officer, director, or partner, or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities.

(b) Any trust or other estate in which the person has a beneficial interest of 10% or more or as to which the person serves as trustee or in a similar fiduciary capacity in connection with the trust or estate.

(c) Any relative or spouse of the person, or any relative of the spouse, who has the same home as the person or who is a director or officer of the corporation or any of its affiliates.

(4) “Beneficial owner”, when used with respect to any voting stock, means a person who:

(a) Individually or with any of its affiliates or associates, beneficially owns voting stock, directly or indirectly.

(b) Individually or with any of its affiliates or associates, has any 1 of the following:

(*i*) The right to acquire voting shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person shall not be considered the beneficial owner of voting shares which are tendered pursuant to a tender or exchange offer made by the person, or an affiliate or associate of the person, until the tendered voting shares are accepted for purchase or exchange.

(*ii*) The right to vote voting shares pursuant to any agreement, arrangement, or understanding. A person shall not be considered the beneficial owner of voting shares if the person's right to vote the shares pursuant to this subparagraph arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation to 10 or more persons.

(*iii*) Except as provided in subparagraph (*ii*), any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of voting shares with any other person who beneficially owns, or

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whose affiliates or associates beneficially own, directly or indirectly, the voting shares.

(5) "Business combination" means any 1 or more of the following:

(a) Any merger, consolidation, or share exchange of the corporation or any subsidiary which alters the contract rights of the shares as expressly set forth in the articles of incorporation or which changes or converts, in whole or in part, the outstanding shares of the corporation with either:

(*i*) Any interested shareholder.

(*ii*) Any other corporation, whether or not itself an interested shareholder, which is, or after the merger, consolidation, or share exchange would be, an affiliate of an interested shareholder that was an interested shareholder prior to the transaction.

(b) Any sale, lease, transfer, or other disposition, except in the usual and regular course of business, in 1 transaction or a series of transactions in any 12-month period, to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, of any assets of the corporation or any subsidiary having, measured at the time the transaction or transactions are approved by the board of directors of the corporation, an aggregate book value as of the end of the corporation's most recently ended fiscal quarter of 10% or more of its net worth.

(c) The issuance or transfer by the corporation, or any subsidiary, in 1 transaction or a series of transactions, of any equity securities of the corporation or any subsidiary which have an aggregate market value of 5% or more of the total market value of the outstanding shares of the corporation to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, except pursuant to the exercise of warrants or rights to purchase securities offered pro rata to all holders of the corporation's voting shares or any other method affording substantially proportionate treatment to the holders of voting shares.

(d) The adoption of any plan or proposal for the liquidation or dissolution of the corporation in which anything other than cash will be received by an interested shareholder or any affiliate of any interested shareholder.

(e) Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger, consolidation, or share exchange of the corporation with any of its subsidiaries which has the effect, directly or indirectly, in 1 transaction or a series of transactions, of increasing by 5% or more of the total number of outstanding shares, the proportionate amount of the outstanding shares of any class of equity securities of the corporation or any subsidiary which is directly or indirectly owned by any interested shareholder or any affiliate of any interested shareholder.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989.

450.1777 Definitions; C, D.

Sec. 777. (1) "Common stock" means any stock other than preferred or preference stock.

(2) "Control", "controlling", "controlled by", or "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. The beneficial ownership of 10% or more of the voting shares of a corporation shall create a presumption of control.

(3) "Determination date" means the date on which an interested shareholder first became an interested shareholder.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1778 Definitions; E to S.

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

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

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

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

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

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

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

(c) For the purpose of determining whether a person is an interested shareholder pursuant to subdivision (a)

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or (b), the number of shares of voting shares considered to be outstanding shall include all voting shares owned by the person except for those shares which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(3) “Market value” means either of the following:

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

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

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

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

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

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

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

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

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1779 Definitions; V.

Sec. 779. (1) “Valuation date” means:

(a) In a business combination voted upon by shareholders, the day prior to the date of the shareholders vote or the day which is 20 calendar days prior to the consummation of the business combination, whichever is later.

(b) In a business combination not voted upon by shareholders, the date of the consummation of the business combination.

(2) “Voting shares” means those shares of a corporation entitled to vote generally in the election of directors.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1780 Advisory statement and approval.

Sec. 780. In addition to any vote otherwise required by law or the articles of the corporation, a business combination shall require an advisory statement from the board of directors and approval by an affirmative vote of both of the following:

(a) Not less than 90% of the votes of each class of stock entitled to be cast by the shareholders of the corporation.

(b) Not less than 2/3 of the votes of each class of stock entitled to be cast by the shareholders of the corporation other than voting shares beneficially owned by the interested shareholder who is, or whose affiliate is, a party to the business combination or an affiliate or associate of the interested shareholder.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989.

450.1781 Conditions for inapplicability of vote to business combination; inapplicability of certain provisions.

Sec. 781. (1) The vote required by section 780 shall not apply to a business combination if each of the following conditions are met:

(a) The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of common stock in the business combination is at least equal to the highest of the following:

(*i*) The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of common stock of the same class or series acquired by the interested shareholder within the 2-year period immediately prior to the announcement date of the proposal of the business combination, or in the transaction in which the shareholder became an interested shareholder, whichever is higher.

(*ii*) The market value per share of common stock of the same class or series on the announcement date or on the determination date, whichever is higher.

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(b) The aggregate amount of the cash and the market value as of the valuation date for consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock shall be at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of a particular class or series of stock:

(*i*) The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of the class of stock acquired by it within the 2-year period immediately prior to the announcement date of the proposal of the business combination, or in the transaction in which it became an interested shareholder, whichever is higher.

(*ii*) The highest preferential amount per share to which the holders of shares of the class of stock are entitled in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the corporation.

(*iii*) The market value per share of the class of stock on the announcement date or on the determination date, whichever is higher.

(c) The consideration to be received by holders of any class or series of outstanding stock shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series of stock. If the interested shareholder has paid for shares of any class of stock with varying forms of consideration, the form of consideration for the class of stock shall be either cash or the form used to acquire the largest number of shares of the class or series of stock previously acquired by the interested shareholder.

(d) After the interested shareholder has become an interested shareholder and prior to the consummation of a business combination, all of the following conditions have been met:

(*i*) Any full periodic dividends, whether or not cumulative, on any outstanding preferred stock of the corporation shall have been declared and paid at the regular date therefor.

(*ii*) The annual rate of dividends paid on any class or series of stock of the corporation that is not preferred stock, except as necessary to reflect any subdivision of the stock, shall not have been reduced, and the annual rate of dividends shall have increased as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or any similar transaction which has the effect of reducing the number of outstanding shares of the stock.

(*iii*) After the interested shareholder has become an interested shareholder, the interested shareholder may not have received the benefit, directly or indirectly, except proportionately as a shareholder, of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation or any of its subsidiaries, whether in anticipation of or in connection with the business combination or otherwise.

(*iv*) The interested shareholder did not become the beneficial owner of any additional shares of the corporation except as part of the transaction which resulted in the interested shareholder becoming an interested shareholder or by virtue of proportionate stock splits or stock dividends.

(*v*) There has been 5 years between the date of becoming an interested shareholder and the date the business combination is consummated.

(2) The provisions of subsection (1)(d)(*i*) and (*ii*) shall not apply if an interested shareholder or an affiliate or associate of the interested shareholder did not vote as a director of the corporation in a manner inconsistent with subparagraphs (*i*) and (*ii*) and the interested shareholder, within 10 days after any act or failure to act inconsistent with subparagraphs (*i*) and (*ii*), notifies the board of directors of the corporation in writing that the interested shareholder disapproves thereof and requests in good faith that the board of directors rectify the act or failure to act.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989.

450.1782 Applicability of MCL 450.1780; resolution.

Sec. 782. (1) Whether or not a business combination is authorized or consummated in whole or in part after the effective date of this chapter or after the interested shareholder became an interested shareholder, the requirements of section 780 shall not apply to business combinations that specifically, generally, or generally by types, as to specifically identified or unidentified existing or future interested shareholders or their affiliates, have been approved or exempted from the requirements of section 780 by resolution of the board of directors of the corporation pursuant to either of the following:

(a) Not later than 4 months after the effective date of this chapter or an earlier date as may be irrevocably established by resolution of the board of directors.

(b) If involving transactions with a particular interested shareholder or its existing or future affiliates, at any time prior to the time that the interested shareholder first became an interested shareholder.

(2) Unless by its terms a resolution adopted under this section is made irrevocable, the resolution may be altered or repealed by the board of directors, but this action shall not affect any business combinations that have been consummated, or which are the subject of an existing agreement entered into, prior to the alteration

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or repeal.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1783 Applicability of MCL 450.1780; interested shareholder; resolution; election.

Sec. 783. (1) Unless the articles or bylaws of a corporation specifically provide otherwise, the requirements of section 780 shall not apply to business combinations of a corporation that on the effective date of this chapter had an existing interested shareholder, whether the business combination is with the existing shareholder, with any other person that becomes an interested shareholder after the effective date of this chapter, or a present or future affiliate of an existing interested shareholder. However, at any time after the effective date of this chapter, the board of directors of the corporation may elect by resolution to be subject, in whole or in part, as to specifically identified or unidentified interested shareholders, to the requirements of section 780.

(2) The articles or bylaws of a corporation may provide that if the board of directors adopts a resolution under subsection (1), the resolution shall be subject to approval of the shareholders in the manner and by the vote specified in the articles or bylaws.

(3) An election under this section may be added to but may not be altered or repealed except by an amendment to the articles of incorporation which was adopted by a vote of shareholders pursuant to the requirements of section 784(1)(b).

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1784 Certain business corporations excepted from requirements of MCL 450.1780; shareholders considered as single beneficial owner.

Sec. 784. (1) Unless a corporation's articles of incorporation provide otherwise, the requirements of section 780 shall not apply to any business combination of any of the following:

(a) A corporation having fewer than 100 beneficial owners of its stock.

(b) A corporation whose original articles of incorporation contain a provision or whose shareholders adopt an amendment to the articles of the corporation after the effective date of this chapter by a vote of not less than 90% of the votes of each class of stock entitled to be cast by the shareholders of the corporation and not less than 2/3 of the votes of each class of stock entitled to be cast by the shareholders of the corporation other than voting shares beneficially owned by interested shareholders of the corporation, expressly electing not to be governed by this chapter.

(c) An investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(2) For purposes of subsection (1)(a), all shareholders of a corporation who have executed an agreement to which the corporation is an executing party governing the purchase and sale of shares of the corporation or a voting trust agreement governing shares of the corporation shall be considered a single beneficial owner of the stock covered by the agreement.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989.

CHAPTER 7B
CONTROL SHARE ACQUISITIONS

450.1790-450.1799 Repealed. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

CHAPTER 8
DISSOLUTION

450.1801 Methods of dissolution.

Sec. 801. (1) A corporation may be dissolved in any of the following ways:

(a) Automatically by expiration of a period of duration to which the corporation is limited by its articles of incorporation.

(b) By action of the incorporators or directors under section 803.

(c) By action of the board and the shareholders under section 804.

(d) Pursuant to an agreement under section 488, effected by filing a certificate under section 805.

(e) By a judgment of the circuit court in an action brought under this act or otherwise.

(f) Automatically, under section 922, for failure to file an annual report or pay the filing fee.

(2) A corporation whose assets have been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of the proceedings. A copy of the order shall be filed by the clerk of the court with the administrator.

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History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1803 Conditions to dissolution by incorporators or directors; certificate of dissolution.

Sec. 803. (1) A corporation may be dissolved by action of its incorporators or directors, if the corporation complies with all of the following conditions:

(a) Has not commenced business.

(b) Has not issued any shares.

(c) Has no debts or other liabilities.

(d) Has received no payments on subscriptions for its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(2) The dissolution of the corporation shall be effected by a majority of the incorporators or directors, executing and filing a certificate of dissolution stating:

(a) The name of the corporation.

(b) That the corporation has not commenced business and has issued no shares, and has no debts or other liabilities.

(c) That the corporation has received no payments on subscriptions to its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(d) That a majority of the incorporators or directors have elected that the corporation be dissolved.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1804 Dissolution by action of board and shareholders; certificate of dissolution.

Sec. 804. (1) A corporation may be dissolved by action of its board and shareholders as provided in this section.

(2) A corporation's board may propose dissolution for action by the shareholders.

(3) The board must recommend dissolution to the shareholders unless the board determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders.

(4) The board may condition its submission of the proposal for dissolution on any basis.

(5) The proposed dissolution shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record whether or not entitled to vote at the meeting within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the corporation.

(6) At the meeting a vote of shareholders shall be taken on the proposed dissolution. The dissolution shall be approved upon receiving the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote thereon.

(7) If the dissolution is approved, it shall be effected by the execution and filing of a certificate of dissolution on behalf of the corporation, setting forth all of the following:

(a) The name of the corporation.

(b) The date and place of the meeting of shareholders approving the dissolution.

(c) A statement that dissolution was proposed and approved by the requisite vote of the board and shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1805 Dissolution; execution and filing certificate.

Sec. 805. Dissolution pursuant to an agreement under section 488 is effected by executing and filing a certificate of dissolution on behalf of the corporation, stating the name of the corporation and that the corporation is dissolved pursuant to an agreement under section 488.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1806 Certificate of dissolution; filing; time of effectiveness; conditions; date stamp as evidence.

Sec. 806. (1) A certificate of dissolution filed with the administrator is effective at the time the certificate is first received by the administrator, not the date of filing, if all of the following are met:

(a) The dissolution is pursuant to an agreement under section 488 or is commenced under section 804.

(b) The administrator receives the certificate of dissolution after June 21, 2003 and before June 30, 2003.

(c) The corporation published notice of dissolution of the corporation under section 842a after June 21, 2003 and before June 30, 2003.

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(d) The certificate does not set forth a subsequent effective time, not later than 90 days after the date the certificate is received by the administrator.

(2) For purposes of subsection (1), the administrator's date stamp on the certificate of dissolution is evidence of the date the administrator received the certificate. If there are multiple date stamps on the certificate, the earliest date stamp is evidence of the date the administrator first received the certificate.

History: Add. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1811 Revocation of dissolution proceedings; certificate of revocations.

Sec. 811. (1) Dissolution proceedings commenced pursuant to section 488 or 804 may be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, by filing a certificate of revocation executed, in person or by proxy, by all the shareholders, stating that revocation is effective pursuant to this section and that all the shareholders of the corporation have executed the certificate in person or by proxy.

(2) Dissolution proceedings commenced pursuant to section 804 may also be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board of directors shall adopt a resolution revoking the dissolution. The proposed revocation shall be submitted for approval at a meeting of shareholders. The shareholders shall be given the same notice of the meeting and the revocation shall be approved by the same vote as required by section 804 for the approval of dissolution.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1815 Renewal of corporate existence; manner.

Sec. 815. A corporation whose term has expired may renew its corporate existence, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board shall adopt a resolution that the corporate existence be renewed. The proposed renewal shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on the renewal of corporate existence.

(b) At the meeting a vote of shareholders entitled to vote on the renewal shall be taken on the proposed renewal which shall be adopted upon receiving the affirmative vote of holders of a majority of the outstanding shares.

(c) If renewal of the corporate existence is approved, a certificate of renewal shall be executed and filed on behalf of the corporation, setting forth all of the following:

(*i*) The name of the corporation.

(*ii*) The date and place of the meeting of shareholders approving the renewal of existence.

(*iii*) A statement that renewal was approved by the requisite vote of directors and shareholders.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1817 Effective date of revocation of dissolution or renewal of corporate existence; accrued penalty or liability unaffected; adoption of corporate name; rights of corporation.

Sec. 817. (1) When the certificate of revocation of dissolution or of renewal of existence is filed, the revocation of the dissolution proceedings or the renewal of the corporate existence becomes effective, and the corporation may again transact its business.

(2) Revocation of dissolution or renewal of corporate existence does not relieve the corporation of any penalty or liability accrued against it under any law of this state, and the corporation shall file any report and pay any fee required under this act for any year for which a report was not filed or a fee was not paid.

(3) Upon filing a certificate of revocation of dissolution or renewal of existence, the administrator may require the corporation to adopt a corporate name that conforms to the requirements of section 212.

(4) Upon compliance with the provisions of this section, the rights of the corporation are the same as though a dissolution or expiration of term had not occurred, and all contracts entered into and other rights acquired during the interval are valid and enforceable.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1821 Action by attorney general for dissolution; grounds.

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Sec. 821. (1) The attorney general 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 for dissolution of a corporation upon the ground that the corporation has committed any of the following acts:

(a) Procured its organization through fraud.

(b) Repeatedly and willfully exceeded the authority conferred upon it by law.

(c) Repeatedly and willfully conducted its business in an unlawful manner.

(2) The enumeration in this section of grounds for dissolution does not exclude any other statutory or common law action by the attorney general for dissolution of a corporation or revocation or forfeiture of its corporate franchises.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1823 Action by director or shareholder for dissolution; judgment; proof.

Sec. 823. A corporation may be dissolved by a judgment entered in an action brought in the circuit court of the county in which the principal place of business or registered office of the corporation is located by 1 or more directors or by 1 or more shareholders entitled to vote in an election of directors of the corporation, upon proof of both of the following:

(a) The directors of the corporation, or its shareholders if an agreement among the shareholders authorized by section 488 is in effect, are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs, or the shareholders of the corporation are so divided in voting power that they have failed to elect successors to any director whose term has expired or would have expired upon the election and qualification of his or her successor.

(b) As a result of a condition stated in subdivision (a), the corporation is unable to function effectively in the best interests of its creditors and shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2006, Act 63, Imd. Eff. Mar. 20, 2006.

450.1825 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to action by shareholder for dissolution and liquidation.

450.1831 Occurrences dissolving corporation.

Sec. 831. A corporation is dissolved when any of the following occurs:

(a) The period of duration stated in the corporation's articles of incorporation expires.

(b) A certificate of dissolution is filed pursuant to sections 803 to 805.

(c) A judgment of forfeiture of corporate franchises or of dissolution is entered by a court of competent jurisdiction and a copy of a judicial order of dissolution shall be forwarded promptly to the administrator by the receiver or other person designated by the court.

(d) Failure to file an annual report or pay an annual filing fee as provided in section 922.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1833 Corporate existence continued for purpose of winding up affairs.

Sec. 833. Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall not carry on business except for the purpose of winding up its affairs by:

(a) Collecting its assets.

(b) Selling or otherwise transferring, with or without security, assets which are not to be distributed in kind to its shareholders.

(c) Paying its debts and other liabilities.

(d) Doing all other acts incident to liquidation of its business and affairs.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1834 Functions of dissolved corporation and its officers, directors, and shareholders continued.

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

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

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

(c) The dissolution does not change quorum or voting requirements for the board or shareholders, and does not alter provisions regarding election, appointment, resignation or removal of, or filling vacancies among,

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directors or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws.

(d) Shares may be transferred.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1841 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to notice to creditors of dissolved corporation.

450.1841a Notice to existing claimants of dissolution; contents; notice as recognition of validity of claim; conditions barring claim; "existing claim" defined; effective date of notice.

Sec. 841a. (1) The dissolved corporation may notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

(a) A description of the information that must be included in a claim. The corporation may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

(b) A mailing address where a claim may be sent.

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

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

(2) The giving of notice described above does not constitute recognition that a person to whom the notice is directed has a valid claim against the corporation.

(3) A claim against the dissolved corporation is barred if either of the following applies:

(a) If a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline.

(b) If a claimant whose claim was rejected by a written notice of rejection by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the written notice of rejection.

(4) For purposes of this section and section 842a, "existing claim" means any claim or right against the corporation, liquidated or unliquidated. It does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.

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

(a) The date it is received.

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

(c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1842 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to notice to creditors of dissolved corporation.

450.1842a Publication of notice of dissolution; requirements; claimants commencing proceedings within 1 year of notice.

Sec. 842a. (1) A dissolved corporation may also publish notice of dissolution at any time after the effective date of dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must be in accord with both of the following:

(a) Be published 1 time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or if there is no principal office in this state, its registered office, is or was last located.

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

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim

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against the dissolved corporation within 1 year after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 841a.

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

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) Notwithstanding subsection (3), a claimant having an existing claim known to the corporation at the time of publication in accordance with subsection (2) and who did not receive written notice under section 841a is not barred from commencing a proceeding until 6 months after the claimant has actual notice of the dissolution.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1843 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to rejection of creditor's claim.

450.1851 Judicial supervision of corporate affairs and liquidation of assets; permitting creditor to file claim or commence proceeding.

Sec. 851. (1) After a corporation has been dissolved in any manner, the corporation, a creditor, or a shareholder may apply at any time to the circuit court of the county in which the principal place of business or registered office of the corporation is located for a judgment that the affairs of the corporation and the liquidation of its assets continue under supervision of the court. The court shall make orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the corporation's assets by its officers and directors under supervision of the court, or the appointment of a receiver of the corporation to be vested with powers as the court designates to liquidate the affairs of the corporation.

(2) For good cause shown, and so long as a corporation has not made complete distribution of its assets, the court may permit a creditor who has not delivered his or her claim or commenced a proceeding to enforce his or her claim within the time limits provided in sections 841a and 842a to file the claim or to commence a proceeding within the time as the court directs.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1855 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to distribution of assets to shareholders.

450.1855a Provision for debts, obligations, and liabilities; distribution of remaining assets.

Sec. 855a. Before making a distribution of assets to shareholders in dissolution, a corporation shall pay or make provision for its debts, obligations, and liabilities. Compliance with this section requires that, to the extent that a reasonable estimate is possible, provision be made for those debts, obligations, and liabilities anticipated to arise after the effective date of dissolution. Provision need not be made for any debt, obligation, or liability that is or is reasonably anticipated to be barred under section 841a or 842a. The fact that corporate assets are insufficient to satisfy claims arising after a dissolution does not create a presumption that the corporation has failed to comply with this section. Adequate provision is deemed to have been made for any debt, obligation, or liability of the corporation if payment has been assumed or guaranteed in good faith by 1 or more financially responsible corporations, persons, or the United States government or agency of the United States government, and the provision, including the financial responsibility of the corporations or other persons, was determined in good faith and with reasonable care by the board to be adequate. After payment or adequate provision has been made for the corporation's debts, obligations, or liabilities, the remaining assets shall be distributed, except as otherwise provided in this section, in cash, in kind, or both in cash and in kind, to shareholders according to their respective rights and interests. A shareholder beneficially owning less than 5% of the outstanding shares may be paid in cash only, even if a shareholder beneficially owning 5% or more of the outstanding shares receives a distribution in kind, if the ownership of all shareholders receiving cash instead of distributions in kind without their written consent does not exceed 10% of all outstanding shares.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1861 Implementation of judicially confirmed plan of reorganization.

Sec. 861. A corporation for which a plan of reorganization has been confirmed by the judgment of a court of competent jurisdiction pursuant to any applicable law of this state or the United States may put into effect and carry out the plan without action by its directors or shareholders. Such action may be taken, as directed in the judgment, by the receiver or trustee of the corporation appointed in the reorganization proceedings, or by

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any other person designated by the court.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1862 Powers of corporation under judicially confirmed plan of reorganization.

Sec. 862. (1) The corporation, in the manner provided in section 861 but without limiting the generality or effect of that section, may amend or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of, or in addition to any director or officer then in office; amend its articles of incorporation, and make any change in its capital or capital stock, or any other amendment, change or alteration, or provision, authorized by this act; be dissolved, transfer any part of its assets, and merge or consolidate as permitted by this act, but in any of these cases a shareholder does not have a statutory right of appraisal of his shares; change the location of its registered office and remove or appoint a resident agent; authorize and fix the terms, manner and conditions of the issuance of bonds, debentures or other obligations, whether or not convertible into shares of its capital stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of its capital stock of any class; and lease its property and franchises.

(2) Irrespective of any other provision of this act, the corporation may issue its shares of capital stock and its bonds for the consideration specified in the plan of reorganization after confirmation of the plan.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1863 Certificate or document filed or recorded pursuant to plan of reorganization.

Sec. 863. A certificate or other document required or permitted by law to be filed or recorded to accomplish any corporate purpose, sought to be accomplished pursuant to the plan of reorganization, shall be made, executed and acknowledged, as may be directed by such judgment by the persons designated in section 861. The certificate or document shall certify that provision for the making of the certificate or document is contained in the plan of reorganization or in a judgment of a court having jurisdiction of the proceeding, under such applicable statute of this state or of the United States for the reorganization of the corporation, and that the plan has been confirmed, as provided by such applicable statute, with the title and venue of the proceeding and the date of the judgment confirming the plan. The certificate or other document shall be filed as provided in section 131 and upon such filing becomes effective in accordance with the terms thereof and the provisions of sections 861 to 864.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1864 Additional certificate or document filed to conform to plan of reorganization as finally confirmed; effect of filing; fees.

Sec. 864. (1) If after the filing of a certificate or other document the order of confirmation of the plan of reorganization is reversed or vacated or the plan is modified, other or further certificates or documents shall be filed as required to conform to the plan of reorganization as finally confirmed or to the judgment of the court.

(2) Except as otherwise provided in sections 861 to 864, a certificate or other document filed pursuant to this section or section 863 is not deemed to confer on a corporation any power, privilege or franchise, except those permitted to be conferred on a corporation formed or existing under this act.

(3) On the filing of a certificate or other document pursuant to this section or any other section of this act, the same fees shall be paid to the administrator as are payable by a corporation not in reorganization upon filing like certificates or documents.

History: 1972, Act 284, Eff. Jan. 1, 1973.

CHAPTER 9
REPORTS

450.1901 Financial report.

Sec. 901. (1) Each domestic corporation at least once in each year shall cause a financial report of the corporation for the preceding fiscal year to be made and distributed to each shareholder thereof within 4 months after the end of the fiscal year. The report shall include the corporation's statement of income, its year-end balance sheet, its statement of source and application of funds if prepared by the corporation, and any other information as may be required by this act.

(2) The financial report required by subsection (1) may be distributed electronically, either by electronic transmission of the report or by making the report available for electronic transmission. If the report is distributed electronically under this subsection, the corporation shall provide the report in written form to a shareholder on request.

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History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1911 Annual report; filing date; contents; exception; no change in information.

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

(a) The name of the corporation.

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

(c) The names and addresses of its president, secretary, treasurer, and directors.

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

(e) For each foreign corporation authorized to transact business in this state, the total number of authorized shares and the most recent percentage used in computation of the tax required by the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

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

(3) If there are no changes in the information provided in the last filed report required under subsection (1), the corporation may file a report that certifies to the administrator that no changes in the required information have occurred since the last filed report. The report filed under this subsection shall be on a form approved by the administrator and filed no later than the date required under section 911.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1977, Act 36, Eff. Oct. 1, 1977;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1996, Act 196, Eff. May 17, 1996;—Am. 1996, Act 197, Imd. Eff. May 17, 1996;—Am. 2007, Act 182, Imd. Eff. Dec. 21, 2007.

450.1913 Destruction or disposition of corporate documents by county clerk.

Sec. 913. The county clerk may destroy the copies of the corporate documents of a domestic or foreign corporation which were forwarded to his or her office in accordance with Act No. 327 of the Public Acts of 1931, as amended, being sections 450.62 to 450.192 of the Michigan Compiled Laws, and its predecessor act. The clerk may destroy or dispose of these records in accordance with section 5 of Act No. 271 of the Public Acts of 1913, as amended, being section 399.5 of the Michigan Compiled Laws.

History: Add. 1975, Act 286, Imd. Eff. Dec. 4, 1975;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1915 Repealed. 2003, Act 106, Imd. Eff. July 24, 2003.

Compiler's note: The repealed section pertained to annual report and filing fee.

450.1921 Neglecting or refusing to file report or pay fee; penalty; exception; waiver.

Sec. 921. (1) If a domestic or foreign corporation neglects or refuses to file a report or pay a fee required by this act within the time specified, the corporation, in addition to its liability for the fee, is subject to a penalty of $10.00 for each month or part of a month that the corporation is delinquent, not to exceed $50.00.

(2) The penalty prescribed in this section shall not apply during an extension granted pursuant to section 923.

(3) As to penalties assessed under this section, the administrator may waive the assessment of the penalties in whole or in part where it appears the assessment of the penalties would constitute an improper and inequitable imposition upon the corporation and the administrator finds the waiver of such penalties to be in the public interest.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974 ;—Am. 1975, Act 11, Imd. Eff. Mar. 25, 1975;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983.

450.1922 Dissolution of corporation or revocation of certificate of authority for neglecting or refusing to file reports or pay fee or penalty; notice of dissolution; right to certificate of good standing.

Sec. 922. (1) If a domestic corporation neglects or refuses to file any annual report or pay any annual filing fee or a penalty added to the fee required by law, and the neglect or refusal continues for a period of 2 years from the date on which the annual report or filing fee was due, the corporation shall be automatically dissolved 60 days after the expiration of the 2-year period. The administrator shall notify the corporation of the impending dissolution not later than 90 days before the 2-year period has expired. Until a corporation has been dissolved, it is entitled to issuance by the administrator, upon request, of a certificate of good standing

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setting forth that it has been validly incorporated as a domestic corporation and that it is validly in existence under laws of this state.

(2) If a foreign corporation neglects or refuses for 1 year to file the annual report or pay the annual filing fee or a penalty added to the fee required by law, its certificate of authority is subject to revocation in accordance with section 1042. Until revocation of its certificate of authority, or its withdrawal from this state or termination of its existence, the foreign corporation is entitled to issuance by the administrator, upon request, of a certificate of good standing setting forth that it has been validly authorized to transact business in this state and that it holds a valid certificate of authority to transact business in this state.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1923 Extension of time for filing report; report to attorney general; action for imposition of penalties; notice of failure to file report.

Sec. 923. (1) If good cause is shown, the administrator may extend the time for filing a report for not more than 1 year from the due date of the filing.

(2) The administrator may report promptly to the attorney general any failure or neglect under sections 921, 922, 931, and 932, and the attorney general may bring an action for imposition of the prescribed penalties. If a domestic or foreign corporation neglects or refuses to file its report within the time prescribed by this act, the administrator shall notify the corporation of that fact by mail directed to its registered office not later than 90 days after the due date of the filing.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1924 Annual reports due or deficient; penalties and interest.

Sec. 924. Annual reports due or deficient prior to the date of this amendatory act shall be subject to the penalties and interest in effect at the statutory filing date. Interest shall accrue at such rates until the filing is completed.

History: Add. 1978, Act 32, Imd. Eff. Feb. 24, 1978.

450.1925 Renewal of corporate existence or certificate of authority by filing reports and paying fees and penalties; adoption of corporate name; effect of compliance.

Sec. 925. (1) A domestic corporation which has been dissolved under subsection (1) of section 922, or a foreign corporation whose certificate of authority has been revoked under subsection (2) of section 922 or section 1042, may renew its corporate existence or its certificate of authority by filing the reports and paying the fees for the years for which they were not filed and paid, and for every subsequent intervening year, together with the penalties provided by section 921. Upon filing the reports and payment of the fees and penalties, the corporate existence or the certificate of authority is renewed. The administrator may require the corporation to adopt or use within this state a corporate name that conforms to the requirements of section 212.

(2) Upon compliance with the provisions of this section, the rights of the corporation shall be the same as though a dissolution or revocation had not taken place, and all contracts entered into and other rights acquired during the interval shall be valid and enforceable.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1931 Wilful false statement in report; penalty.

Sec. 931. If a domestic or foreign corporation which is required to file a report as provided in section 911 wilfully makes a false statement in the report, it is subject to an additional penalty of $1,000.00.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978.

450.1932 False or fraudulent report, certificate, or statement; falsification or alteration of books, records, or accounts; penalties.

Sec. 932. (1) A person who knowingly makes or files or a person who knowingly assists in the making or filing of a false or fraudulent report, certificate, or other statement required by this act to be filed by a domestic or foreign corporation with a public officer of this state, or a person knowing the same to be false or fraudulent, who procures, counsels, or advises the making or filing of a report, certificate, or statement, is guilty of a misdemeanor and is subject to a fine of not to exceed $1,000.00 for each offense.

(2) An officer or agent of a corporation who knowingly falsifies or wrongfully alters the books, records, or accounts of a corporation is guilty of a misdemeanor and is subject to a fine of not to exceed $1,000.00 for

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each such offense.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1935 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to liability to creditor or shareholder for false representation or alteration.

CHAPTER 10
FOREIGN CORPORATIONS

450.2001 Foreign corporation transacting business in state on effective date of act.

Sec. 1001. A foreign corporation which is authorized to transact business in this state on the effective date of this act, for a purpose for which a corporation might secure such authority under this act, has the rights and privileges applicable to a foreign corporation which receives a certificate of authority to transact business in this state under this act. From the effective date of this act the corporation is subject to the duties, restrictions, penalties and liabilities prescribed herein for a foreign corporation which receives a certificate of authority to transact business in this state under this act.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.2002 Foreign corporation with certificate of authority.

Sec. 1002. (1) A foreign corporation that receives a certificate of authority under this act, until a certificate of revocation or of withdrawal is issued under this act, has the same rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authority is issued. Except as otherwise provided in this act, the corporation is subject to the same duties, restrictions, penalties, and liabilities of a similar domestic corporation.

(2) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.2003 Foreign corporation without certificate of authority.

Sec. 1003. A foreign corporation which transacts business in this state without a certificate of authority under this act is subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a foreign corporation which receives such certificate of authority, in addition to any other penalty or liability imposed by law.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.2011 Certificate of authority as prerequisite to transacting business; scope of authority.

Sec. 1011. A foreign corporation shall not transact business in this state until it has procured a certificate of authority to transact business from the administrator. A foreign corporation may be authorized to transact business in this state that may be transacted lawfully in this state by a domestic corporation, to the extent that it is authorized to transact that business in the jurisdiction where it is organized, but no other business.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.2012 Activities not constituting transaction of business; applicability of section.

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

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

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

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.

(e) Selling through independent contractors.

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

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

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

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

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

(k) Transacting business in interstate commerce.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.2013 Loans.

Sec. 1013. A foreign corporation may acquire or, through another person entitled to transact business in this state, may make loans, or participations or interests therein, insured or guaranteed in whole or in part by the federal housing administration or the veterans' administration or a successor or similar agency of the federal government, which are secured in whole or in part by mortgages of real property located in this state, and a foreign corporation may purchase a loan, or participation or interest therein, secured in whole or in part by a mortgage of real property located in this state, without maintaining authority to transact business in this state under this act or any other law of this state relating to such qualification or authority and without paying fees with respect thereto. Neither the failure, heretofore or hereafter, of such a foreign corporation to qualify or maintain authority to transact business in this state under this act or any such other law of this state nor its failure, heretofore or hereafter, to pay fees with respect thereto affects or impairs its ownership of such loans or participations or interests therein, whether heretofore or hereafter made or acquired, or its right to collect and service the same through another person entitled to transact business in this state, or its right to enforce the same or to acquire, hold, protect, convey, lease and otherwise contract and deal with respect to the property mortgaged as security therefor.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.2014 Applicability of MCL 450.2001 to 450.2055.

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

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

(b) A foreign joint stock company.

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

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

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

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

History: Add. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.2015 Certificate of authority to transact business; application; filing; contents.

Sec. 1015. To procure a certificate of authority to transact business in this state, a foreign corporation shall file with the administrator an application setting forth all of the following:

(a) The name of the corporation and the jurisdiction of its incorporation.

(b) The date of incorporation and the period of duration of the corporation.

(c) The street address, and the mailing address if different from the street address, of its main business or headquarters office.

(d) The street address of its registered office in this state, the mailing address if different from the street address, and the name of its resident agent in this state at the address, together with a statement that the resident agent is an agent of the corporation upon whom process against the corporation may be served.

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.2016 Foreign corporation; application; attaching certificate of good standing; fees; issuance of certificate of authority; duration of authority.

Sec. 1016. (1) A certificate setting forth that the corporation is in good standing under the laws of the

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jurisdiction of its incorporation, executed by the official of the jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days before filing of the application, shall be attached to the application of a foreign corporation. If the certificate is in a foreign language, a translation of the certificate under oath of the translator shall be attached to the certificate.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.2021 Amended application; conditions; contents; corporation as survivor of merger; increase in authorized shares.

Sec. 1021. (1) Except as otherwise provided in this section, a foreign corporation authorized to transact business in this state which changes its corporate name, or enlarges, limits, or otherwise changes the business which the foreign corporation proposes to do in this state, or otherwise affects the information set forth in its application for certificate of authority to transact business in this state, shall file an amended application with the administrator not later than 30 days after the time a change becomes effective. A change in the registered office or resident agent may be made pursuant to section 242. The amended application under this subsection shall set forth all of the following:

(a) The name of the foreign corporation as it appears on the records of the administrator and the jurisdiction of its incorporation.

(b) The date the foreign corporation was authorized to do business in this state.

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

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

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

(2) If a foreign corporation authorized to transact business in this jurisdiction is the survivor of a merger permitted by the laws of the jurisdiction in which the foreign corporation is incorporated, not later than 30 days after the merger becomes effective, the foreign corporation shall file a certificate issued by the proper officer of the jurisdiction of its incorporation attesting to the occurrence of the merger. If the merger has changed the corporate name of the foreign corporation, or has enlarged, limited, or changed the business the foreign corporation proposes to do in this state, or has affected the information set forth in the application, the foreign corporation shall also comply with subsection (1).

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.2023 Repealed. 1993, Act 91, Eff. Oct. 1, 1993.

Compiler's note: The repealed section pertained to increase by foreign corporation of authorized stock attributable to state.

450.2031 Application for withdrawal from state.

Sec. 1031. A foreign corporation authorized to transact business in this state may withdraw from this state upon receiving from the administrator a certificate of withdrawal. The foreign corporation shall file an application for withdrawal setting forth:

(a) The name of the corporation and the jurisdiction of its incorporation.

(b) That the corporation is not transacting business in this state.

(c) That the corporation surrenders its authority to transact business in this state.

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History: 1972, Act 284, Eff. Jan. 1, 1973.

450.2032 Issuance and effect of certificate of withdrawal.

Sec. 1032. Upon filing the application for withdrawal, and payment of the filing fee prescribed by law, the administrator shall issue to the foreign corporation a certificate of withdrawal, and the following shall occur:

(a) The authority of the foreign corporation to transact business in this state shall cease.

(b) The authority of its resident agent in this state to accept service of process against the foreign corporation is revoked.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.2035 Information required to be filed on dissolution, termination, merger, or consolidation; assessment of unpaid fees; certificate of withdrawal.

Sec. 1035. (1) When a foreign corporation authorized to transact business in this state is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, or it is merged into or consolidated with another corporation, there shall be filed with the administrator information as may be required by the administrator to determine and assess any unpaid fees payable by the foreign corporation as required by law and either of the following:

(a) A certificate of the official of the jurisdiction of incorporation of the foreign corporation who has custody of the records pertaining to corporations, evidencing the occurrence of the event.

(b) A certified copy of an order or judgment of a court of competent jurisdiction directing dissolution of the foreign corporation, the termination of its existence, or the cancellation of its authority.

(2) Upon filing of the certificate, order, or judgment and payment of the filing fee prescribed by law, the administrator shall issue a certificate of withdrawal with the same effect as provided in section 1032.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.2041 Certificate of authority; grounds for revocation.

Sec. 1041. In addition to any other ground for revocation provided by law, the administrator may revoke the certificate of authority of a foreign corporation to transact business in this state upon the conditions prescribed in section 1042 upon any of the following grounds:

(a) The corporation fails to maintain a resident agent in this state as required by this act.

(b) The corporation, after changing its registered office or resident agent, fails to file a statement of the change as required by this act.

(c) The corporation fails to file an amended application as required by this act.

(d) The corporation, after becoming the survivor to a merger, fails to file the certificate attesting to the occurrence of the merger as required by this act.

(e) The corporation fails to file its annual report within the time required by this act, or fails to pay an annual filing fee required by this act.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974 ;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.2042 Certificate of authority; revocation; notice; certificate of revocation; effect.

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

(2) The notice shall be sent by first class mail to the corporation at its registered office in this state.

(3) Upon revoking a certificate of authority, the administrator shall issue a certificate of revocation and mail a copy to the corporation at its registered office in this state.

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.2051 Action or proceeding by or against foreign corporation without certificate of authority; order of dismissal; recommencement of action; validity of corporate contracts or acts.

Sec. 1051. (1) A foreign corporation transacting business in this state without a certificate of authority shall not maintain an action or proceeding in any court of this state until the corporation has obtained a certificate

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of authority. An action commenced by a foreign corporation having no certificate of authority shall not be dismissed if a certificate of authority has been obtained before the order of dismissal. Any such order of dismissal shall be without prejudice to the recommencement of such action or proceeding by the foreign corporation after it obtains a certificate of authority. This prohibition applies to:

(a) A successor in interest of the foreign corporation, except a receiver, trustee in bankruptcy, or other representative of creditors of the corporation.

(b) An assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but has not obtained a certificate of authority in this state.

(2) Failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of a contract or act of the corporation, and does not prevent the corporation from defending an action or proceeding in a court of this state.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983.

450.2055 Penalty for transacting business without certificate of authority.

Sec. 1055. In addition to any other liability imposed by law, a foreign corporation transacting business in this state without a certificate of authority shall forfeit to the state a penalty of not less than $100.00, nor more than $1,000.00, for each calendar month, not more than 5 years prior thereto, in which it has transacted business in this state without a certificate of authority. This penalty shall not exceed $10,000.00. The penalty shall be recovered with costs in an action prosecuted by the attorney general.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.2056 Registration of corporate name by foreign corporation not authorized to transact business in state; filing; duration; notice; renewal.

Sec. 1056. (1) Any foreign corporation not authorized to transact business in this state and not required to be authorized to transact business in this state may register its corporate name under this act, if permissible under section 212.

(2) Registration shall be made by filing all of the following in the office of the administrator:

(a) An application for registration executed on behalf of the corporation, setting forth the name and the mailing address of the corporation, the jurisdiction of its incorporation, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged.

(b) A certificate dated not earlier than 30 days before filing of the application, setting forth that the corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the office of the jurisdiction which has custody of the records pertaining to corporations.

(3) Unless sooner terminated by the filing of a certificate of termination, the registration shall be effective until the close of the calendar year in which the application for registration is filed. However, registrations filed after September 30 of a year shall expire at the end of the following calendar year. The administrator shall notify the corporation of the impending expiration not later than 90 days before the expiration of the registration. A foreign corporation which has in effect a registration of its corporate name may renew the registration from year to year by filing annually an application for renewal and a certificate of good standing as required for the original registration. A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

History: Add. 1982, Act 407, Eff. Jan. 1, 1983.

450.2060 Fees.

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

(a) Articles of a domestic corporation, $10.00.

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

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

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

(e) Certificate of merger, conversion, or share exchange under chapter 7, $50.00.

(f) Certificate attesting to the occurrence of a merger of a foreign corporation under section 1021, $10.00.

(g) Certificate of dissolution, $10.00.

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

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

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

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

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

(m) Certificate of abandonment, $10.00.

(n) Certificate of correction, $10.00.

(o) Certificate of revocation of dissolution proceedings, $10.00.

(p) Certificate of renewal of corporate existence, $10.00.

(q) For examining a special report required by law, $2.00.

(r) Certificate of registration of corporate name of a foreign corporation, $50.00.

(s) Certificate of renewal of registration of corporate name of a foreign corporation, $50.00.

(t) Certificate of termination of registration of corporate name of a foreign corporation, $10.00.

(u) Report required under section 911, $15.00 if paid before October 1, 2003 or after September 30, 2012. After September 30, 2003 and before October 1, 2012, the fee is $25.00.

(2) The fees described in subsection (1) are in addition to any franchise fees prescribed in this act. The administrator shall not refund all or any part of a fee described in this section.

(3) Except as provided in subsection (9), the administrator shall deposit all fees received and collected under this section in the state treasury to the credit of the administrator, who may only use the money credited pursuant to legislative appropriation and only in carrying out those duties of the department required by law.

(4) The fees described in this section apply to documents filed by a domestic or foreign regulated investment company as defined in section 1064.

(5) If any money received by the administrator from fees paid under subsection (1)(u) is not appropriated to the department in that fiscal year, the money remaining from those fees shall revert to the general fund of this state.

(6) A minimum charge of $1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a corporation if a fee for that service is not described in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies the fee established in a schedule of fees adopted by the administrator with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection, and the department shall use it to defray the costs for its copying and certifying services.

(7) If a domestic or foreign corporation pays fees or penalties by check and the check is dishonored, the fee is unpaid and the administrator shall rescind the filing of all related documents.

(8) The administrator may accept a credit card in lieu of cash or check as payment of a fee under this act. The administrator shall determine which credit cards he or she shall accept for payment.

(9) The administrator may charge a nonrefundable fee of up to $50.00 for any document submitted or certificate sent by facsimile or electronic transmission. The administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974 ;—Am. 1977, Act 36, Eff. Oct. 1, 1977;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2003, Act 106, Imd. Eff. July 24, 2003;—Am. 2007, Act 83, Imd. Eff. Sept. 30, 2007;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.2061 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to franchise fee for nonprofit corporations.

450.2062 Organization and admission fee; initial admission fee of foreign corporation for profit and foreign regulated investment company; fees for increase in authorized shares; additional admission fee; determining amount of authorized shares attributable to this state; information relating to determination of fees; "corporation" defined; determination of fee if capital of corporation not divided into shares; domestic corporation resulting from merger or consolidation; admission fees.

Sec. 1062. (1) A domestic corporation or cooperative association, organized for profit, or a domestic regulated investment company, at the time of filing its articles of incorporation, shall pay 1 of the following to the administrator as an initial organization and admission fee:

(a) For 60,000 or fewer authorized shares, $50.00.

(b) For more than 60,000 and fewer than 1,000,001 authorized shares, $100.00.

(c) For more than 1,000,000 and fewer than 5,000,001 authorized shares, $300.00.

(d) For more than 5,000,000 and fewer than 10,000,001 authorized shares, $500.00.

(e) For more than 10,000,000 authorized shares, $500.00 plus an additional $1,000.00 for each additional

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10,000,000 authorized shares or portion of 10,000,000 authorized shares in excess of the initial 10,000,000 authorized shares.

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

(3) Every corporation incorporated under the laws of this state that increases its authorized shares, at the time of filing its amendment to the articles of incorporation, shall pay 1 of the following additional organizational fees:

(a) For an increase of 60,000 or fewer authorized shares, $50.00.

(b) For an increase of more than 60,000 and less than 1,000,001 authorized shares, $100.00.

(c) For an increase of more than 1,000,000 and less than 5,000,001 authorized shares, $300.00.

(d) For an increase of more than 5,000,000 and less than 10,000,001 authorized shares, $500.00.

(e) For an increase of more than 10,000,000 authorized shares, $500.00 plus an additional $1,000.00 for each additional 10,000,000 authorized shares or portion of 10,000,000 authorized shares in excess of the initial 10,000,000 authorized shares.

(4) A foreign corporation authorized to transact business in this state that increases the number of authorized shares attributable to this state shall file an amended application in accordance with section 1021 and shall pay 1 of the following additional admission fees:

(a) For an increase of 60,000 or fewer authorized shares attributable to this state, $50.00.

(b) For an increase of more than 60,000 and less than 1,000,001 authorized shares attributable to this state, $100.00.

(c) For an increase of more than 1,000,000 and less than 5,000,001 authorized shares attributable to this state, $300.00.

(d) For an increase of more than 5,000,000 and less than 10,000,001 authorized shares attributable to this state, $500.00.

(e) For an increase of more than 10,000,000 authorized shares attributable to this state, $500.00 plus an additional $1,000.00 for each additional 10,000,000 authorized shares attributable to this state or portion of 10,000,000 authorized shares attributable to this state in excess of the initial 10,000,000 authorized shares attributable to this state.

(5) The number of authorized shares attributable to this state is determined by multiplying the total number of authorized shares by the most recent apportionment percentage used in the computation of the tax required by the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601. If the business activities are confined solely to this state, the total number of authorized shares are considered attributable to this state.

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

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

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

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

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2005, Act 212, Eff. Jan. 1, 2006;—Am. 2007, Act 182, Imd. Eff. Dec. 21, 2007.

450.2063 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to valuation of shares without par value as basis for franchise fees.

450.2064 “Regulated investment company” defined.

Sec. 1064. A regulated investment company, for purposes of this act, means any domestic or foreign

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corporation or association, common law or statutory trust, under whatever authority organized, which for any taxable year or period for purposes of federal income tax is registered and regulated under the investment company act of 1940, title I of chapter 686, 54 Stat. 789 and which for such taxable year or period is classified as a regulated investment company as defined in part 1 of subchapter M of chapter 1 of the internal revenue code, 26 U.S.C. 851 to 855.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.2098 Repeals.

Sec. 1098. The following acts and parts of acts are repealed:

(a) Act No. 226 of the Public Acts of 1885, being sections 450.351 to 450.354 of the Compiled Laws of 1948.

(b) Sections 1 to 61, 65 to 80, 82 to 91a and 187b of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.61, 450.65 to 450.80, 450.82 to 450.91a and 450.187b of the Compiled Laws of 1948.

(c) Act No. 16 of the Public Acts of the Extra Session of 1932, being sections 450.361 to 450.363 of the Compiled Laws of 1948.

(d) Act No. 48 of the Public Acts of 1947, as amended, being sections 450.431 and 450.432 of the Compiled Laws of 1948.

(e) Section 2908 of Act No. 236 of the Public Acts of 1961, being section 600.2908 of the Compiled Laws of 1948.

(f) Sections 1 to 3(b) of Act No. 85 of the Public Acts of 1921, as amended, being sections 450.301 to 450.303b of the Compiled Laws of 1948.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.2099 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to effective date of act.

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NONPROFIT CORPORATION ACT
Act 162 of 1982

AN ACT to revise, consolidate, and classify the laws relating to the organization and regulation of certain nonprofit corporations; to prescribe their duties, rights, powers, immunities, and liabilities; to provide for the authorization of foreign nonprofit corporations within this state; to impose certain duties on certain state departments; to prescribe fees; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts.

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

The People of the State of Michigan enact:

CHAPTER 1

450.2101 Short title.

Sec. 101. This act shall be known and may be cited as the “nonprofit corporation act”.

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

450.2103 Construction and application of act.

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

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

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

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

450.2104 Definitions generally.

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

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

450.2105 Definitions; A, B.

Sec. 105. (1) “Administrator” means the director of commerce or the head of any other agency or department authorized by law to administer this act, or a designated representative of that person.

(2) “Articles of incorporation” includes (a) the original articles of incorporation or any other instrument filed or issued under any statute to organize a domestic or foreign corporation, as amended, supplemented, or restated by certificates of amendment, merger, or consolidation, or other certificates or instruments filed or issued under any statute; or (b) a special act or charter creating a domestic or foreign corporation, as amended, supplemented, or restated.

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

(4) “Authorized shares” means shares of all classes that a corporation is authorized to issue.

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

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

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

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

450.2106 Definitions; C to E.

Sec. 106. (1) "Charitable purpose corporation" means a nonprofit corporation that meets any of the following:

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

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

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

(2) "Corporation" or "domestic corporation" means a nonprofit corporation.

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

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

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

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

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

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.

450.2107 Definitions; F to I.

Sec. 107. (1) “Foreign business corporation” means a corporation for profit organized under laws other than the laws of this state, which includes in its purposes a purpose for which a corporation may be organized under Act No. 284 of the Public Acts of 1972, as amended.

(2) “Foreign corporation” means a corporation organized under laws other than the laws of this state conducting affairs in this state for a purpose or purposes for which a corporation may be organized under this act.

(3) “Insolvent” means being unable to pay debts as they become due in the usual course of a debtor's business.

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

450.2108 Definitions; M to P.

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

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

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

(4) “Person” means an individual, partnership, corporation, association, or any other legal entity.

(5) “Predecessor act” means an act or part of an act repealed by this act, or an act or part of an act repealed by an act that this act repeals.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1990, Act 39, Imd. Eff. Mar. 29, 1990;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

450.2109 Definitions; S.

Sec. 109. “Shares” means the units into which interests of shareholders in a corporation are divided.

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

450.2110 Definitions; T, V.

Sec. 110. (1) “Treasury shares” means shares which have been issued, have been subsequently acquired by a corporation, and have not been canceled. Treasury shares are issued shares, but not outstanding shares.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1990, Act 39, Imd. Eff. Mar. 29, 1990.

450.2121 Corporations to which act applicable; corporation organized under predecessor act.

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

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

(b) Every foreign corporation which is authorized to conduct affairs in this state.

(c) Any other domestic corporation or foreign corporation to the extent provided under this act or any law governing such corporation.

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

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

450.2122 Statutory reference to repealed act as reference to this act; statutes not applicable to corporation.

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

(2) The following statutes do not apply to a corporation, as defined in section 106:

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

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

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

450.2123 Applicability to corporation organized under other act not repealed by this act; organizations to which act inapplicable.

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

(2) A corporation covered by subsection (1) includes, but is not limited to, a cooperative corporation classified as a nonprofit corporation pursuant to section 98 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.98 of the Michigan Compiled Laws; a secret society or lodge; a trustee corporation holding property for charitable, religious, benevolent, educational, or other public benefit purposes; a church trustee corporation; an educational corporation which is organized as a trustee corporation; or a nonprofit corporation, an ecclesiastical corporation, and a public building corporation.

(3) This act does not apply to insurance, surety, credit unions, savings and loan associations, fraternal benefit societies, railroad, bridge, and tunnel companies, union depot companies, and banking corporations.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1990, Act 39, Imd. Eff. Mar. 29, 1990.

450.2124 Requirements of other acts not modified; compliance; inconsistency between acts.

Sec. 124. (1) This act does not modify the requirements of the following:

(a) The supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

(b) 1965 PA 169, MCL 450.251 to 450.253.

(c) The charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.

(d) The uniform management of institutional funds act, 1976 PA 157, MCL 450.1201 to 450.1210.

(e) The career development and distance learning act.

(2) A corporation subject to any 1 or more of the acts listed in subsection (1) shall comply with those acts and shall comply with this act. If there is any inconsistency between those acts and this act, those acts shall control.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2002, Act 33, Imd. Eff. Mar. 7, 2002.

450.2125 Applicability to commerce with foreign nations and among several states, and to corporations formed by act of congress.

Sec. 125. This act applies to commerce with foreign nations and among the several states and to corporations formed by or under any act of congress, only to the extent permitted under the constitution and laws of the United States.

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

450.2127 Effect of act on existing corporation, cause of action, liability, penalty, action, or special proceeding.

Sec. 127. (1) Except as provided in section 261(3), this act does not affect the duration of a corporation which exists on the effective date of this act. An existing corporation and its shareholders, members, directors, and officers have the same rights and are subject to the same limitations, restrictions, liabilities, and penalties as a corporation formed under this act, and its shareholders, members, directors, and officers.

(2) This act does not affect a cause of action, liability, penalty, or action or special proceeding, which on the effective date of this act is accrued, existing, incurred, or pending, but the same may be asserted, enforced, prosecuted, or defended as if this act had not been enacted.

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

450.2129 Supplementation, alteration, amendment, or repeal of act by legislature.

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Sec. 129. This act may be supplemented, altered, amended, or repealed by the legislature and every corporation, domestic or foreign, to which this act applies is bound thereby.

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

450.2131 Submission of documents; delivery; endorsement; indexing; preparing and returning copy or original; public inspection; maintenance of records and files; effective date of document; fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1992, Act 198, Imd. Eff. Oct. 5, 1992;—Am. 2005, Act 219, Eff. Jan. 1, 2006.

450.2132 English language; numbers; articles of foreign corporation; signatures; contents of

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documents.

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

(2) A document required or permitted to be filed under this act which is also required by this act to be executed on behalf of the corporation, shall be signed in ink by the chairperson or vice-chairperson of the board or the president or a vice-president. If the corporation is in the hands of a receiver, trustee, or other court appointed officer, the document shall be signed in ink by the fiduciary or the majority of them, if there are more than 1. The name of a person signing the document and the capacity in which the person signs, shall be stated beneath or opposite the signature. The document may, but need not, contain:

(a) The corporate seal.

(b) An attestation by the secretary or an assistant secretary of the corporation.

(c) An acknowledgment or proof.

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

450.2133 Correction of document; certificate; effective date of corrected document.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2141 Taking action without notice and without lapse of prescribed period of time; waiver.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2142 Dispensing with notice or communication to person with whom communication unlawful; affidavit, certificate, or other instrument.

Sec. 142. When a notice or communication is required to be given to a person by this act, by the articles of incorporation or bylaws, or by the terms of an agreement or instrument relating to the internal affairs of the corporation, or as a condition precedent to taking corporate action, and communication with the person is then unlawful under a statute of this state or the United States or a rule, regulation, proclamation, or order issued under any of those statutes, the giving of the notice or communication to the person is not required and there is no duty to apply for a license or other permission to do so. An affidavit, certificate or other instrument which is required to be made or filed as proof of the giving of a notice or communication required by this act, if the notice or communication to any person is dispensed with under this section, shall include a statement that the notice or communication was not given to any person with whom communication is unlawful. The affidavit, certificate or other instrument is as effective for all purposes as though the notice or communication had been personally given to the person.

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

450.2143 Giving notice or communication by mail; electronic transmission as written notice.

Sec. 143. (1) When a notice or communication is required or permitted by this act to be given by mail, it shall be mailed, except as otherwise provided in this act, to the person to whom it is directed at the address designated by that person for that purpose or, if none is designated, at that person's last known address. The

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notice or communication is given when deposited, with postage prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. The mailing shall be registered, certified, or other first class mail except where otherwise provided in this act.

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2151 Refusal by administrator to file document promptly; notice of refusal to file; refusal or revocation of authorization of foreign corporation to conduct affairs in state; judicial review.

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

CHAPTER 2

450.2201 Incorporators; signing and filing articles of incorporation.

Sec. 201. (1) One or more persons may be the incorporators of a corporation by signing in ink and filing articles of incorporation for the corporation.

(2) If there are 3 or more incorporators of a corporation, the incorporators may, by suitable resolution adopted by the incorporators at the organization meeting or by written instrument, designate any 1 among themselves to sign the articles of incorporation for that person and the remainder of the incorporators, in which case a copy of the resolution duly certified by the person who acted as secretary at the organization meeting shall be made a part of and filed with the articles of incorporation.

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

450.2202 Articles of incorporation; contents.

Sec. 202. The articles of incorporation shall contain:

(a) The name of the corporation.

(b) The purposes for which the corporation is organized. It shall not be sufficient to state substantially that the corporation may engage in any activity within the purposes for which a corporation may be organized under this act. A corporation which proposes to conduct educational purposes shall state such purposes and shall comply with all requirements of sections 170 to 177 of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.170 to 450.177 of the Michigan Compiled Laws.

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

(d) In the case of a corporation organized on a stock basis, if the shares are, or are to be, divided into classes, to the extent that the designations, numbers, relative rights, preferences, and limitations have been determined: the designation of each class; the number of shares in each class; and a statement of the relative rights, preferences, and limitations of the shares of each class.

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

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

(g) The street address, and the mailing address if different from the street address, of the corporation's

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initial registered office and the name of the corporation's initial resident agent at that address.

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

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

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

450.2204 Articles of incorporation; provision pertaining to proposed compromise or arrangement or reorganization between corporation and creditors or shareholders.

Sec. 204. The articles of incorporation may contain the following provision or the substance thereof: When a compromise or arrangement or a plan of reorganization of this corporation is proposed between this corporation and its creditors or any class of them or between this corporation and its shareholders, members, or any class of them, a court of equity jurisdiction within the state, on application of this corporation or of a creditor, shareholder, or member of the corporation, or an application of a receiver appointed for the corporation, may order a meeting of the creditors or class of creditors or of the shareholders or members or class of shareholders or members to be affected by the proposed compromise or arrangement or reorganization, to be summoned in such manner as the court directs. If a majority in number representing 3/4 in value of the creditors or class of creditors, or of the shareholders or members or class of shareholders or members to be affected by the proposed compromise or arrangement or a reorganization, agree to a compromise or arrangement or a reorganization of this corporation as a consequence of the compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, or on all the shareholders or members or class of shareholders or members and also on this corporation.

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

450.2205 Articles of incorporation; including provision of MCL 450.2204; effect on creditors, shareholders, or members of corporation; administration and enforcement of provision by circuit court; restraining actions and proceedings against corporation; appointment and powers of temporary receiver.

Sec. 205. (1) When the provision of section 204 is included in the original articles of incorporation of a corporation, all persons who become creditors, shareholders, or members of the corporation are deemed to have become creditors, shareholders, or members subject in all respects to that provision, and it shall be binding upon them.

(2) When that provision is inserted in the articles of a corporation by an amendment of the articles, all persons who become creditors, shareholders, or members of the corporation after the amendment becomes effective are deemed to have become creditors, shareholders, or members subject in all respects to that provision, and it shall be binding upon them.

(3) The circuit court may administer and enforce the provision and restrain, during the process of an action, actions and proceedings against the corporation with respect to which the court so restraining has begun the administration or enforcement of the provision, and appoint a temporary receiver for the corporation and grant the receiver such powers as are deemed proper.

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

450.2209 Articles of incorporation; additional provisions.

Sec. 209. The articles of incorporation may contain any provision consistent with any of the following:

(a) A provision regarding the management of the corporation or creating, defining, limiting, or regulating the powers of the corporation, its directors, officers, members, or shareholders, or a class of shareholders or members.

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

(c) A provision that eliminates the personal liability of a volunteer director or volunteer officer to the corporation, its shareholders, or its members for monetary damages for a breach of the director's or officer's fiduciary duty. The provision does not eliminate or limit the liability of a director or officer for any of the following:

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

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

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

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

(*v*) An act or omission occurring before the effective date of the provision granting limited liability.

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

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

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

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

(*ii*) The volunteer was acting in good faith.

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

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1990, Act 39, Imd. Eff. Mar. 29, 1990;—Am. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 1996, Act 397, Imd. Eff. Oct. 9, 1996.

450.2212 Corporate name.

Sec. 212. (1) The corporate name of a corporation formed or existing under or subject to this act:

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

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

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

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

(3) A corporation incorporated for the purpose of receiving and administering funds for perpetuation of the memory of persons, preservation of objects of historical or natural interest, educational, charitable, or religious purposes, or public welfare may use the name foundation.

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

450.2213 Assuming name that implies corporation is banking corporation, insurance or surety company, or trust company prohibited.

Sec. 213. A corporation formed or existing under or subject to this act shall not assume a name which implies that it is a banking corporation, an insurance or surety company, or a trust company.

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

450.2215 Reservation of right to use corporate name; application; duration; expiration; extension; transfer of right to exclusive use of reserved corporate name.

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

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

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

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

450.2217 Conduct of affairs under assumed name or names other than corporate name; assumption of same name by 2 or more corporations participating in partnership or joint venture; certificate of assumed name; duration; extensions; notification of impending expiration; substantive rights to use of assumed name not created.

Sec. 217. Except as otherwise prohibited by law, a domestic or foreign corporation may conduct its affairs under any assumed name or names other than its corporate name, not precluded from use by section 212, and the same name may be assumed by 2 or more corporations participating together in any partnership or joint venture by filing a certificate stating the true name of the corporation and the assumed name under which its affairs are to be conducted. The certificate shall be effective, unless sooner terminated by the filing of a certificate of termination or by the dissolution or withdrawal of the corporation, for a period expiring on December 31 of the fifth full calendar year following the year in which it was filed. It may be extended for additional consecutive periods of 5 full calendar years each by the filing of similar certificates not earlier than 90 days preceding the expiration of any such period. The administrator shall notify the corporation of the impending expiration of the certificate of assumed name no later than 90 days before the initial or subsequent 5-year period will expire. This section does not create substantive rights to the use of a particular assumed name.

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

450.2221 Corporate existence to begin on effective date of articles; filing as conclusive evidence that conditions precedent fulfilled and corporation organized; exception.

Sec. 221. The corporate existence shall begin on the effective date of the articles of incorporation as provided in section 131. Filing is conclusive evidence that all conditions precedent required to be performed under this act have been fulfilled and that the corporation has been organized under this act, except in an action or special proceeding by the attorney general.

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

450.2223 Selection of board and adoption of bylaws; first meeting; notice; quorum; transaction of business.

Sec. 223. Before or after filing of the articles of incorporation a majority of the incorporators at a meeting or by written instrument, shall select a board and may adopt bylaws. On or after the filing date of the articles, any member of the board may call the first meeting of the board upon not less than 3 days' notice by mail to each director. A majority of the directors constitutes a quorum for the first meeting of the board. At the first meeting, the board may adopt bylaws, elect officers, and transact such other business as may come before the meeting.

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

450.2231 Bylaws; adoption; amendment or repeal; contents.

Sec. 231. (1) Except if the power to adopt, amend, or repeal the bylaws is reserved exclusively to the corporation's shareholders, its members, or its board in the articles of incorporation:

(a) The initial bylaws of a corporation shall be adopted by its incorporators, its shareholders, its members, or its board.

(b) The shareholders, the members, or the board may amend or repeal the bylaws or adopt new bylaws.

(c) The shareholders or members may prescribe in the bylaws that any bylaw adopted by them shall not be amended or repealed by the board.

(2) The bylaws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

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

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450.2241 Registered office; resident agent.

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

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

(b) A resident agent, which agent may be either an individual resident in this state whose business office is identical with the corporation's registered office, a domestic or domestic business corporation, or a foreign or foreign business corporation authorized to conduct affairs or transact business in this state and having a business office identical with the corporation's registered office.

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

450.2242 Change of registered office or resident agent; statement.

Sec. 242. A domestic corporation or a foreign corporation authorized to conduct affairs in this state may change its registered office or change its resident agent, or both, upon filing a statement, which may be executed by any of the individuals set forth in section 132 or by the secretary or assistant secretary of the corporation, setting forth:

(a) The name of the corporation.

(b) The street address of its then registered office, and its mailing address if different from its street address.

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

(d) The name of its then resident agent.

(e) If its resident agent is changed, the name of its successor resident agent.

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

(g) That such change was authorized by resolution duly adopted by its board.

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

450.2243 Resident agent; resignation; notice; appointment of successor; termination of appointment of resigning agent.

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

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

450.2246 Resident agent; service of process, notice, or demand; resident agent as agent of director or officer in certain actions; forwarding process to director or officer.

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

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

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

450.2251 Corporate purposes; conduct of lawful activities during war or national emergency.

Sec. 251. (1) Except if required by law to incorporate under another statute of this state, a corporation may be formed under this act for any lawful purposes not involving pecuniary gain or profit for its officers, directors, shareholders, or members.

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

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

450.2261 Corporate powers; duration of existence of certain corporations incorporated before effective date of act; fixed limitation or term; waiver of right to perpetual existence; nonprofit power corporation.

Sec. 261. (1) A corporation, subject to any limitation provided in this act, in any other statute of this state, in its articles of incorporation or otherwise by law, shall have power in furtherance of its corporate purposes to:

(a) Have perpetual duration.

(b) Sue and be sued in all courts and participate in actions and proceedings judicial, administrative, arbitrative or otherwise, in like cases as natural persons.

(c) Have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed, or reproduced in any other manner.

(d) Adopt, amend, or repeal bylaws, including emergency bylaws, relating to the purposes of the corporation, the conduct of its affairs, its rights and powers, and the rights and powers of its shareholders, members, directors, or officers.

(e) Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and the compensation of directors, and indemnify corporate directors, officers, employees, and agents.

(f) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with, real or personal property, or an interest therein, wherever situated, either absolutely or in trust and without limitation as to amount or value.

(g) Sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, or create a security interest in, any of its property, or an interest therein, wherever situated.

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

(i) Make contracts, give guarantees, and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest therein, wherever situated.

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

(k) Make donations for public welfare or for community fund, hospital, charitable, educational, scientific, civic or similar purposes, and in time of war or other national emergency in aid thereof.

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

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

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

(o) Cease its corporate activities and dissolve.

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

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

(2) A corporation subject to Act No. 157 of the Public Acts of 1976, being sections 451.1201 to 451.1210 of the Michigan Compiled Laws, shall have all powers granted under this act and Act No. 157 of the Public Acts of 1976. However, in the event of an inconsistency between this act and Act No. 157 of the Public Acts of 1976, Act No. 157 shall control.

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(3) The corporate existence of all corporations incorporated before the effective date of this act, without capital stock, for religious, benevolent, social, or fraternal purposes, shall be deemed to be in perpetuity. A limitation or term fixed in the articles or in the law under which the corporation originally incorporated shall not be effective unless the corporation has affirmatively waived its right to perpetual existence subsequent to September 18, 1931, by fixing a definite term of existence by amendment to its articles.

(4) Any nonprofit power corporation which is authorized to furnish electric service may construct, maintain, and operate its lines along, over, across or under any public places, streets and highways, and across or under the waters in this state, with all necessary erections and fixtures. A nonprofit power corporation may exercise the power of eminent domain, in the manner provided by Act No. 87 of the Public Acts of 1980, as amended, being sections 213.51 to 213.77 of the Michigan Compiled Laws. As a condition to the exercise of any of these powers, nonprofit corporations shall be subject to the jurisdiction of the Michigan public service commission pursuant to Act No. 106 of the Public Acts of 1909, as amended, being sections 460.551 to 460.559 of the Michigan Compiled Laws, Act No. 419 of the Public Acts of 1919, as amended, being sections 460.51 to 460.62 of the Michigan Compiled Laws, and Act No. 3 of the Public Acts of 1939, as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

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

450.2262 Existing incorporated association or society operating as corporation subject to act; payment of death or sick benefits; reserves; rules; investment of funds securing reserves; statement required of evidence of obligation to pay death and sick benefits.

Sec. 262. (1) An association or society, not otherwise provided for here or by other statute, incorporated before January 1, 1983, and now existing, whose purpose is to provide for the relief of distressed members, visitation of the sick, and the payment of a voluntary sick benefit to or for members not exceeding $2,000.00 on account of any 1 member, or the buying and selling of products for its members without direct pecuniary profit to the association or its members may operate as a corporation subject to this act. The ladies Lutheran benevolent federation of Michigan, now incorporated as a nonprofit corporation, may pay death benefits in an amount not exceeding $500.00 to any 1 person. The metropolitan club of America, inc., national spirit, and the ladies auxiliary of the metropolitan clubs of America, national spirit, which are incorporated as nonprofit corporations, may pay death benefits in an amount not to exceed $1,000.00 to any 1 person. The Venetian club of mutual aid, incorporated as a nonprofit corporation, may pay death and sick benefits in an amount not to exceed $10,000.00 to any 1 person. The Warren firemen's benevolent association may pay death and sick benefits in an amount not to exceed $20,000.00 to any 1 person. The Lansing firemen's benefit association may pay death and sick benefits in an amount not to exceed $2,000.00 to any 1 person. The Sanilac county police and firemen's fund may pay death and sick benefits in an amount not to exceed $3,000.00 to any 1 person. The Italian-American brotherhood society may pay death and sick benefits in an amount not to exceed $3,000.00 to any 1 person. The Italian-American fraternal club of Dearborn may pay death and sick benefits in an amount not to exceed $500.00 to any 1 person. The Michigan licensed beverage association may pay death and sick benefits in an amount not to exceed $5,000.00 to any 1 person who is a licensee of the Michigan liquor control commission. The Westland fire fighters' benevolent association may pay death and sick benefits in an amount not to exceed $7,500.00 to any 1 person. The Livonia benevolent association for fire fighters and police officers may pay death and sick benefits in an amount not to exceed $5,000.00 to any 1 person. The Midland fire fighters' benefit fund may pay death and sick benefits in an amount not to exceed $10,000.00 to any 1 person. The incorporated branches of the fraternal order of eagles within this state may pay death benefits of $350.00 or sickness benefits of $350.00, but not a combination of death and sickness benefits that would exceed $500.00 to any 1 person.

(2) The entities specified in this section and organized before January 1, 1983, and providing for the payment of death or sick benefits under this section in an amount exceeding $1,000.00 to 1 person shall by January 1, 1980, establish and maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the entity may be liable and to provide for the expense of adjustment or settlement of losses and claims. The reserves shall be computed in accordance with rules promulgated by the commissioner of insurance, after due notice and hearing, upon reasonable consideration of the ascertained experiences and the character of such kinds of business for the purpose of adequately protecting the members and securing the solvency of the corporations. The funds of the entities securing the reserves shall be invested only in securities permitted by the laws of this state for the investment of assets of life insurance companies.

(3) An entity specified in this section that obligates itself to the payment of death and sick benefits to its members shall not make, issue, or deliver in this state a certificate or other written evidence of the obligation unless the certificate or other written evidence has conspicuously printed on the first page in boldface type not

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smaller than 10 point the following statement: This organization does not operate under the supervision of the Michigan insurance bureau.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1985, Act 71, Imd. Eff. July 1, 1985;—Am. 1991, Act 37, Imd. Eff. June 10, 1991;—Am. 1996, Act 533, Imd. Eff. Jan. 13, 1997.

450.2271 Act of corporation and transfer of property to or by corporation not invalid where corporation without capacity or power; assertion of lack of capacity or power.

Sec. 271. An act of a corporation and a transfer of real or personal property to or by a corporation, otherwise lawful, is not invalid because the corporation was without capacity or power to do the act or make or receive the transfer of property. However the lack of capacity or power may be asserted:

(a) By a shareholder or member, or by a director who has not authorized or consented to the act or transfer, in an action against the corporation to enjoin the doing of an act or the transfer of real or personal property by or to the corporation.

(b) In an action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to an unauthorized act by that person.

(c) In an action or special proceeding by the attorney general to dissolve the corporation or to enjoin it from the conducting of unauthorized affairs.

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

450.2275 Agreement to pay rate of interest in excess of legal rate; defense of usury prohibited.

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

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

CHAPTER 3

450.2301 Payment or distribution of assets, income, or profit; conferring benefits on shareholders or members; compensation; distribution of assets upon dissolution; providing for payment of dividends or distribution of income or profit in articles or bylaws; application or distribution of profits; use, conveyance, or distribution of assets held by corporation for charitable purposes.

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

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

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

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

(b) Upon dissolution as permitted by this act, a corporation may make distributions of assets, other than assets held for charitable purposes, to shareholders or members.

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

(d) As permitted in subsection (4).

(e) If provision for redemption of shares is made pursuant to sections 361 to 365.

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

(5) This act shall not be deemed to permit assets held by a corporation for charitable purposes to be used, conveyed or distributed for noncharitable purposes.

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

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450.2302 Corporation organized upon nonstock basis.

Sec. 302. A corporation shall be organized upon a stock or nonstock basis. A corporation organized upon a nonstock basis shall be organized upon a membership basis or a directorship basis.

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

450.2303 Corporation organized upon stock basis; provisions of articles and bylaws; issuance of shares; rights, preferences, and limitations of or upon shareholders; classes of shares; voting rights; transferability and cancellation of shares; rules of qualification and government.

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

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

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

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

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

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

450.2304 Corporation organized upon membership basis; provisions of articles or bylaws; rights, preferences, and limitations of or upon members; classes of members; voting rights; condominium association; homeowners or property owners association; transferability and termination of membership; rules of qualification and government; limitations on membership.

Sec. 304. (1) Except as otherwise provided in this act, the articles of incorporation or bylaws of a corporation organized upon a membership basis may prescribe the number, qualifications, liquidation rights, preferences, and limitations, and other rights, preferences, and limitations of or upon the members of the corporation.

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

(3) Each member of a corporation, regardless of class, shall be entitled to 1 vote on each matter submitted to a vote of members, unless the articles or bylaws deny, limit, or otherwise prescribe the voting rights of any class of members. The members and each affected class of members, if any, shall adopt, amend, or repeal any bylaw denying, limiting, or otherwise prescribing the voting rights of any class of members.

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

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

(6) Except as otherwise provided in this act, the articles of incorporation or the bylaws, membership shall

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not be transferable and shall be terminated by death, resignation, expulsion, or expiration of a term of membership.

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

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

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

450.2305 Corporation organized upon directorship basis; members; voting; matters subject to action by board of directors.

Sec. 305. (1) A corporation organized upon a directorship basis may or may not have members. If a corporation organized upon a directorship basis has members, the members shall not be entitled to vote.

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

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

450.2307 Subscription for shares or membership; enforceability; irrevocability; acceptance; consent to revocation; contract with corporation to purchase shares to be issued or treasury shares as subscription agreement.

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

(2) A subscription for shares of or membership in a corporation to be organized may provide that it is irrevocable and may be accepted by the corporation for a period of 6 months, unless all the subscribers consent to its revocation.

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

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

450.2308 Subscription for shares or membership; payment; installments; call for payment ratable; retention of shares as security for performance by subscriber.

Sec. 308. Unless otherwise provided in the subscription agreement:

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

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

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

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

450.2309 Default in payment of amount due under subscription agreement; rights and duties of corporation; interpretation; limiting and adding to rights and remedies of corporation.

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

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

(b) If the articles of incorporation or bylaws of a corporation organized upon a stock basis permit the transfer of shares, it may sell the shares in any reasonable manner consistent therewith at any time before full satisfaction of the claim or a judgment therefor. Notice of the time and place of a public sale or of the time after which a private sale may be had, together with a statement of the amount due upon each share, shall be given in writing to the subscriber personally or by registered or certified mail at least 20 days before any such time stated in the notice. Any excess of net proceeds realized over the amount due plus interest shall be paid to the subscriber. If the sale is made in good faith, in a reasonable manner, and upon such notice, the

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corporation may recover the difference between the amount due plus interest and the net proceeds of the sale. A good faith purchaser for value acquires title to the sold shares free of any right of the subscriber even though the corporation fails to comply with 1 or more of the requirements of this subdivision.

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

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

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

450.2310 Rescission of subscription under which part of shares issued and in which security interest retained as cancellation of shares.

Sec. 310. Rescission by a corporation of a subscription under which a part of the shares subscribed for have been issued and in which the corporation retains a security interest, as provided in section 308(c), effects the cancellation of such shares.

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

450.2311 Fees or dues required as condition of shareholding or membership; fixing; enforcement.

Sec. 311. A corporation may fix in the bylaws, or the bylaws may authorize the board to fix, an amount as fees or dues which shareholders or members may be required to pay initially or periodically as a condition of shareholding or admission or retention of membership. The corporation may make bylaws necessary to enforce this requirement, including provisions for cancellation of shares or termination of membership for nonpayment of dues or obligations and for reissuance of shares or reinstatement of membership.

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

450.2312 Issuance by corporation organized on stock basis of shares for fixed consideration; disposition of treasury shares.

Sec. 312. (1) Shares may be issued by a corporation organized on a stock basis for a consideration fixed by the board unless the articles of incorporation reserve this right to the shareholders.

(2) Unless otherwise provided in the articles of incorporation, treasury shares which are transferable may be disposed of by the corporation for a consideration fixed by the board.

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

450.2313 Corporation, unincorporated association, partnership, or other person as shareholder or member; officers and directors as director of corporation; rights, powers, privileges, and liabilities of shareholders or members.

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

(2) If a corporation or business corporation is a shareholder or a member in a corporation, its officers or directors may serve as a director of the corporation of which it is a shareholder or member. A corporation or business corporation that is also a shareholder or member of a corporation shall possess and exercise all the rights, powers, privileges, and liabilities of individual shareholders or members.

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

450.2315 Consideration for issuance of shares; rights and privileges of subscribers when payment received by corporation; value of consideration; fully paid shares nonassessable.

Sec. 315. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money or other property, tangible or intangible, or in services performed or to be performed for the corporation or for its benefit or in its organization or reorganization.

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(2) Except where the consideration is future services or payment, when payment of the full consideration for which shares are to be issued is received by the corporation, the subscriber has all the rights and privileges of a holder of such shares, including registration in the subscriber's name of a certificate representing them; and the shares shall be fully paid. Where the consideration is future services or payment, rights of the subscriber shall be determined by the subscription agreement.

(3) In the absence of fraud in the transaction, the judgment of the board of the shareholders as to the value of the consideration received for shares is conclusive.

(4) Unless the articles of incorporation otherwise provide, shares which are fully paid shall be nonassessable.

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

450.2317 Obligation to pay unpaid portion of consideration for shares or membership as sole obligation; liability of person holding stock or membership in fiduciary or representative capacity; liability of assignee, transferee, or pledgee of shares, membership, or subscription for unpaid portion of consideration.

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

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

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

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

450.2327 Charges and expenses of organization or reorganization; sale or underwriting expenses and compensation; payment or allowance.

Sec. 327. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without thereby rendering the shares not fully paid or assessable.

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

450.2331 Representation of shares by certificates; signatures of officers and seal.

Sec. 331. The shares of a corporation shall be represented by certificates signed by the chairperson of the board, vice-chairperson of the board, president, vice-president, treasurer, or other officer authorized by the bylaws or a resolution of the board, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the officers may be facsimile if the certificate is countersigned by a transfer agent or registered by a registrar other than the corporation itself or its employee. In case an officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, it may be issued by the corporation with the same effect as if the person were an officer at the date of issue.

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

450.2332 Certificate representing shares; required statements.

Sec. 332. (1) A certificate representing shares shall state upon its face:

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

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

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

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

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

(2) A certificate representing shares issued by a corporation which is authorized to issue shares of more

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than 1 class shall set forth on its face or back or state that the corporation will furnish to a shareholder upon request and without charge a full statement of the designation, relative rights, preferences, and limitations of the shares of each class authorized to be issued.

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

450.2334 Lost or destroyed certificate; issuance of new certificate; bond.

Sec. 334. A corporation may issue a new certificate for shares or fractional shares in place of a certificate theretofore issued by it, alleged to have been lost or destroyed, and the board may require the owner of the lost or destroyed certificate, or the owner's legal representative, to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged lost or destroyed certificate or the issuance of such a new certificate.

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

450.2338 Issuing certificates for fractions of share; purposes; rights of holders; paying fair value of fractions of share in cash; issuing scrip in registered or bearer form exchangeable for full shares; conditions; providing opportunity to purchase additional fractions of share or scrip.

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

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

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

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

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

450.2361 Shares redeemable upon occurrence of specified event or events in cash, bonds, or other property; classes; sinking fund for redemption.

Sec. 361. A corporation may provide in its articles of incorporation for 1 or more classes of shares which are redeemable, in whole or in part, upon the occurrence of a specified event or events in cash, its bonds or other property, at such prices, within such periods, and under such conditions as are stated in the articles, if the provision for redemption is consistent with the purpose or purposes of the corporation. If so provided in its articles, a corporation may create a sinking fund for redemption, in whole or in part, of any class of redeemable shares.

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

450.2363 Shares redeemable at option of shareholders in cash, bonds, or other property; classes; amendment to articles.

Sec. 363. A corporation may provide, in its original articles of incorporation or by an amendment approved by the holders of record of all outstanding shares, for 1 or more classes of shares which are redeemable, in whole or in part, at the option of the shareholders, if the provision for redemption is consistent with the purpose or purposes of the corporation. Subject to restrictions imposed by section 365, such shares may be redeemable in cash, bonds of the corporation, or other property, at such prices, within such periods, and under such conditions as are stated in the articles. The articles may be amended to delete or change a provision for shares redeemable at the option of the shareholder only with unanimous approval of the holders of such shares.

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

450.2365 Purchase or redemption by corporation of own shares under certain conditions prohibited.

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Sec. 365. A corporation shall not purchase or redeem its own shares under any of the following conditions:

(a) If the purchase or redemption is inconsistent with the purpose or purposes of the corporation.

(b) If the purchase or redemption is contrary to any restriction contained in the articles of incorporation.

(c) When the corporation is insolvent or when the purchase or redemption would render the corporation insolvent.

(d) Unless after purchase or redemption there remains outstanding 1 or more classes of shares possessing, among them collectively, voting rights.

(e) In the case of redeemable shares and within the period of their redeemability, at a price greater than the applicable redemption price.

(f) Contrary to section 301(5).

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

450.2371 Cancellation of shares reacquired by corporation; retention of reacquired shares as treasury shares; status of cancelled shares.

Sec. 371. (1) Shares that have been issued and have been purchased, redeemed, or otherwise reacquired by a corporation shall be canceled unless the articles of incorporation or bylaws otherwise provide.

(2) Shares reacquired by a corporation and not required to be canceled may be retained as treasury shares or canceled by the board at the time of reacquisition or at any time thereafter.

(3) Shares canceled under this section are restored to the status of authorized but unissued shares. However, if the articles of incorporation or bylaws prohibit reissue of any shares required or permitted to be canceled under this section, the board by resolution shall adopt and file an amendment of the articles reducing the number of authorized shares accordingly.

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

450.2391 Conferring voting and inspection rights upon bond holders; signatures of officers.

Sec. 391. (1) A corporation, in its articles of incorporation, may confer upon the holders of bonds issued or to be issued by it, rights to inspect the corporate books and records and to vote in the election of directors and on any other matters on which shareholders or members of the corporation may vote to the extent, in the manner, and subject to the conditions prescribed in the articles. The articles may grant to the board the power to confer such voting or inspection rights under the terms of any bonds issued or to be issued by the corporation.

(2) The signatures of the officers upon a bond may be facsimiles.

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

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

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

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

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

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

450.2404 Notice of time, place, and purposes of meeting of shareholders or members; manner; notice of adjourned meeting; notice not given; attendance at meeting as waiver of notice; participating and voting by remote communication.

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

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

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

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

(3) If a meeting of shareholders or members is adjourned under subsection (2), only business that might have been transacted at the original meeting may be transacted at the adjourned meeting if a notice of the adjourned meeting is not given.

(4) Attendance of a person at a meeting of shareholders or members, in person or by proxy, constitutes 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.

(5) If a shareholder or member 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 or member may participate.

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.

450.2405 Shareholder or member 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) A corporation may provide in its articles of incorporation or in its bylaws for a shareholder's or member's participation in a meeting of shareholders or members by a conference telephone or other means of remote communication by which all persons participating in the meeting may hear each other if all participants are advised of the means of remote communication in use and the names of the participants in the meeting are divulged to all participants.

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

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

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

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

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

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

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.

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

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

(3) Any action required or permitted by this act to be taken at an annual or special meeting of shareholders or members may be taken without a meeting, without prior notice, and without a vote, if all the shareholders or members entitled to vote on the action consent to the action in writing.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2411 Fixing record date for determination of shareholders or members entitled to notice and vote; effect of not fixing record date; applicability of determination to adjournment.

Sec. 411. (1) For the purpose of determining shareholders or members entitled to notice of and to vote at a meeting of shareholders or members or an adjournment thereof, or to express consent or to dissent from a proposal without a meeting, or for the purpose of any other action, the bylaws may provide for fixing, or in

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the absence of such provision the board may fix, in advance, a date as the record date for any such determination of shareholders or members. The date shall not be more than 60 nor less than 10 days before the date of the meeting, nor more than 60 days before any other action.

(2) If a record date is not fixed: (a) the record date for determination of shareholders or members entitled to notice of or to vote at a meeting of shareholders or members shall be the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day next preceding the day on which the meeting is held; and (b) the record date for determining shareholders or members for any purpose other than that specified in subdivision (a) shall be the close of business on the day on which the resolution of the board relating thereto is adopted.

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

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

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 having charge of the shareholder or membership records of a corporation shall make and certify a complete list of the shareholders or members entitled to vote at a shareholders' or members' meeting or any adjourned shareholders' or members' meeting. The list shall meet all of the following:

(a) Be arranged alphabetically within each class with the address of each member or shareholder and the number of shares held by each shareholder.

(b) Be produced at the time and place of the meeting.

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

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2415 Quorum; continuing to do business notwithstanding withdrawal of shareholders or members; 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 or members, or in this act, shares or members entitled to cast a majority of the votes at a meeting constitute a quorum at the meeting. The shareholders or members present in person or by proxy at such meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders or members to leave less than a quorum. Whether or not a quorum is present, the meeting may be adjourned by a vote of the shareholders or members present.

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

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

450.2421 Authorizing person to act for shareholder or member by proxy; signature; duration; revocability; methods of granting authority; use of facsimile or reproduction.

Sec. 421. (1) Except as otherwise provided in the articles of incorporation or in a bylaw adopted by the shareholders or members, a shareholder or member entitled to vote at a meeting of shareholders or members or to express consent or dissent without a meeting may authorize other persons to act for the shareholder or member by proxy.

(2) A proxy shall be signed by the shareholder or member or an authorized agent or representative. A

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

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

(4) The authority of the holder of a proxy to act is not revoked by the incompetence or death of the shareholder or member 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 responsible for maintaining the list of shareholders or members.

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

(a) Delivering a writing to the person authorizing that person to act for the shareholder or member as proxy, executed by the shareholder or member, or by an authorized officer, director, employee, or agent of the shareholder or member, by signing the writing or causing his or her signature to be affixed to the writing by any reasonable means, including, but not limited to, facsimile signature.

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2422 Irrevocable proxy.

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

(a) In the case of shares or memberships which are transferable, a pledgee.

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

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

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

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

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

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

450.2423 Revocability of proxy.

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

(2) A proxy is revocable, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of 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.

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

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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.

450.2441 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 pursuant to section 303 or 304. A vote may be cast either orally or in writing, unless otherwise provided in the bylaws. In addition, the bylaws may provide for voting by electronic transmission.

(2) When an action, other than the election of directors, is to be taken by vote of the shareholders or members, it shall be authorized by a majority of the votes cast by the holders of shares or members entitled to vote on that action, unless a greater plurality is required by the articles of incorporation or another section of this act. Except as otherwise provided by the articles, directors shall be 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.

450.2442 Voting as class.

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

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

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

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

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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) The vote of a shareholder or member which is a domestic corporation or domestic business corporation or foreign corporation or foreign business corporation, whether or not the corporation or business corporation is subject to this act, may be cast by an officer or agent, or by proxy appointed by an officer or agent or by some other person, who by action of its board or pursuant to its bylaws shall be appointed to cast such vote.

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

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

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 ae 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. The vote of shares or a membership held by 2 or more persons as joint tenants or as tenants in common may be cast or voted at a meeting of shareholders or members by any of those persons, unless another joint tenant or tenant in common seeks to vote in person or by proxy. In the latter event, the written agreement, if any, which governs the manner in which the shares or membership shall be voted, controls if presented at the meeting, either physically or by means of electronic transmission. If the agreement is not presented at the meeting, the majority in interest of the joint tenants or tenants in common present shall control the manner of voting. In the case of a stock corporation, if there is no majority in interest of the joint tenants or tenants in common present, the shares, for the purpose of voting, shall be divided among those joint tenants or tenants in common in accordance with their interest in the shares.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2447 Treasury shares; shares of corporation held by another corporation or business corporation; voting.

Sec. 447. (1) Treasury shares shall not be voted on any matter nor deemed to be outstanding shares.

(2) If a corporation holds shares sufficient to elect a majority of the directors of another domestic corporation or a foreign corporation or domestic or foreign business corporation, shares of the first corporation held by such domestic corporation or foreign corporation or domestic or foreign business corporation shall not be voted on any matter or counted in determining the total number of outstanding shares

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of the first corporation.

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

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. The articles of incorporation may provide that a shareholder or member entitled to vote at an election for directors may vote, in person, by proxy, or by electronic transmission, for as many persons as there are directors to be elected and for whose election the shareholder or member has a right to vote, or to cumulate votes by giving 1 candidate as many votes as the number of those directors multiplied by the number of shares 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.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

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

Sec. 455. When, with respect to an action to be taken by the shareholders or members, the articles of incorporation require the vote or concurrence of holders of a greater proportion of the shares or a greater proportion of members, or of a class thereof, than required by this act with respect to the action, the articles shall control. An amendment of the articles which adds, changes, or deletes such a provision shall be authorized by the vote required to amend the articles pursuant to section 611, or by the same vote as would be required to take action under such provision, whichever is greater.

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

450.2461 Agreement as to voting rights.

Sec. 461. An agreement between 2 or more shareholders or members, if in writing and signed by the parties thereto, may provide that in exercising voting rights, they shall cast their votes as provided in the agreement, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

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

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.

450.2481 Issuing or delivering unissued or treasury shares; preemptive rights.

Sec. 481. (1) Except as otherwise provided in the articles of incorporation or by agreement, a corporation may issue or deliver unissued or treasury shares without first offering them to existing shareholders.

(2) The preemptive rights, whether created by statute or common law, of shareholders of a corporation organized before the effective date of this act are not affected by subsection (1). Such a corporation may alter or abolish its shareholders' preemptive rights by an amendment of its articles.

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

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

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inspect them.

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

450.2487 Mailing balance sheet and statements to shareholder or member upon request; examination of minutes and records; compelling production of books, records, and minutes; extracts.

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

(2) A person who is a shareholder or member of record of a corporation, upon at least 10 days' written demand, may examine for any proper purpose in person or by agent or attorney, during usual business hours, its minutes of shareholders' or members' meetings and record of shareholders or members and make extracts therefrom, at the places where they are kept pursuant to section 485.

(3) Upon proof by a shareholder or member of a proper purpose, the circuit court may compel production for examination by the shareholder or member of the books and records of account, minutes, and record of shareholders or members of a corporation, and may allow the shareholder or member to make extracts therefrom.

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

450.2491 Action by shareholder or member in right of corporation to procure judgment; allegations.

Sec. 491. (1) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by a record holder or beneficial owner of shares or by a member of the corporation.

(2) In such an action, the complaint shall allege:

(a) That the plaintiff is such a shareholder or member at the time of bringing the action and that the plaintiff was such a shareholder or member at the time of the transaction of which the plaintiff complains, or that the plaintiff's shares, interest therein, or membership devolved upon the plaintiff by operation of law from a person who was a shareholder or member at such time.

(b) With particularity the effort of the plaintiff to secure the initiation of the action by the board or the reasons for not making the effort.

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

450.2492 Discontinuance, compromise, or settlement of action authorized by MCL 450.2491; approval; notice; expense; award and recovery.

Sec. 492. An action authorized by section 491 shall not be discontinued, compromised, or settled without approval by the court having jurisdiction of the action. If the court determines that the interest of the shareholders or members or of any class thereof will be substantially affected by the discontinuance, compromise, or settlement, the court may direct that notice, by publication or otherwise, be given to the shareholders or members or any class thereof whose interests it determines will be so affected. If notice is so directed to be given, the court may determine which 1 or more of the parties to the action shall bear the expense of giving the notice, in such amount as the court determines and finds to be reasonable in the circumstances. The amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

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

450.2493 Action brought in right of corporation; awarding plaintiff or claimant reasonable expenses; accounting; applicability of section; requiring plaintiff to pay expenses where action brought without reasonable cause.

Sec. 493. (1) If an action brought in the right of the corporation is successful, in whole or in part, or if anything is received by the plaintiff or a claimant as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff or claimant reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to account to the corporation for the remainder of the proceeds received. This section does not apply to a judgment rendered for the benefit of an injured shareholder or member only and limited to a recovery of the loss or damage sustained by the injured shareholder or member.

(2) In an action brought in the right of the corporation by a record holder or beneficial owner of shares of the corporation or a member, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of the action.

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

CHAPTER 5

450.2501 Management of business and affairs of corporation by board; qualifications of directors; powers of board.

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

(2) The board of a corporation which is subject to Act No. 157 of the Public Acts of 1976, being sections 451.1201 to 451.1210 of the Michigan Compiled Laws, shall have the powers granted under Act No. 157 of the Public Acts of 1976 and this act. However, in the event of an inconsistency between this act and Act No. 157 of the Public Acts of 1976, Act No. 157 shall control.

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

450.2501a Board of directors; minimum age; requirements.

Sec. 501a. (1) A corporation organized for purposes described in section 501(c)(3) of the internal revenue code of 1986 may include 1 or more directors on its board who are 16 or 17 years of age as long as that number does not exceed 1/2 the total number of directors required for a quorum for the transaction of business.

(2) If a corporation described in subsection (1) may have more than 1 director who is 16 or 17 years of age, the corporation shall state in its articles of incorporation the number of directors who may be 16 or 17 years of age.

History: Add. 1998, Act 444, Imd. Eff. Dec. 30, 1998.

450.2505 Board; number, term, and election or appointment of directors; resignation of director; number of directors on effective date of amendatory act.

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

(2) The articles of incorporation or a bylaw adopted by the shareholders, members, or incorporators of a corporation organized on a stock or membership basis may specify the term of office and the manner of election or appointment of directors. If the articles of incorporation or bylaws do not so specify the term of office or manner of election or appointment of directors, the first board of directors shall hold office until the first annual meeting of shareholders or members. At the first annual meeting of shareholders or members and at each subsequent annual meeting the shareholders or members shall elect directors to hold office until the succeeding annual meeting, except in case of the classification of directors permitted under this act.

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

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 222, Imd. Eff. July 16, 2008.

450.2506 Dividing directors into 2 or more classes; election or appointment; term; expiration; election of directors by shareholders or members of class.

Sec. 506. (1) The articles of incorporation or a bylaw adopted by the shareholders or members of a corporation organized upon a stock or membership basis may provide that in lieu of annual election of all directors the directors be divided into 2 or more classes, to be elected or appointed for such terms and in such manner as therein specified. If the articles of incorporation or the bylaws do not so specify the term of office for the classes of directors, the term of office of directors in the first class shall expire at the first annual meeting of shareholders or members after their election, and that of each succeeding class shall expire at the next annual meeting after their election corresponding with the number of their class. At each annual meeting after such classification, a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the next annual meeting corresponding with the number of

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their class.

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

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

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

450.2511 Removal of director or entire board.

Sec. 511. (1) Unless otherwise provided in the articles of incorporation or bylaws, a director or the entire board may be removed:

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

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

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

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

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

450.2515 Filling of vacancies; increase in number of directors; special meeting where no directors in office.

Sec. 515. (1) Unless the right to fill vacancies is reserved to the shareholders or members or otherwise provided by the articles of incorporation or bylaws, a vacancy occurring in the board may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board. A directorship to be filled because of an increase in the number of directors or to fill a vacancy may be filled by the board for a term of office continuing only until the next election of directors by the shareholders or members.

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

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

450.2521 Regular or special meetings of board; location; notice; waiver; participation by means of conference telephone or other remote communication.

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

(2) A regular meeting may be held with or without notice as prescribed in the bylaws. A special meeting shall be held upon notice as prescribed in the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, a regular or special meeting need be specified in the notice or waiver of notice of the meeting unless required by the bylaws.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2523 Quorum; vote constituting action of board or committee; amendment of bylaws.

Sec. 523. A majority of the members of the board then in office, or of the members of a committee thereof,

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constitutes a quorum for the transaction of business, provided that the articles of incorporation or bylaws may provide for a larger number, and provided further that in any corporation where there are more than 7 directors, the articles of incorporation or bylaws may provide that less than a majority, but in no event less than 1/3 of the directors, may constitute a quorum of the board. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee, unless the vote of a larger number is required by this act, the articles, or the bylaws. Amendment of the bylaws by the board requires the vote of not less than a majority of the members of the board then in office.

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

450.2525 Taking action without meeting; consent.

Sec. 525. Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.2527 Designation of committees; membership; alternates; term; providing for election or appointment of committees in articles or bylaws.

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

(2) A committee designated pursuant to subsection (1), and each member thereof, shall serve at the pleasure of the board.

(3) The articles of incorporation or bylaws may provide for the election or appointment of 1 or more committees to consist of 1 or more shareholders or members or 1 or more directors or a combination of shareholders or members and directors.

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

450.2528 Committee designated pursuant to MCL 450.2527; powers and authority.

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

(a) Amend the articles of incorporation.

(b) Adopt an agreement of merger or consolidation.

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

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

(e) Amend the bylaws of the corporation.

(f) Fill vacancies in the board.

(g) Fix compensation of the directors for serving on the board or on a committee.

(h) Cancel stock or terminate membership.

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

450.2531 Officers of corporation; election or appointment; person holding 2 or more offices; term of office; authority and duties.

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

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

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

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

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

450.2535 Removal of officer; suspension of authority to act; contract rights; resignation of officer; notice.

Sec. 535. (1) An officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders or members may be removed, with or without cause, only by vote of the shareholders or members. The authority of the officer to act as an officer may be suspended by the board for cause.

(2) The removal of an officer shall be without prejudice to the contract rights of the officer, if any. The election or appointment of an officer does not of itself create contract rights.

(3) An officer may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or at a subsequent time specified in the notice of resignation.

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

450.2541 Director or officer; discharge of duties; compliance with MCL 451.1207; liability of volunteer director; action against director or officer for failure to perform duties.

Sec. 541. (1) A director or an officer shall discharge the duties of that position in good faith and with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, a director or an officer, when acting in good faith, may rely upon the opinion of counsel for the corporation, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the corporation represented to the director or officer as correct by the president or the officer of the corporation having charge of its books or account, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the corporation.

(2) A director or officer of a corporation subject to the uniform management of institutional funds act, Act No. 157 of the Public Acts of 1976, being sections 451.1201 to 451.1210 of the Michigan Compiled Laws, shall be considered in compliance with this section when the director or officer complies with section 7 of Act No. 157 of the Public Acts of 1976 in the administration of the powers specified in that section.

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

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988.

450.2545 Transaction between corporation and directors or officers, or between corporation and corporation or business corporation, firm, or association in which directors or officers interested, not void or voidable; conditions.

Sec. 545. A contract or other transaction between a corporation and 1 or more of its directors or officers, or between a corporation and a domestic or foreign corporation, domestic or foreign business corporation, firm, or association of any type or kind, in which 1 or more of its directors or officers are directors or officers, or

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are otherwise interested, is not void or voidable solely because of such common directorship, officership, or interest, or solely because such directors are present at the meeting of the board or committee thereof which authorizes or approves the contract or transaction, or solely because their votes are counted for such purpose if any of the following conditions is satisfied:

(a) The contract or other transaction is fair and reasonable to the corporation when it is authorized, approved, or ratified.

(b) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or known to the board or committee, and the board or committee authorizes, approves, or ratifies the contract or transaction by a vote sufficient for the purpose without counting the vote of any common or interested director.

(c) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or known to the shareholders or members, and they authorize, approve or ratify the contract or transaction.

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

450.2546 Burden of establishing validity of contract described in MCL 450.2545; grounds; counting common or interested directors in determining presence of quorum; compensation of directors; approval of shareholders or members.

Sec. 546. (1) When the validity of a contract described in section 545 is questioned, the burden of establishing its validity on the grounds prescribed in section 545 is upon the director, officer, corporation, firm, or association asserting its validity.

(2) Common or interested directors may be counted in determining the presence of a quorum at a board or committee meeting at which a contract or transaction described in section 545 is authorized, approved, or ratified.

(3) The board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the corporation as directors or officers, but approval of the shareholders or members is required if the articles of incorporation, bylaws, or other provisions of this act so provide.

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

450.2548 Loan, guaranty, or assistance by corporation for officer or employee; corporation as charitable purpose corporation.

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

(2) A loan, guaranty, or assistance described in subsection (1) may be with or without interest, and may be unsecured, or secured in a manner that the board approves.

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

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 222, Imd. Eff. July 16, 2008.

450.2551 Liability of directors for certain corporate actions; liability of shareholder or member accepting or receiving unauthorized distribution.

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

(a) Distribution of assets to shareholders or members contrary to this act or contrary to any restriction in the articles of incorporation or bylaws.

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

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(c) Distribution of assets to shareholders or members during or after dissolution of the corporation without paying, or adequately providing for, all known debts, obligations, and liabilities of the corporation.

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

(2) A director is not liable under this section if the director has complied with section 541.

(3) A shareholder or member who accepts or receives a distribution with knowledge of facts indicating it is not authorized by this act is liable to the corporation in the amount accepted or received by the shareholder or member.

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

450.2552 Rights of director against whom claim successfully asserted under MCL 450.2551.

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

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

(a) Upon payment to the corporation of any amount of an improper distribution, to be subrogated to the rights of the corporation against shareholders or members who received the distribution in proportion to the amounts received by them respectively.

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

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

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

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

450.2553 Presence or absence of director at meeting at which action referred to in MCL 450.2551 taken; presumption; dissent.

Sec. 553. A director who is present at a meeting of the board, or a committee thereof of which the director is a member, at which action on a corporate matter referred to in section 551 is taken, is presumed to have concurred in that action unless a dissent is entered in the minutes of the meeting or unless the director files a written dissent to the action with the person acting as secretary of the meeting before or promptly after the adjournment thereof. The right to dissent does not apply to a director who voted in favor of the action. A director who is absent from a meeting of the board, or a committee thereof of which the director is a member, at which any such action is taken is presumed to have concurred in the action unless the director files a dissent with the secretary of the corporation within a reasonable time after obtaining knowledge of the action.

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

450.2554 Commencement of action under MCL 450.2551 or 450.2552.

Sec. 554. An action against a director, shareholder, or member for recovery upon a liability imposed by section 551 shall be commenced within 3 years after the cause of action accrues. An action under section 552 shall be commenced within 3 years after payment by the director to the corporation.

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

450.2556 Volunteer's acts or omissions; claim for monetary damages.

Sec. 556. If the corporation's articles of incorporation contain a provision authorized under section 209(e), then a claim for monetary damages for a volunteer director, volunteer officer, or other volunteer's acts or omissions shall not be brought or maintained against a volunteer director, volunteer officer, or other volunteer. The claim shall be brought and maintained against the corporation.

History: Add. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 1996, Act 457, Imd. Eff. Dec. 23, 1996.

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450.2561 Indemnification of director, officer, partner, trustee, employee, nondirector volunteer, or agent in connection with action, suit, or proceeding; conditions; presumption.

Sec. 561. Unless otherwise provided by law or its articles of incorporation or bylaws, a corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not for profit, against expenses including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members, and with respect to any criminal action or proceeding, if the person had no reasonable cause to believe that conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

450.2562 Indemnification against expenses of director, officer, partner, trustee, employee, nondirector volunteer, or agent in connection with action or suit by or in right of corporation; conditions; limitations.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

450.2563 Indemnification against expenses of director, officer, employee, nondirector volunteer, or agent successful in defense of action, suit, or proceeding referred to in MCL 450.2561 or 450.2562; authorization; determination; indemnification for portion of expenses.

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

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

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

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

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

(d) By the shareholders or members.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

450.2564 Advance payment by corporation of expenses incurred in defending action, suit, or proceeding described in MCL 450.2561 or 450.2562; repayment.

Sec. 564. Expenses incurred in defending a civil or criminal action, suit, or proceeding described in section 561 or 562 may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee, nondirector volunteer, or agent to repay the expenses if it is ultimately determined that the person is not entitled to be indemnified by the corporation. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

450.2565 Indemnification or advancement of expenses not exclusive of other rights; limitation; continuation of indemnification.

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

(2) The indemnification provided in sections 561 to 564 and this section continues as to a person who ceases to be a director, officer, employee, nondirector volunteer, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

450.2567 Purchase and maintenance of insurance on behalf of director, officer, employee, nondirector volunteer, or agent.

Sec. 567. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, nondirector volunteer, or agent of another corporation, business corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the corporation would have power to indemnify the person against such liability under sections 561 to 565.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

450.2569 Scope of “corporation” for purposes of MCL 450.2561 to 450.2567; effect.

Sec. 569. For purposes of sections 561 to 567, “corporation” includes all constituent corporations absorbed in a consolidation or merger and the resulting or surviving corporation or business corporation, so that a person who is or was a director, officer, employee, nondirector volunteer, or agent of the constituent corporation or is or was serving at the request of the constituent corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise whether for profit or not shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation or business corporation as the person would if the person had served the resulting or surviving corporation or business corporation in the same capacity.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993.

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450.2601 Amendment of articles of incorporation; contents.

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

(2) Subject to section 301(5), a corporation may amend its articles of incorporation to become a business corporation by adopting restated articles of incorporation in accordance with section 641 which shall so amend the articles that they shall contain only such provisions as might be lawfully contained in original articles of incorporation of a business corporation organized under Act No. 284 of the Public Acts of 1972, as amended, being sections 450.1101 to 450.2099 of the Michigan Compiled Laws.

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

450.2602 Amendment of articles of incorporation; purposes.

Sec. 602. Without limitation upon the general power of amendment granted by section 601, a corporation may amend its articles of incorporation:

(a) To change its corporate name.

(b) To enlarge, limit, or otherwise change its corporate purposes or powers.

(c) To change the duration of the corporation.

(d) To increase or decrease the aggregate number of shares, or shares of any class which the corporation has authority to issue.

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

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

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

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

(i) To change its registered office or change its resident agent.

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

(k) To change its basis of organization to a stock corporation or a nonstock corporation organized upon a membership or directorship basis, in which event the amendment shall comply with section 202(c) and (d) or section 202(e) and (f), as applicable.

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

450.2611 Amendment of articles by incorporators; manner of adoption; notice of meeting; vote on proposed amendment; requirements; adoption; number of amendments acted upon at 1 meeting; certificate of amendment.

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

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

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

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

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

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

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(4) At a meeting to consider an amendment to the articles of incorporation, a vote of shareholders, members, or directors entitled to vote shall be taken on the proposed amendment. The proposed amendment is adopted if it receives the affirmative vote of a majority of the outstanding shares or members entitled to vote on the proposed amendment or a majority of the directors then in office. If any class of shares or members is entitled to vote on the proposed amendment as a class, the affirmative vote of a majority of the outstanding shares or members of that class is also required to adopt the amendment. The voting requirements of this section are subject to greater requirements as prescribed by this act for specific amendments, or as provided in the articles of incorporation or bylaws. In addition, unless a greater vote is required in the articles of incorporation, or in a bylaw adopted by the shareholders, members, or directors, the proposed amendment is adopted if it receives an affirmative vote of a majority of members or shares of shareholders present in person, by proxy, or by electronic transmission at the meeting if due notice of the time, place, and object of the meeting was given by mail, at the last known address, to each shareholder, member, or director entitled to vote at least 20 days before the date of the meeting or by publication in a publication distributed by the corporation to its shareholders or members at least 20 days before the date of the meeting.

(5) The shareholders, members, or directors may act on any number of amendments at 1 meeting.

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

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1984, Act 209, Eff. Nov. 1, 1985;—Am. 2008, Act 222, Imd. Eff. July 16, 2008.

450.2615 Voting as class upon proposed amendment.

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

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

450.2631 Certificate of amendment; signing or execution; filing; contents.

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

(2) In case of any other amendment, except as otherwise provided in this act, a certificate of amendment shall be executed and filed on behalf of the corporation setting forth the amendment and certifying that the amendment has been adopted in accordance with section 611(2).

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

450.2641 Integrating provisions of articles into single instrument; adoption of restated articles of incorporation; amendments subject to other provisions of act.

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

(2) If the restated articles of incorporation merely restate and integrate, but do not further amend the articles as theretofore amended, they may be adopted by the board without a vote of the shareholders or members, or by the shareholders or members, in which case the procedure and vote required by section 611(2) is applicable. If the restated articles of incorporation restate and integrate and also further amend in any material respect the articles of incorporation, as theretofore amended, they shall be adopted by the shareholders, members, or directors pursuant to section 611(2).

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

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

450.2642 Restated articles of incorporation; designation; required statements; omitted provisions.

Sec. 642. Restated articles of incorporation shall be specifically designated as such in the heading thereof. They shall state, either in the heading or in an introductory paragraph, the corporation's present name, and, if it has been changed, all of its former names and the date of filing of its original articles. Restated articles shall

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state that they were duly adopted by directors, shareholders, or members in accordance with this section. If adopted by the board without a vote of the shareholders, members, or directors according to the procedure and vote required by section 641(2), they shall state that they only restate and integrate and do not further amend the articles as theretofore amended, and that there is no material discrepancy between those provisions and the provisions of the restated articles. Restated articles of incorporation may omit such provisions of the original articles which named the incorporators, the initial board, or original subscribers for shares or original members, and the omission is not deemed a further amendment.

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

450.2643 Restated articles of incorporation; execution; filing; effect.

Sec. 643. Restated articles of incorporation shall be executed and filed in accordance with section 131. When such filing becomes effective, the corporation's original articles of incorporation, as amended, are superseded; and thenceforth the restated articles, including any further amendments made thereby, shall be the articles of incorporation of the corporation.

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

450.2651 Abandonment of amendment; certificate.

Sec. 651. Before the effective date of an amendment to the articles of incorporation for which shareholder, member, or director approval is required by this act, the amendment may be abandoned pursuant to provisions therefor, if any, set forth in the resolution of the shareholders, members, or directors approving the amendment. If a certificate of amendment has been filed by the corporation, it shall file a certificate of abandonment, but not later than the proposed effective date within 10 days after the abandonment.

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

CHAPTER 7

450.2701 Merger or consolidation of domestic corporations; plan; contents.

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

(2) The board of each corporation proposing to participate in a merger or consolidation shall adopt a plan of merger or consolidation, setting forth:

(a) The name of each constituent corporation and the name of the surviving or consolidated corporation.

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

(c) As to each constituent corporation which is a nonstock corporation, a description of the members, in the case of a membership corporation, including the number, classification, and voting rights of members, or a description of the organization of the board, in the case of a directorship corporation, including the number, classification, and voting rights of directors.

(d) The terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the shares of or membership or other interest in each constituent corporation into shares, bonds, or other securities or membership or other interest in the surviving or consolidated corporation, or into cash or other consideration, which may include shares, bonds, rights, or other property or securities of a corporation whether or not a party to the merger, or into a combination thereof.

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

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

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

450.2703 Plan of merger or consolidation; approval or authorization; voting; notice of meeting.

Sec. 703. (1) A plan of merger or consolidation adopted by the board of each constituent corporation which is organized upon a stock or membership basis shall be submitted for approval at a meeting of its shareholders or members. Notice of the meeting shall be given to each shareholder or member of record, whether or not entitled to vote at the meeting, not less than 20 days before the meeting, in the manner provided in this act for

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the giving of notice of meetings of shareholders or members. The notice shall include or be accompanied by a copy or summary of the plan of merger or consolidation.

(2) At the meeting, a vote of the shareholders or members shall be taken on the proposed plan of merger or consolidation. The plan shall be approved upon receiving the affirmative vote of a majority of the outstanding shares or members of the corporation entitled to vote thereon, and if a class is entitled to vote thereon as a class, the affirmative vote of a majority of the outstanding shares or members of each such class. A class of shares or members of any such corporation is entitled to vote as a class if the plan of merger or consolidation contains a provision which, if contained in a proposed amendment to the articles of incorporation, would entitle the class of shares or members to vote as a class.

(3) If any merging or consolidating corporation is organized upon a directorship basis, a plan of merger or consolidation shall be authorized upon receiving the affirmative vote of a majority of the directors then in office. Notice of the meeting to authorize the plan of merger or consolidation shall be given to each director then in office not less than 20 days before the meeting and shall include or be accompanied by a copy or summary of the plan.

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

450.2707 Certificate of merger or certificate of consolidation; execution and filing; contents; effective date.

Sec. 707. (1) After approval of a plan of merger or consolidation, a certificate of merger or a certificate of consolidation shall be executed and filed on behalf of each corporation. The certificate shall set forth the plan of merger or the plan of consolidation and either of the following:

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

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

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

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

450.2721 Effect of merger or consolidation.

Sec. 721. When a merger or consolidation has been effected:

(a) The corporations parties to the plan of merger or consolidation shall be a single corporation, which in a merger is that corporation designated in the plan of merger as the surviving corporation, and in a consolidation is the new corporation provided for in the plan of consolidation.

(b) The separate existence of corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) The surviving or new corporation has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a corporation organized under this act.

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

450.2722 Surviving or new corporation; rights, privileges, immunities, and franchises; liabilities and obligations; prosecution of existing claim or pending action or proceeding; rights of creditors; lien upon property of corporation.

Sec. 722. (1) The surviving or new corporation has all the rights, privileges, immunities, and franchises, public or private, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action. Upon complying with section 217, the surviving or new corporation may use the corporate name and the assumed names of the merging or consolidating corporations. All interests of or belonging to or due to each of the corporations merged or consolidated, are considered to be transferred to and vested in a single corporation without further act or deed. The title to real estate, or any interest in real estate, vested in a corporation shall not revert or be in any way impaired because of the merger or consolidation.

(2) The surviving or new corporation is thenceforth responsible and liable for all liabilities and obligations of each of the corporations merged or consolidated. A claim existing or action or proceeding pending by or against a corporation may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be substituted in its place. The rights of creditors and a lien upon the property of such a corporation are not impaired by the merger or consolidation.

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

450.2723 Changes in articles stated in plan of merger; effect; statements in plan of

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consolidation as original articles of new corporation.

Sec. 723. In a merger, the articles of incorporation of the surviving corporation are deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of merger. In a consolidation, the statements set forth in the plan of consolidation and which are required or permitted to be set forth in the articles of incorporation of a corporation organized under this act are deemed to be the original articles of the new corporation.

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

450.2731 Merger or consolidation of foreign and domestic corporations; compliance with laws of jurisdiction; applicability of act to surviving or new corporation governed by laws of other jurisdiction; liability of corporation; service of process.

Sec. 731. (1) One or more foreign corporations and 1 or more domestic corporations may be merged or consolidated as provided in this act, if the merger or consolidation is permitted by the laws of the jurisdiction where each foreign corporation is organized.

(2) A domestic corporation shall comply with this act with respect to the merger or consolidation of domestic corporations and a foreign corporation shall comply with the laws of the jurisdiction where it is organized.

(3) If the surviving or new corporation is to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of this act with respect to foreign corporations if it is to conduct affairs in this state. The corporation is liable, and is subject to service of process of a proceeding in this state, for the enforcement of an obligation of a domestic corporation which is a party to the merger or consolidation.

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

450.2732 Effect of merger or consolidation authorized by MCL 450.2731.

Sec. 732. The effect of a merger or consolidation authorized by section 731 is the same as in the case of a merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of a jurisdiction other than this state, the effect of the merger or consolidation is the same as in the case of the merger or consolidation in such jurisdiction, except as otherwise herein provided.

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

450.2736 Merger or consolidation of domestic corporations and domestic or foreign business corporations; procedure; compliance with applicable laws; plan of merger or consolidation; applicability of act to surviving or new corporation or business corporation governed by laws of other jurisdiction; liability of corporation or business corporation; service of process.

Sec. 736. (1) Subject to section 301(5), one or more domestic corporations and 1 or more domestic business corporations and foreign business corporations may be merged or consolidated as provided in this act, if such merger or consolidation is not contrary to the law of the state of incorporation of any constituent foreign business corporation.

(2) With respect to procedure, including authorization by shareholders, members, or directors, each domestic corporation shall comply with the provisions of this act, each domestic business corporation shall comply with the provisions of Act No. 284 of the Public Acts of 1972, as amended, being sections 450.1101 to 450.2099 of the Michigan Compiled Laws, and each foreign business corporation shall comply with the applicable provisions of the law of the jurisdiction where it is organized.

(3) The plan of merger or consolidation shall set forth, in addition to all matters required by section 701(2), the manner and basis of converting shares, membership or other interests in each constituent corporation or business corporation into shares, membership, or other interests of the surviving or consolidated corporation or business corporation, or the case or other consideration to be paid or delivered in exchange for shares, membership, or other interests in each constituent corporation or business corporation, or a combination thereof.

(4) If the surviving or new corporation or business corporation is to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of this act with respect to foreign corporations or foreign business corporations if it is to conduct affairs or to transact business in this state. The corporation or business corporation is liable and is subject to service of process in a proceeding in this state for the enforcement of an obligation of a domestic corporation or a domestic business corporation which is a party to the merger or consolidation.

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

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450.2737 Effect of merger or consolidation where surviving or new corporation is domestic corporation, domestic business corporation, or foreign business corporation.

Sec. 737. If a surviving or new corporation is a domestic corporation to be governed by the laws of this state, the effect of the merger or consolidation authorized by section 736 is the same as in the case of a merger or consolidation of domestic corporations. If a surviving or new business corporation is a domestic business corporation to be governed by the laws of this state, the effect of a merger or consolidation is the same as in the case of a merger or consolidation of domestic business corporations, subject to Act No. 284 of the Public Acts of 1972, as amended. If a surviving or new business corporation is a foreign business corporation to be governed by the laws of a jurisdiction other than this state, the effect of the merger or consolidation is the same as in the case of the merger or consolidation in such jurisdiction, except as otherwise herein provided.

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

450.2741 Abandonment of merger or consolidation; certificate of abandonment.

Sec. 741. At any time before the effective date of a certificate of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. If a certificate of merger or consolidation has been filed by a corporation, it shall file a certificate of abandonment within 10 days after the abandonment, but not later than the proposed effective day.

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

450.2753 Disposition of property and assets of corporation; approval; notice of meeting; statement; authorization; fixing terms or conditions and consideration; voting; abandonment.

Sec. 753. (1) A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a corporation, may be made upon such terms and conditions and for a consideration, which may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other corporation or business corporation, domestic or foreign, as authorized as provided in this section.

(2) The board shall approve a proposal for the sale, lease, exchange, or other disposition.

(3) In the case of a stock or membership corporation, the proposed transaction shall be submitted for approval at a meeting of shareholders or members. Notice of the meeting shall be given to each shareholder or member of record whether or not entitled to vote at the meeting, not less than 20 days before the meeting, in the manner provided in this act for the giving of notice of meetings of shareholders or members. The notice shall include or be accompanied by a statement summarizing the principal terms of the proposed transaction or a copy of any documents containing the principal terms.

(4) At the meeting the shareholders or members may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any term or condition thereof and the consideration to be received by the corporation therefor. The authorization requires the affirmative vote of the holders of a majority of the outstanding shares or members of the corporation entitled to vote thereon, and if a class is entitled to vote thereon as a class, the affirmative vote of a majority of the outstanding shares or members of each such class.

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

(6) In the case of a corporation organized upon a directorship basis, a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without goodwill, of a corporation, shall be authorized upon receiving the affirmative vote of a majority of the directors then in office. Notice of the meeting to authorize the sale, lease, exchange, or other disposition shall be given to each director then in office not less than 20 days before the meeting and shall include a statement summarizing the principal terms of the proposed transaction or a copy of any documents containing the principal terms.

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

CHAPTER 8

450.2801 Dissolution of corporation; methods; summary dissolution of corporation whose assets disposed of under court order in receivership or bankruptcy proceedings; filing copy of order with administrator.

Sec. 801. (1) A corporation may be dissolved in any of the following ways:

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(a) Automatically by expiration of a period of duration to which the corporation is limited by its articles of incorporation.

(b) By action of the incorporators or directors pursuant to section 803.

(c) By action of the shareholders, members, or the board pursuant to section 804.

(d) By action of a shareholder or member pursuant to section 805.

(e) By a judgment of the circuit court in an action brought pursuant to this act or otherwise.

(f) Automatically, pursuant to section 922, for failure to file an annual report or pay the annual filing fee or a penalty added to the fee.

(2) A corporation whose assets have been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of the proceedings. A copy of the order shall be filed with the administrator by the clerk of the court.

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

450.2803 Dissolution of corporation by action of incorporators or directors; conditions; certificate of dissolution.

Sec. 803. (1) A corporation may be dissolved by action of its incorporators or directors, if the corporation complies with all of the following conditions:

(a) Has not commenced affairs.

(b) Has not issued any shares and has no members entitled to vote on dissolution.

(c) Has no debts or other liabilities.

(d) Has received no payments on subscriptions for its shares or memberships, contributions or other funds from members or third parties, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(2) The dissolution of the corporation shall be effected by a majority of the incorporators or directors, executing and filing a certificate of dissolution stating:

(a) The name of the corporation.

(b) That the corporation has not commenced affairs, has issued no shares, and has no members entitled to vote on dissolution, and has no debts or other liabilities.

(c) That the corporation has received no payments on subscriptions to its shares or memberships, contributions or other funds from members or third parties, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(d) That a majority of the incorporators or directors have elected that the corporation be dissolved.

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

450.2804 Dissolution of corporation by action of shareholders, members, or board; resolution; approval or authorization; notice; voting; certificate.

Sec. 804. (1) A corporation may be dissolved by action of its shareholders, members, or board as provided in this section.

(2) The board shall adopt a resolution that the corporation be dissolved and that a plan of distribution of assets complying with section 855 be implemented.

(3) If the corporation is organized upon a stock or membership basis, the proposed dissolution shall be submitted for approval at a meeting of shareholders or members. Notice shall be given to each shareholder or member of record entitled to vote at the meeting as provided in this act for the giving of notice of meetings of shareholders or members, and shall state that a purpose of the meeting is to vote on dissolution of the corporation. The notice shall include a copy or summary of the plan of distribution of assets.

(4) At the meeting a vote of shareholders or members shall be taken on the proposed dissolution and plan of distribution of assets. The dissolution shall be approved upon receiving the affirmative vote of the holders of a majority of the outstanding shares or a majority of the members of the corporation entitled to vote thereon, and if a class is entitled to vote thereon as a class, the affirmative vote of a majority of the outstanding shares or members of each such class.

(5) If the corporation is organized upon a directorship basis, the dissolution shall be authorized by the affirmative vote of a majority of directors then in office. Notice of the meeting to authorize the dissolution shall be given to each director then in office not less than 10 days before the meeting and shall state that a purpose of the meeting is to vote on dissolution of the corporation. The notice shall include a copy or summary of the plan of distribution of assets.

(6) If the dissolution is approved, a certificate of dissolution shall be executed and filed on behalf of the corporation, setting forth:

(a) The name of the corporation.

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(b) The date and place of the meeting of shareholders, members, or directors approving the dissolution.

(c) A statement that dissolution was approved by the requisite vote of directors and shareholders, directors and members, or directors.

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

450.2805 Provision in articles permitting shareholders, members, or directors to require dissolution authorized; plan of distribution of assets; execution and filing of certificate of dissolution; noting existence of provision on face of share certificates or membership certificates.

Sec. 805. (1) The articles of incorporation may contain a provision that a shareholder, a member, or a director, or the holders of any specified number or proportion of shares or any specified number or proportion of members or directors, or of any specified number or proportion of shares or members of a class, may require dissolution of the corporation at will or upon the occurrence of a specified event, if all the incorporators have authorized the provision in the articles or the holders of record of all outstanding shares or all the members or all the directors authorize the provision in an amendment to the articles. Said provision shall also specify a plan of distribution of assets of the corporation which complies with section 855.

(2) If the articles contain this provision, dissolution may be effected by the execution and filing of a certificate of dissolution on behalf of the corporation when authorized by a holder or holders of the number or proportion of shares or by the number or proportion of members or directors specified in the provision, obtained in such manner as may be specified therein, or if no manner is specified therein, when authorized on written consent signed by such holder or holders, member or members, or director or directors. The certificate of dissolution shall state the name of the corporation and that the corporation is dissolved pursuant to a designated provision in the articles.

(3) If the articles contain a provision authorized by subsection (1), the existence of the provision shall be noted conspicuously on the face of every certificate for shares issued by the corporation or on the face of a membership certificate delivered to every member of the corporation, and a holder or recipient of such certificate is conclusively deemed to have taken delivery or assumed membership with notice of the provision.

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

450.2811 Revocation of dissolution proceedings; resolution of board; approval; notice of meeting; voting; certificate of revocation.

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

(2) Dissolution proceedings commenced pursuant to section 804 may also be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, in the following manner:

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

(b) A certificate of revocation, stating that dissolution is revoked pursuant to this section, and giving the information required by section 804(6), shall be executed and filed on behalf of the corporation.

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

450.2815 Renewal of corporate existence.

Sec. 815. A corporation whose term has expired may renew its corporate existence, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board shall adopt a resolution that the corporate existence be renewed.

(b) If the corporation is organized upon a stock or membership basis, the proposed renewal shall be submitted for approval at a meeting of shareholders or members. Notice shall be given to each shareholder or member of record entitled to vote at the meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders or members, and shall state that a purpose of the meeting is to vote on the renewal of corporate existence. At the meeting a vote of shareholders or members entitled to vote thereat shall be taken on the proposed renewal which shall be adopted upon receiving the affirmative vote of

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holders of a majority of the outstanding shares or a majority of the members of the corporation entitled to vote thereon, and if a class of shareholders or members is entitled to vote thereon as a class, the affirmative vote of a majority of the outstanding shares or the members of each such class. Unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, the proposed renewal shall also be adopted upon receiving an affirmative vote of a majority of members or shares of shareholders present in person or by proxy at such meeting if due notice of the time, place, and object of the meeting was given by mail, at last known address, to each shareholder or member entitled to vote thereon at least 20 days prior to the date of the meeting or by publication in a publication distributed to its shareholders or members at least 20 days prior to the date of the meeting.

(c) If the corporation is organized upon a directorship basis, renewal shall be authorized by the affirmative vote of a majority of directors then in office.

(d) If renewal of the corporate existence is approved, a certificate of renewal shall be executed and filed on behalf of the corporation, setting forth:

(*i*) The name of the corporation.

(*ii*) The date and place of the meeting of shareholders or members approving the renewal of existence, if any.

(*iii*) A statement that renewal was approved by the requisite vote of directors and shareholders, directors and members, or directors.

(*iv*) The duration of the corporation, if other than perpetual.

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

450.2817 Effect of filing certificate of revocation of dissolution or renewal of corporate existence; accrued penalty or liability; adoption of different name.

Sec. 817. (1) Upon filing of the certificate of revocation of dissolution or of renewal of existence, the revocation of the dissolution proceedings or the renewal of the corporate existence becomes effective, and the corporation may again conduct affairs.

(2) Revocation of dissolution or renewal of corporate existence does not relieve the corporation of any penalty or liability accrued against it under any law of this state.

(3) If during the period of dissolution or expiration of term the corporate name or a confusingly similar name has been assigned to another corporation, the administrator may require that the corporation adopt a different name upon filing of a certificate of revocation of dissolution or of renewal of existence.

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

450.2821 Action by attorney general for dissolution of corporation; grounds.

Sec. 821. (1) The attorney general may bring an action in the circuit court for the county in which the registered office of the corporation is located for dissolution of a corporation upon the ground that the corporation has committed any of the following acts:

(a) Procured its organization through fraud.

(b) Repeatedly and wilfully exceeded the authority conferred upon it by law.

(c) Repeatedly and wilfully conducted its affairs in an unlawful manner.

(2) The enumeration in this section of grounds for dissolution does not exclude any other statutory or common law action by the attorney general for dissolution of a corporation or revocation or forfeiture of its corporate franchises.

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

450.2823 Dissolution of corporation by judgment in action brought by director, shareholder, or member; proof.

Sec. 823. A corporation may be dissolved by a judgment entered in an action brought in the circuit court for the county in which the registered office of the corporation is located by 1 or more directors or by 1 or more shareholders or members entitled to vote in an election of directors of the corporation, upon proof of both of the following:

(a) The directors of the corporation are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs, or the shareholders or members of the corporation are so divided in voting power that they have failed to elect successors to any director whose term has expired or would have expired upon the election and qualification of the director's successor.

(b) As a result of a condition stated in subdivision (a), the corporation is unable to carry out its corporate purposes or function effectively in the best interests of its creditors and shareholders or members, if any.

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

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450.2825 Adjudging dissolution and liquidation of assets and affairs of corporation by circuit court in action filed by shareholder, member, or director; grounds; making order or granting relief other than dissolution.

Sec. 825. (1) The circuit court for the county in which the registered office of the corporation is located may adjudge the dissolution of, and liquidate the assets and affairs of, a corporation, in an action filed by a shareholder, member, or director when it is established that the acts of the directors or those in control of the corporation are illegal, fraudulent, or wilfully unfair and oppressive to the corporation or to such shareholder or member or contrary to the purposes of the corporation.

(2) In an action filed by a shareholder, member, or director to dissolve the corporation on a ground enumerated in subsection (1), the circuit court upon establishment of such ground may make such order or grant such relief, other than dissolution, as it deems appropriate, including, without limitation, an order providing for any of the following:

(a) Cancellation or alteration of a provision contained in the articles of incorporation, or an amendment thereof, or in the bylaws of the corporation.

(b) Cancellation, alteration, or injunction against a resolution or other act of the corporation.

(c) Direction or prohibition of an act of the corporation or of shareholders, members, directors, officers, or other persons party to the action.

(d) In the case of shares which are transferable, purchase at their fair value of shares of a shareholder, either by the corporation or by the officers, directors, or other shareholders responsible for the wrongful acts.

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

450.2831 Dissolution of corporation; conditions.

Sec. 831. A corporation is dissolved when any of the following occurs:

(a) The period of duration stated in the corporation's articles of incorporation expires.

(b) A certificate of dissolution is filed pursuant to sections 803 to 805.

(c) A judgment of forfeiture of corporate franchises or of dissolution is entered by a court of competent jurisdiction and a copy of a judicial order of dissolution shall be forwarded promptly to the administrator by the receiver or other person designated by the court.

(d) Failure to file an annual report or pay an annual filing fee, as provided in section 922.

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

450.2833 Dissolved corporation; continuation of corporate existence; conduct of affairs.

Sec. 833. Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall not conduct affairs except for the purpose of winding up its affairs by:

(a) Collecting its assets.

(b) Selling or otherwise transferring, with or without security, assets which are not to be distributed in kind pursuant to section 855.

(c) Paying its debts and other liabilities.

(d) Doing all other acts incident to liquidation of its affairs.

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

450.2834 Dissolved corporation and officers, directors, shareholders, and members; manner of functioning.

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

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

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

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

(d) Shares may be transferred if otherwise authorized.

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

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

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dissolution.

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

450.2841 Notice to creditors; "creditor" defined.

Sec. 841. (1) After a corporation has been dissolved, the corporation, or a receiver appointed for it pursuant to this chapter, may give notice requiring all creditors to present their claims in writing. The notice shall be published once in each of 3 consecutive weeks in a newspaper in the county in which the registered office of the corporation is located. The notice shall state that all persons who are creditors of the corporation shall file their claims in writing with the corporation or the receiver at a place and on or before a date named in the notice, which date shall be not less than 6 months after the date of the first publication.

(2) As used in this section and sections 842 and 843, "creditor" means a person to whom the corporation is indebted, and any other person who has a claim or right against the corporation, liquidated or unliquidated, matured or unmatured, direct or indirect, absolute or contingent, secured or unsecured.

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

450.2842 Mailing notice to creditor of corporation; failure to file claim as bar to enforcement; applicability.

Sec. 842. (1) On or before the date of first publication of the notice prescribed in section 841, the corporation or the receiver shall mail a copy of the notice to each known creditor of the corporation. The giving of the notice does not constitute recognition that a person to whom the notice is directed is a creditor of the corporation other than for the purpose of receipt of notice hereunder.

(2) Except as otherwise provided in this act, a creditor who does not file a claim as required by the notice, and all persons claiming through or under that creditor, are forever barred from suing on the claim or otherwise realizing upon or enforcing it. However, this section does not apply to a claim in litigation on the date of the first publication of the notice and does not preclude the enforcement of a lien, encumbrance, or other security interest. A claim filed by a trustee or paying agent for the holders of bonds or coupons has the same effect as if filed by the holder of any such bond or coupon.

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

450.2843 Rejection of claim filed by creditor; notice; failure to commence action as bar to enforcement of claim.

Sec. 843. If the corporation, or the receiver of a corporation appointed pursuant to this chapter, rejects in whole or in part a claim filed by a creditor, the corporation or the receiver shall mail notice of the rejection to the creditor. The notice shall state that if the creditor does not commence an action on the claim within 60 days after the notice was mailed to the creditor, the creditor and all persons claiming through or under the creditor, except as otherwise provided in this chapter, are forever barred from suing on the claim or otherwise realizing upon or enforcing it. Failure to commence such an action is a bar to enforcement of the claim.

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

450.2851 Application for judgment that affairs of corporation and liquidation of assets continue under supervision of court; orders and judgments; permitting creditor to file claim or commence action.

Sec. 851. (1) After a corporation has been dissolved in any manner, the corporation, a creditor, a shareholder, member, or a director may apply at any time to the circuit court for the county in which the registered office of the corporation is located for a judgment that the affairs of the corporation and the liquidation of its assets continue under supervision of the court. The court shall make such orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the corporation's assets by its officers and directors under supervision of the court, or the appointment of a receiver of the corporation to be vested with powers as the court designates to liquidate the affairs of the corporation.

(2) For good cause shown, and so long as a corporation has not made complete distribution of its assets, the court, in an action pending under this section or otherwise, may permit a creditor who has not filed a claim within the time limited by section 841, or who has not commenced an action on a rejected claim within the time limited by section 842, to file such claim or to commence such action within such time as the court directs.

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

450.2855 Application and distribution of assets upon dissolution.

Sec. 855. Upon dissolution, the assets of a corporation shall be applied and distributed as follows:

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(a) All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed in accordance with any provisions in the articles of incorporation or bylaws which designate 1 or more recipients or a mechanism for determining 1 or more recipients which are domestic or foreign corporations, societies, or organizations, including governmental agencies, engaged in activities furthering such purposes. If the articles of incorporation or bylaws do not contain such provisions, such assets shall be transferred or conveyed to 1 or more domestic or foreign corporations, societies, or organizations, including governmental agencies, engaged in activities substantially similar to or consistent with those of the dissolving corporation.

(d) Other assets, if any, shall be distributed in accordance with provisions of the articles of incorporation or the bylaws which determine the distributive rights of shareholders or members, or any class or classes of shareholders or members, or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, domestic or foreign corporations, or domestic or foreign business corporations, as may be specified in a plan of distribution adopted by the corporation.

(f) When there is no provision for the distribution of assets, the assets remaining after implementation of the provisions of this section shall escheat to the state.

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

450.2861 Plan of reorganization; action by directors, shareholders, or members not required to put plan into effect.

Sec. 861. A corporation for which a plan of reorganization has been confirmed by the judgment of a court of competent jurisdiction pursuant to any applicable law of this state or the United States may put into effect and carry out the plan without action by its directors, shareholders, or members. Such action may be taken as directed in the judgment by the receiver or trustee of the corporation appointed in the reorganization proceedings, or by any other person designated by the court.

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

450.2862 Powers of corporation under reorganization; issuing shares of capital stock and bonds for consideration specified in plan of reorganization.

Sec. 862. (1) The corporation, in the manner provided in section 861, but without limiting the generality or effect of that section, may amend or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute, or appoint directors and officers in place of or in addition to any director or officer then in office; amend its articles of incorporation, and make any change in its capital or capital stock, or any other amendment, change, alteration, or provision, authorized by this act; be dissolved, transfer any part of its assets, and merge or consolidate as permitted by this act, change the location of its registered office, and remove or appoint a resident agent; authorize and fix the terms, manner, and conditions of the issuance of bonds, debentures, or other obligations, whether or not convertible into shares of its capital stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of its capital stock of any class, and lease its property and franchises.

(2) Irrespective of any other provision of this act, the corporation may issue its shares of capital stock and its bonds for the consideration specified in the plan of reorganization after confirmation of the plan.

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

450.2863 Document filed or recorded to accomplish corporate purpose pursuant to plan of reorganization; making, execution, and acknowledgment; contents; filing.

Sec. 863. A certificate or other document required or permitted by law to be filed or recorded to accomplish any corporate purpose, sought to be accomplished pursuant to the plan of reorganization, shall be made, executed, and acknowledged, as may be directed by such judgment by the persons designated in section 861. The certificate or document shall certify that provision for the making of the certificate or document is contained in the plan of reorganization or in a judgment of a court having jurisdiction of the proceeding under such applicable statute of this state or of the United States for the reorganization of the corporation, and that

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the plan has been confirmed, as provided by such applicable statute, with the title and venue of the proceeding and the date of the judgment confirming the plan. The certificate or other document shall be filed as provided in section 131, and upon such filing becomes effective in accordance with the terms thereof and the provisions of sections 861 to 864.

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

450.2864 Reversal or vacation of reorganization plan; filing of other or further certificates or documents; effect; fees.

Sec. 864. (1) If after the filing of a certificate or other document the order of confirmation of the plan of reorganization is reversed or vacated or the plan is modified, other or further certificates or documents shall be filed as required to conform to the plan of reorganization as finally confirmed or to the judgment of the court.

(2) Except as otherwise provided in sections 861 to 864, a certificate or other document filed pursuant to this section or section 863 is not deemed to confer on a corporation any power, privilege, or franchise, except those permitted to be conferred on a corporation formed or existing under this act.

(3) On the filing of a certificate or other document pursuant to this section or any other section of this act, the same fees shall be paid to the administrator as are payable by a corporation not in reorganization upon filing like certificates or documents.

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

CHAPTER 9

450.2901 Report of corporation; contents; electronic transmission; distribution to shareholder, member, or director.

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

(2) A corporation may distribute the financial report required under subsection (1) electronically, either by electronic transmission of the report or by making the report available for electronic transmission. If the report is distributed electronically under this subsection, the corporation shall provide the report in written form to a shareholder, member, or director on request.

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.

450.2911 Annual report to administrator; filing; contents.

Sec. 911. (1) A domestic or foreign corporation authorized to conduct affairs in this state shall file a report with the administrator no later than October 1 of each year. The report, on a form approved by the administrator, shall contain all of the following information:

(a) The name of the corporation.

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

(c) The names and business or residence addresses of its officers and directors.

(d) Purposes of the corporation.

(e) Nature and kind of business in which the corporation has engaged during the year covered by the report.

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

(3) If there are not changes in the information provided in the last filed report, the corporation shall certify that no changes in the required information have occurred since the last filed report. The certification shall be on a report provided by the administrator and filed no later than the date required in subsection (1).

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1984, Act 209, Eff. Nov. 1, 1985;—Am. 1996, Act 84, Imd. Eff. Feb. 27, 1996.

450.2913 Destruction or disposition of certain records.

Sec. 913. The county clerk may destroy the copies of the corporate documents of a corporation which were forwarded to the office of the county clerk in accordance with Act No. 327 of the Public Acts of 1931, as

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amended, being sections 450.62 to 450.192 of the Michigan Compiled Laws, and its predecessor act. The clerk may destroy or dispose of these records in accordance with section 5 of Act No. 271 of the Public Acts of 1913, as amended, being section 399.5 of the Michigan Compiled Laws.

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

450.2915 Repealed. 2003, Act 107, Imd. Eff. July 24, 2003.

Compiler's note: The repealed section pertained to report and fee.

450.2922 Failure of domestic or foreign corporation to file annual report or pay filing fee; automatic dissolution or revocation of certificate of authority; dissolution of charitable purpose corporation; notice; right to certificate of good standing.

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

(2) A charitable purpose corporation that is dissolved under subsection (1) shall provide notice of the dissolution to the attorney general within 60 days after the date of the dissolution and shall not dispose of any of its assets without written approval of the attorney general.

(3) If a foreign corporation neglects or refuses for 1 year to file the annual report or pay the annual filing fee required by law, its certificate of authority is subject to revocation in accordance with section 1042. Until revocation of its certificate of authority or its withdrawal from this state or termination of its existence, the foreign corporation is entitled to issuance by the administrator, upon request, of a certificate of good standing setting forth that it has been validly authorized to transact business in this state and that it holds a valid certificate of authority to transact business in this state.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 222, Imd. Eff. July 16, 2008.

450.2923 Extension of time for filing report; reporting failure or neglect under MCL 450.2922, 450.2931, and 450.2932 to attorney general; action by attorney general; certificate of mailing as evidence.

Sec. 923. (1) The administrator for good cause shown may extend the time for filing of a report for not more than 1 year from the due date of the filing.

(2) The administrator may report promptly to the attorney general any failure or neglect under sections 922, 931, and 932, and the attorney general may commence an action for imposition of the prescribed penalties. When a corporation neglects or refuses to file its report within 90 days after the time prescribed by this act, the administrator shall notify the corporation of that fact by mail directed to its registered office. The administrator's certificate of mailing of the notice is prima facie evidence in all courts and places of that fact, and that the notice was received by the corporation.

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

450.2924 Annual reports due or deficient prior to date of act; penalties.

Sec. 924. Annual reports due or deficient prior to the date of this act shall be subject to the penalties in effect at the statutory filing date.

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

450.2925 Renewal of corporate existence or certificate of authority following dissolution or revocation.

Sec. 925. (1) A domestic corporation which has been dissolved pursuant to section 922(1), or a foreign corporation whose certificate of authority has been revoked pursuant to section 922(2) or section 1042, may renew its corporate existence or its certificate of authority by filing the reports for the last 5 years or any lesser number of years in which the reports were not filed and paying the annual filing fees for all the years for which they were not paid, together with a penalty of $5.00 for each delinquent report. Upon filing the reports and payment of the fees and penalties, the corporate existence or the certificate of authority is renewed. If during the intervening period the corporate name or a confusingly similar name has been assigned to another corporation, the administrator may require that the corporation adopt or use within this state a different name.

(2) Upon compliance with the provisions of this section, the rights of the corporation shall be the same as

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though a dissolution or revocation had not taken place, and all contracts entered into and other rights acquired during the interval shall be valid and enforceable.

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

450.2931 Wilful false statement in report; additional penalty.

Sec. 931. If a domestic or foreign corporation which is required to file a report as provided in section 911 wilfully makes a false statement in the report, it is subject to an additional penalty of $1,000.00.

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

450.2932 Prohibited conduct as misdemeanor; fine.

Sec. 932. (1) A person who knowingly makes or files or a person who knowingly assists in the making or filing of a false or fraudulent report, certificate, or other statement required by this act to be filed by a corporation with a public officer of this state, or a person knowing the same to be false or fraudulent, who procures, counsels, or advises the making or filing of such a report, certificate, or statement, is guilty of a misdemeanor and is subject to a fine of not to exceed $1,000.00 for each such offense.

(2) An officer or agent of a corporation who knowingly falsifies or wrongfully alters the books, records, or accounts of a corporation is guilty of a misdemeanor and is subject to a fine of not to exceed $1,000.00 for each such offense.

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

450.2935 Authorizing, signing, or making false statement or notice; authorizing or making wrongful alteration of book, record, or account; liability; commencement of action.

Sec. 935. (1) If a report, certificate, or other statement made, or public notice given by, the officers or directors of a corporation is false in a material representation, or if any book, record, or account of the corporation is knowingly or wrongfully altered, the officers, directors, or agents knowingly or wrongfully authorizing, signing, or making the false report, certificate, other statement or notice or authorizing or making the wrongful alteration are jointly and severally personally liable to a person who has become a creditor, shareholder, or member of the corporation upon the faith of the false material representation or alteration therein for all damages resulting therefrom.

(2) An action for the liability imposed by this section shall be commenced within 2 years after discovery of the false representation or alteration and within 6 years after the certificate, report, public notice, or other statement or the alteration has been made or given by the officers, directors, or agents of the corporation.

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

CHAPTER 10

450.3001 Foreign corporation authorized to conduct affairs in this state on effective date of act; rights and privileges; duties, restrictions, penalties, and liabilities.

Sec. 1001. A foreign corporation which is authorized to conduct affairs in this state on the effective date of this act, for a purpose for which a corporation might secure such authority under this act, has the rights and privileges applicable to a foreign corporation which receives a certificate of authority to transact business in this state under this act. From the effective date of this act the corporation is subject to the duties, restrictions, penalties, and liabilities prescribed herein for a foreign corporation which receives a certificate of authority to transact business in this state under this act.

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

450.3002 Foreign corporation receiving certificate of authority under act; rights and privileges; duties, restrictions, penalties, and liabilities.

Sec. 1002. A foreign corporation which receives a certificate of authority under this act, until a certificate of revocation or of withdrawal is issued as provided in this act, has the same rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authority is issued. Except as otherwise provided in this act, the corporation is subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

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

450.3003 Foreign corporation conducting affairs without certificate of authority; duties, restrictions, penalties, and liabilities.

Sec. 1003. A foreign corporation which conducts affairs in this state without a certificate of authority under this act is subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a

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foreign corporation which receives such certificate of authority, in addition to any other penalty or liability imposed by law.

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

450.3011 Foreign corporation; certificate of authority required; extent of authorization to conduct affairs in state.

Sec. 1011. A foreign corporation shall not conduct affairs in this state until it has procured a certificate of authority so to do from the administrator. A foreign corporation may be authorized to conduct affairs in this state which may be conducted lawfully in this state by a domestic corporation, to the extent that it is authorized to conduct such affairs in the jurisdiction where it is organized, but no other affairs.

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

450.3012 Foreign corporation not considered to be conducting affairs in state; activities; applicability of section.

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

(a) Maintaining or defending an action or suit or an administrative or arbitrative proceeding, or effecting the settlement thereof or the settlement of a claim or dispute.

(b) Holding meetings of its directors, shareholders, or members or carrying on any other activities concerning its internal affairs.

(c) Maintaining a bank account.

(d) Effecting sales through an independent contractor.

(e) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(f) Borrowing money, with or without security.

(g) Securing or collecting debts or enforcing any right in property securing the same.

(h) Transacting any business in interstate commerce.

(i) Conducting an isolated transaction not in the course of a number of repeated transactions of like nature.

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

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

450.3015 Application of foreign corporation for certificate of authority to conduct affairs in state; contents.

Sec. 1015. To procure a certificate of authority to conduct affairs in this state, a foreign corporation shall file with the administrator an application setting forth:

(a) The name of the corporation and the jurisdiction of its incorporation.

(b) The date of incorporation and the period of duration of the corporation.

(c) The street address, and the mailing address if different from the street address, of its main business or headquarters office.

(d) The address of its registered office in this state, and the name of its resident agent in this state at such address, together with a statement that the resident agent is an agent of the corporation upon whom process against the corporation may be served.

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

(f) Such additional information as the administrator may require in order to determine whether the corporation is entitled to a certificate of authority to conduct affairs in this state.

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

450.3016 Application of foreign corporation for certificate of authority to conduct affairs in state; attachments; fees; issuance of certificate; duration of authority.

Sec. 1016. (1) A copy of the articles of incorporation and all amendments thereto, certified by the proper officer of the jurisdiction of its incorporation shall be attached to the application of a foreign corporation. A certificate setting forth that the corporation is in good standing under the laws of the jurisdiction of its incorporation, executed by the official of the jurisdiction who has custody of the records pertaining to corporations and dated not earlier than 30 days before filing of the application, shall also be attached to the application. If such certificate is in a foreign language, a translation thereof under oath of the translator shall

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be attached thereto.

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

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

450.3021 Foreign corporation authorized to conduct affairs in state; filing with administrator copy of amendment of articles or certificate of merger, consolidation, or similar corporate action.

Sec. 1021. (1) When the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, the foreign corporation, within 60 days after the amendment is effective, shall file with the administrator a copy of the amendment certified by the proper officers of the jurisdiction of its incorporation.

(2) When a foreign corporation authorized to conduct affairs in this state is a party to a merger, consolidation, or similar corporate action taken in accordance with the laws of the jurisdiction of its incorporation, the foreign corporation, within 60 days after the effective date thereof, shall file with the administrator a copy of the certificate of merger, consolidation, or similar corporate action, certified by the proper officers of the jurisdiction of its incorporation.

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

450.3031 Foreign corporation authorized to conduct affairs in state; withdrawal; certificate; application.

Sec. 1031. A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon receiving from the administrator a certificate of withdrawal. The foreign corporation shall file an application for withdrawal setting forth:

(a) The name of the corporation and the jurisdiction of its incorporation.

(b) That the corporation is not conducting affairs in this state.

(c) That the corporation surrenders its authority to conduct affairs in this state.

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

450.3032 Issuance of certificate of withdrawal; conditions; effect.

Sec. 1032. Upon filing the application for withdrawal and payment of the filing fees prescribed by law, the administrator shall issue to the corporation a certificate of withdrawal, whereupon:

(a) The authority of the corporation to conduct affairs in this state shall cease.

(b) The authority of its resident agent in this state to accept service of process against the corporation is deemed revoked.

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

450.3035 Foreign corporation authorized to conduct affairs in state; termination or cancellation of authority or existence; filing information, certificate, order, or judgment with administrator; payment of fees; certificate of withdrawal.

Sec. 1035. (1) When a foreign corporation authorized to conduct affairs in this state is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, or it is merged into or consolidated with another corporation, there shall be filed with the administrator such information as may be required by the administrator to determine and assess any unpaid fees payable by such foreign corporation as required by law and either of the following:

(a) A certificate of the official of the jurisdiction of incorporation of the foreign corporation who has custody of the records pertaining to corporations, evidencing the occurrence of any such event.

(b) A certified copy of an order or judgment of a court of competent jurisdiction directing dissolution of the foreign corporation, the termination of its existence, or the cancellation of its authority.

(2) Upon filing of the certificate, order, or judgment and payment of the filing fees prescribed by law, the administrator shall issue a certificate of withdrawal with like effect as provided in section 1032.

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

450.3041 Revocation of certificate of authority of foreign corporation to conduct affairs in

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state; grounds.

Sec. 1041. In addition to any other ground for revocation provided by law, the administrator may revoke the certificate of authority of a foreign corporation to conduct affairs in this state upon the conditions prescribed in section 1042 upon any of the following grounds:

(a) The corporation fails to maintain a resident agent in this state as required by this act.

(b) The corporation, after change of its registered office or resident agent, fails to file a statement of such change as required by this act.

(c) The corporation, after amending its articles of incorporation, fails to file a copy of the amendment as required by this act.

(d) The corporation, after becoming a party to a merger, consolidation, or similar corporation action, fails to file a copy of the certificate of merger, consolidation, or similar corporate action as required by this act.

(e) The corporation fails to file its annual report within the time required by this act.

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

450.3042 Revocation of certificate of authority of foreign corporation to conduct affairs in state; notice of default under MCL 450.3031; certificate of revocation.

Sec. 1042. (1) The administrator shall revoke a certificate of authority of a foreign corporation only when the administrator has given the corporation not less than 90 days' notice that a default under section 922 exists and that its certificate of authority will be revoked unless the default is cured within 90 days after mailing of the notice, and the corporation fails before revocation to cure the default.

(2) The notice shall be sent by first class mail to the corporation at its registered office in this state and at its main business or headquarters office as these offices are on record in the office of the administrator.

(3) Upon revoking such a certificate of authority, the administrator shall issue a certificate of revocation and mail a copy to the corporation at each of the addresses designated in subsection (2).

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

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

450.3051 Action commenced by foreign corporation without certificate of authority prohibited; applicability of prohibition; effect of failure to obtain certificate of authority on validity of contract and act of corporation; defense of action or proceeding.

Sec. 1051. (1) A foreign corporation conducting affairs in this state without a certificate of authority shall not maintain an action or proceeding in any court of this state until the corporation has obtained a certificate of authority. An action commenced by a foreign corporation having no certificate of authority shall not be dismissed if a certificate of authority has been obtained before the order of dismissal. This prohibition applies to:

(a) A successor in interest of the foreign corporation, except a receiver, trustee in bankruptcy, or other representative of creditors of the corporation.

(b) An assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but has not obtained a certificate of authority in this state.

(2) Failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state does not impair the validity of a contract or act of the corporation, and does not prevent the corporation from defending an action or proceeding in a court of this state.

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

450.3055 Foreign corporation conducting affairs in state without certificate of authority; penalty.

Sec. 1055. In addition to any other liability imposed by law, a foreign corporation conducting affairs in this state without a certificate of authority shall forfeit to the state a penalty of not less than $100.00 nor more than $1,000.00 for each calendar month, not more than 5 years prior thereto, in which it has conducted affairs in this state without a certificate of authority. This penalty shall not exceed $10,000.00. The penalty shall be recovered with costs in an action prosecuted by the attorney general.

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

450.3060 Fees.

Sec. 1060. (1) The fees a person shall pay to the administrator for the purposes described in this section are as follows:

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(a) Examining, filing, and copying of articles of a domestic corporation, $10.00.

(b) Examining and filing articles or certificate of incorporation, and other papers connected with the application of a foreign corporation for admission to conduct affairs in this state, $10.00.

(c) Examining, filing, and copying an amendment to the articles of a domestic corporation, $10.00.

(d) Examining and filing an amendment to the articles of a foreign corporation, $10.00.

(e) Examining, filing, and copying a certificate of merger or consolidation under chapter 7, $50.00.

(f) Examining and filing a certificate of merger or consolidation of a foreign corporation, under section 1021, $10.00.

(g) Examining, filing, and copying a certificate of dissolution, $10.00.

(h) Examining and filing an application for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, $10.00.

(i) Examining, filing, and copying an application for reservation of corporate name, $10.00.

(j) Examining, filing, and copying a certificate of assumed name or certificate of termination of assumed name, $10.00.

(k) Examining, filing, and copying a statement of change of registered office or resident agent, $5.00.

(*l*) Examining, filing, and copying restated articles of domestic corporation, $10.00.

(m) Examining, filing, and copying a certificate of abandonment, $10.00.

(n) Examining, filing, and copying a certificate of correction, $10.00.

(o) Examining, filing, and copying a certificate of revocation of dissolution proceedings, $10.00.

(p) Examining, filing, and copying a certificate of renewal of corporate existence, $10.00.

(q) Filing and examination of a special report required by law, $2.00.

(r) Examining and filing a certificate of election, $10.00.

(s) Filing a report required under section 911, $10.00 if paid before October 1, 2003 or after September 30, 2012. After September 30, 2003 and before October 1, 2012, the fee is $20.00.

(2) A corporation shall pay the applicable fee described in this section to the administrator at the time of filing or when the service is rendered by the administrator. The fees described in this section are in addition to any franchise fees prescribed in this act.

(3) A person shall pay a minimum charge of $1.00 for each certificate and 50 cents per folio to the administrator for certifying a part of a file or record pertaining to a corporation if a fee for that service is not described in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies the fee established in a schedule of fees adopted by the administrator with the approval of the state administrative board.

(4) The administrator shall not refund all or any part of a fee described in this section. The administrator shall deposit all fees received and collected under this section in the state treasury to the credit of the administrator, who may only use the money credited pursuant to legislative appropriation and only in carrying out those duties of the department required by law.

History: 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1984, Act 209, Eff. Nov. 1, 1985;—Am. 2003, Act 107, Imd. Eff. July 24, 2003;—Am. 2007, Act 87, Imd. Eff. Sept. 30, 2007.

450.3061 Fee for privilege of exercising franchises in state.

Sec. 1061. Every corporation organized or conducting affairs in this state shall, upon filing its articles, or, if a foreign corporation, upon filing its application for admission, pay to the administrator a fee of $10.00 for the privilege of exercising its franchises within this state, upon such organization or admission as the case may be.

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

450.3098 Repeal of acts and parts of acts.

Sec. 1098. The following acts and parts of acts are repealed:

(a) Act No. 213 of the Public Acts of 1935, being sections 450.401 to 450.402 of the Compiled Laws of 1970.

(b) Act No. 90 of the Public Acts of 1954, being sections 450.441 to 450.442 of the Compiled Laws of 1970.

(c) Sections 62, 63, 64, 81, 92, 117, 118, 119, 119a, 120, 121, 122, 123, 124, 124a, 125, 126, 127, 128, 129, 130, 131, 132, 132a, 163, 164, 165, 166, 167, 168, 188, and 189 of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.62, 450.63, 450.64, 450.81, 450.92, 450.117, 450.118, 450.119, 450.119a, 450.120, 450.121, 450.122, 450.123, 450.124, 450.124a, 450.125, 450.126, 450.127, 450.128, 450.129, 450.130, 450.131, 450.132, 450.132a, 450.163, 450.164, 450.165, 450.166, 450.167, 450.168, 450.188, and 450.189 of the Compiled Laws of 1970.

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(d) Act No. 161 of the Public Acts of 1947, being sections 450.421 to 450.422 of the Compiled Laws of 1970.

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

450.3099 Effective date of act.

Sec. 1099. This act shall take effect January 1, 1983.

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

CHAPTER 11

450.3100 Short title.

Sec. 1100. This chapter shall be known and may be cited as the “consumer cooperative act”.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3101 Applicability of act and chapter; amendment of articles or bylaws; exemption.

Sec. 1101. (1) Except as otherwise provided in this act or by other law, this act and this chapter apply to:

(a) All consumer cooperatives which are organized after the effective date of this amendatory act.

(b) All consumer cooperatives which have been organized under this act, a predecessor act, or other act and which have represented themselves to be cooperatives.

(c) All other corporations that elect to accept this act pursuant to section 1192.

(d) All other cooperatives organized under this chapter.

(e) All foreign cooperatives to the extent provided in sections 1123 and 1191.

(2) A consumer cooperative which was organized under a predecessor or other act is subject to this act and this chapter except to the extent that either conflicts with the articles, bylaws, or cooperative plan of the consumer cooperative lawfully made pursuant to the predecessor or other act. The consumer cooperative may amend its articles or bylaws to bring itself in conformity with this act. If a corporation elects to accept this act and this chapter pursuant to section 1192, the corporation shall amend its articles and bylaws, as necessary, to bring itself in conformity with this act and this chapter.

(3) A nonprofit power corporation as described in section 261(4) may elect to be exempted from this chapter by the effective date of this amendatory act by a resolution of the board of directors of the corporation. If such a corporation should subsequently elect to accept this act and this chapter pursuant to section 1192, the corporation shall amend its articles and bylaws, as necessary, to bring itself in conformity with this act and this chapter.

(4) This chapter shall not apply to a cooperative organized substantially for the purpose of agricultural production, processing, supply, research, bargaining, or marketing which is organized under sections 98 to 109 of Act No. 327 of the Public Acts of 1931, being sections 450.98 to 450.109 of the Michigan Compiled Laws, or a farm cooperative the majority of votes of which are held by farmers, unless the cooperative elects to accept this chapter pursuant to section 1192.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3102 Controlling definitions.

Sec. 1102. The definitions contained in sections 1103 and 1104 shall control in the interpretation of this chapter, unless the context otherwise requires.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3103 Definitions; C to F.

Sec. 1103. (1) "Consumer" means a natural person who acquires, or commits to acquire in the future from the cooperative primarily for consumption, use, or occupancy by the person or the person's family, any of the goods, services, or facilities furnished by the cooperative.

(2) "Consumer cooperative" means a cooperative the majority of the votes of which are held by consumers, or, in the case of a cooperative which provides residential dwelling units, the majority of the votes of which are held by consumers and the majority of members of which do not have the right of possession or occupancy of dwelling units they do not occupy.

(3) "Cooperative" means a corporation organized on a cooperative basis or similar basis that is provided in law as a criterion for being a cooperative.

(4) "Cooperative basis" means:

(a) That, subject to section 1133, each member has 1 vote, except as provided in this chapter.

(b) That the dividends, if any, paid on member capital do not exceed 8% per year.

(c) That the net savings are distributed as provided in section 1135.

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(d) That business is engaged in for the mutual benefit of its members.

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

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

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

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

(6) "Foreign cooperative" means a corporation organized under laws other than the laws of this state operating on a cooperative basis or a similar basis that is provided in those other laws as a criterion for being a cooperative.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.3104 Definitions; M to U.

Sec. 1104. (1) “Member capital” means the assets which a member must provide by payment, transfer, or allocation of net savings to a cooperative as a condition of admission to or retention of membership and with respect to which the member has rights to dividends, redemption or distributions on dissolution pursuant to this chapter.

(2) “Membership fee” means a nonredeemable fee which a member must pay to a cooperative as a condition of admission to or retention of membership in the cooperative which is not member capital or a fee for goods, services, or facilities.

(3) “Patron” means a person whose economic exchange is a regular part of the business of a cooperative or foreign cooperative, which economic exchange is the same type of regular economic exchange engaged in by any class of members.

(4) “Patronage” means the selling or providing of goods, services, or facilities to, or the buying of goods, services, or facilities from members or other persons, or the providing of labor or services to or by a cooperative.

(5) “Redemption” means any method by which a cooperative exchanges cash or debt instruments for member capital, including, but not limited to, repurchase, redemption, refund, or repayment.

(6) “Referendum” means a method of member voting that utilizes secret ballot and established polling places as provided in the cooperative's bylaws.

(7) “Unincorporated cooperative” means either of the following:

(a) An association of 2 or more persons organized on a cooperative basis which is not a corporation.

(b) An association of 2 or more persons organized under the laws of another state operating on either a cooperative basis or a similar basis provided in another state as the criterion for being a cooperative, which is not a corporation.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3107 Inconsistent provisions inapplicable to chapter.

Sec. 1107. To the extent that sections 301(3) and (4), 855, and 901 are inconsistent with this chapter, they shall not apply to cooperatives.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3109 Requirements of MCL 460.1 et seq. not modified; effect of economic activity conducted by cooperative.

Sec. 1109. (1) This chapter does not modify the requirements of Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws.

(2) The fact that a cooperative conducts economic activity under this act shall not alone cause the economic activity of the cooperative to be considered a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3121 Articles of incorporation; requirement.

Sec. 1121. In addition to the requirements of section 202, the articles of incorporation of a cooperative organized under this act shall state whether the cooperative will be financed on a membership fee basis, a member capital basis, or a combination of both.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3123 Use of term “cooperative,”“co-op,”“consumer cooperative,” or any variation thereof.

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Sec. 1123. (1) The term “cooperative”, “co-op”, or any variation thereof, may only be used in the name of cooperatives organized under or subject to this chapter, corporations organized under or subject to sections 98 to 109 of Act No. 327 of the Public Acts of 1931, being sections 450.98 to 450.109 of the Michigan Compiled Laws, parent cooperative preschools licensed under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, credit unions chartered under the laws of this state or federal law, corporations organized on a cooperative basis or similar basis and organized before the effective date of this amendatory act as nonprofit corporations, unincorporated cooperatives, foreign cooperatives, any entities wholly owned by any of the foregoing or any combination of such entities, and any other entities specifically authorized by statute to use “cooperative”, “co-op”, or any variation thereof.

(2) The term “consumer cooperative” or any variation thereof may only be used in the name of a consumer cooperative or a foreign or unincorporated cooperative the majority of the votes of which are held by consumers and which complies with sections 1132 and 1138.

(3) Unless authorized by subsection (1) or (2), or as otherwise specifically provided by law, a person shall not use the term “cooperative”, “co-op”, “consumer cooperative”, or any variation thereof, as part of a corporate or other business name or title.

(4) This section shall not be construed to authorize any use of the term “co-op”, “cooperative”, “consumer cooperative”, or any variation thereof, that is prohibited by the cooperative identity protection act.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3125 Adoption of initial bylaws; ratification or amendment; contents of bylaws.

Sec. 1125. (1) Notwithstanding section 231, the initial bylaws of a cooperative may be adopted by the incorporators, the board, or the members. If initial bylaws are adopted by the incorporators or the board, at the first meeting of members the bylaws shall be submitted to the members for ratification or amendment.

(2) Bylaws may contain provisions for educational programs for directors, members, employees, patrons, prospective members, and the community and provisions for cooperative relations with cooperatives and unincorporated cooperatives.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3131 Organization on nonstock membership basis.

Sec. 1131. Notwithstanding section 302, a cooperative organized under this act shall be organized on a nonstock membership basis and shall not be organized on a stock or directorship basis.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3132 Membership; notice of qualifications.

Sec. 1132. Subject to section 304(7), membership in a consumer cooperative subject to this act shall be available to all patrons of the cooperative who are consumers. The bylaws may make membership available to other patrons. For any other cooperative, 50% or more of the patronage shall be with members or, subject to section 304(7), membership shall be available to all patrons. All cooperatives shall give all patrons reasonable notice of the qualifications for membership.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3133 Classification.

Sec. 1133. If a cooperative has classes of members pursuant to section 304, classification shall be based only on 1 or more of the following number of members, number of persons served, type of patronage, level of patronage, or whether or not members are patrons. In a consumer cooperative, classification of consumers by level of patronage shall not be used.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3134 Cooperative organized on member capital basis, member fee basis, or basis combining member capital and membership fee; powers.

Sec. 1134. (1) A cooperative which is organized on a member capital basis or on a basis combining member capital and membership fee may provide for any of the following, if such provision is set forth in the articles or bylaws:

(a) A maximum member capital to be held by any 1 member.

(b) Transfer of member capital pursuant to section 304(6).

(c) Mandatory contribution or contributions of member capital as a condition or conditions of admission to or retention of membership, including but not limited to initial capital contributions, surcharges, and distributions of net savings pursuant to section 1135.

(d) A dividend on membership capital, not to exceed 8% per year.

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(e) Special assessments on members.

(2) A cooperative which is organized on a membership fee basis or on a basis combining member capital and membership fee may provide for either or both of the following as a condition or conditions of admission to or retention of membership in the cooperative, if such a provision is set forth in its articles or bylaws:

(a) The charging of a nonredeemable initial or periodic membership fee or fees.

(b) Nonredeemable special assessments on members.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3135 Net savings; determination, allocation, distribution, and use; apportionment of losses.

Sec. 1135. (1) At least once each year, a cooperative shall determine its net savings by deducting from total income:

(a) All operating costs and expenses.

(b) Reasonable reserves for depreciation and obsolescence of property, doubtful accounts, other valuation or operating reserves, capital investments and reserves for capital investment.

(c) Dividends paid on member capital and interest or dividends paid on nonvoting investment certificates or bonds, if any.

(2) The articles or bylaws may provide for any reasonable method of allocating net savings by the board of directors for the common benefit of all the patrons of a cooperative.

(3) Unless the articles or bylaws otherwise provide pursuant to subsection (2), net savings shall be allocated, distributed, or used in any of the following ways:

(a) By allocation of net savings to all patrons at a uniform rate in proportion to their individual patronage, provided that different rates of allocation may be established according to the net savings generated by various departments or types of business done by the cooperative. Distribution to patrons may be made as follows:

(*i*) In cash or credits. Credits shall be evidenced by shares, revolving fund certificates, notices of allocation, capital credits, or other certificates or notices of the cooperative, or any combination thereof.

(*ii*) In the case of nonmember patrons who have subscribed for membership, distribution may be credited toward payment of unpaid member capital or membership fees.

(*iii*) In the case of nonmember patrons, distribution of the proportionate amount of net savings generated by nonmember patronage may be made to a general fund. Redistribution shall be made to an individual nonmember patron only upon request and presentation of evidence of the nonmember's patronage. Such net savings may be distributed in cash or credited toward payment of member capital or membership fees. Reasonable notice shall be provided to nonmember patrons of their rights to redistribution and the means of applying for membership.

(b) By allocation to retained earnings, operating costs or capital expenditures of the cooperative to reduce the costs of goods, facilities, or services, to improve the quality provided or otherwise to further the common benefit of the patrons.

(4) The articles or bylaws may include any reasonable provisions for the apportionment of losses.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3136 Certificate; issuance; contents; restrictions on dividends.

Sec. 1136. (1) If a cooperative is to be financed in whole or in part on a member capital basis, each member shall be provided a certificate or certificates setting forth the initial member capital of the member.

(2) A certificate issued pursuant to this section shall contain the information required by section 1138. The certificate may be denominated a membership certificate, share certificate, stock certificate, or a similar designation but shall not constitute shares as defined in section 109.

(3) The board of directors shall not pay dividends when currently the cooperative is insolvent or would thereby be made insolvent, or when the declaration, payment, or distribution of a dividend would be contrary to the articles or bylaws.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3137 Nonvoting investment certificate or bond.

Sec. 1137. Subject to the uniform securities act, Act No. 265 of the Public Acts of 1964, being sections 451.501 to 451.818 of the Michigan Compiled Laws, a cooperative may offer to its members or to the general public any form of nonvoting investment certificate or bond that may bear interest or dividends as provided by the board of directors.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

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450.3138 Advising persons in writing; statement on membership certificate.

Sec. 1138. Prior to accepting a person as a member or any membership fee or member capital, a cooperative shall advise the person in writing of the items in subdivisions (a) to (g). A cooperative shall also conspicuously state on each membership certificate the items in subdivisions (a), (e), and (f):

(a) A statement that the corporation is a cooperative subject to this act and under what act it is organized.

(b) A statement that the purpose of becoming a member of a cooperative is to assure access to the goods, services, and facilities of the cooperative and not to gain profit.

(c) A statement of voting rights and rights to notice of meetings of members.

(d) A statement of the qualifications for admission to and retention of membership and the right of the cooperative to terminate membership, if any.

(e) A statement of the restrictions, if any, on the transfer of memberships.

(f) A statement of the rights to redemption of a member capital, if any, or a statement that member capital is not redeemable.

(g) A statement of the right of members to call special meetings or cause a mail ballot, to receive annual reports, and to secure other material information concerning the cooperative.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3139 Redemption of member capital; failure to patronize cooperative; notice of redemption; failure to respond and claim payment; failure to claim refunds of patronage capital, deposits, and fees; failure of nonmember patron to pay in or accumulate full member capital or comply with bylaws.

Sec. 1139. (1) Unless the articles or bylaws provide that the member capital is not redeemable, upon termination of a membership issued on a member capital basis, a cooperative shall redeem the member's member capital by paying to the member in cash or other property (*i*) the lesser of the member's member capital or the member's pro rata share of the total member capital of the cooperative determined according to the ratio each member's member capital bears to total member capital, unless a different proration is provided in the articles; or (*ii*) such other amount as may be provided in the articles or bylaws. Payment shall be made within 5 years from the date of termination, unless the articles or bylaws provide for a different period for payment.

(2) Unless the articles or bylaws provide that member capital is not redeemable, a cooperative may adopt and implement any plan to partially redeem member capital.

(3) A cooperative shall not redeem member capital or any portion thereof under either of the following conditions:

(a) When the cooperative is insolvent or when the redemption would render the cooperative insolvent.

(b) Unless after redemption there remains outstanding 1 or more classes of members possessing among them, collectively, voting rights.

(4) The articles or bylaws may provide that if a member fails to patronize a cooperative to an extent and within a specific period of time, the membership shall be terminated.

(5) A person entitled to payment for redemption of member capital shall be given reasonable notice of the redemption, which notice may be by mail to the last known address of the person. If the person fails to respond to the notice and claim the payment within 5 years from the date of notice, that person shall have no further rights in the member capital and the member capital may be added to the general funds of the cooperative.

(6) In the case of a nonprofit power corporation as described in section 261(4), any refunds of patronage capital, deposits, and fees of members not claimed within 5 years after reasonable notice has been given to the member's last known address shall remain the property of the corporation. If any such refund is not claimed by the member within the 5-year period, the member shall have no claim to the refund.

(7) The articles or bylaws may provide that if within any time specified in the bylaws or articles any nonmember patron who has subscribed for membership has not paid in or accumulated the full member capital required for membership or has failed to comply with the provisions of the bylaws, if any, concerning admission to membership, any amounts allocated from net savings and credited to the member capital of the nonmember patron may be added to the general funds of the cooperative and thereafter the nonmember patron shall have no further rights therein.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3141 Meetings; petitions; signatures; quorum.

Sec. 1141. Regular meetings of members shall be held at a time and place prescribed in the bylaws but not

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less than annually. A special meeting of members may be called by the board of directors or by written petition of members. A petition shall state the purpose or purposes for which the meeting is to be called. Unless the bylaws provide for a smaller percent or number, the number of member signatures required for such a petition shall be 10% of the members. Notwithstanding section 415, unless the articles or bylaws provide a greater percentage or number, a quorum shall be 10% of the members or 50 members, whichever is less.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3143 Alternative notice of regular meeting.

Sec. 1143. Instead of the notice required in section 404, written notice of the time, place, and purposes of a regular meeting of members may be given by a means specified in the bylaws and accessible to all members, if the date of regular meeting is established in the bylaws and the notice is made accessible to all members at least 15 days before the meeting.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3144 Proxies; voting by mail ballot, referendum, or electronic transmission.

Sec. 1144. (1) Notwithstanding section 421, there shall be no proxies unless the articles of incorporation or bylaws authorize use of proxies. If the articles of incorporation or bylaws authorize use of proxies, an individual may not vote more than 5 proxies at any meeting.

(2) The articles or bylaws may provide a method by which members may vote on matters submitted to a vote of members by mail ballot, referendum, or electronic transmission.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

450.3145 Amendments; affirmative vote of majority.

Sec. 1145. Notwithstanding section 611(4), 703(2), 753(4), or 804(4), unless the articles of incorporation provide for a higher vote for passage, amendment of the articles of incorporation, amendment of the bylaws which alters member voting rights or member capital, merger, consolidation, disposition of all or substantially all of the assets of the corporation, or dissolution shall be adopted by the affirmative vote of a majority of the votes cast by members eligible to vote thereon, and if a class is eligible to vote thereon as a class, the affirmative vote of a majority of the votes cast by members of each class. Such action may only be taken at a meeting called according to the notice provisions of section 404.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3146 Effective date of adopted action; confirmation vote; filing with administrator.

Sec. 1146. (1) An action subject to the vote requirement of section 1145 shall not take effect for 60 days from the date of adoption and shall be subject to 1 confirmation vote as provided in subsection (2) if the action is adopted by less than a majority of all the members eligible to vote.

(2) If a petition of 15% or more of the members eligible to vote is presented to the cooperative prior to the sixtieth day after the adoption of the action, the cooperative shall cause a confirmation vote to be held. The cooperative shall cause a special meeting or, if authorized, mail ballot or referendum to be conducted within 45 days of receipt of the petition. The confirmation vote must achieve the vote which would have been required for original adoption. If confirmed, the action or amendment may take effect immediately after the confirmation or upon filing with the administrator, if such filing is required.

(3) If an action or amendment is subject to confirmation, a filing shall not be made with the administrator until the time for presenting a petition has expired or the action is confirmed.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3147 Dispute resolution body.

Sec. 1147. A cooperative may authorize in its articles or bylaws the establishment of a neutral dispute resolution body. The dispute resolution body shall attempt to settle disputes between the cooperative and any of its members. It shall be composed of individuals who are approved by both parties to the dispute, which individuals may be members or nonmembers, but not officers or directors of the cooperative. The bylaws of a cooperative may provide that membership in the cooperative is conditioned upon participation in good faith in the dispute resolution process authorized by this section.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3148 Purchase or sale under execution, in course of bankruptcy, or by legal process or operation of law; pledge of certificate; assignment of proprietary lease or other agreement.

Sec. 1148. (1) The purchase or sale of any member capital or privileges in a cooperative made under

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execution, or in the course of bankruptcy proceedings, or by any legal process or by operation of law, shall not give any person any membership right, title, or interest in a cooperative, unless in accordance with the articles or bylaws of the cooperative.

(2) No subsequent amendment to the articles or bylaws shall invalidate or otherwise impair a pledge of a certificate issued under section 1136 or an assignment of a proprietary lease or other agreement providing for occupancy of facilities furnished by the cooperative, if the pledge or assignment was made when the articles or bylaws expressly permitted the pledge or assignment in connection with loans made to members.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3149 Books for recording operations; annual report, balance sheet, and income statement; certified report of condition; copies of reports; mailings at request and expense of member; notice of member's desire to be contacted by other members regarding proposal.

Sec. 1149. (1) A cooperative shall keep a set of books for recording its operations. A written report, including a statement of the amount of its transactions with members and the amount of its transactions with nonmember patrons, a balance sheet, and an income statement shall be prepared annually.

(2) A cooperative shall prepare, not later than 120 days after the close of its fiscal year, a report of its condition, which report shall be certified by the president. The report shall include all of the following:

(a) The name and principal address of the cooperative.

(b) The names, addresses, and date of expiration of terms of the officers and directors, and their rate of compensation, if any.

(c) The number of memberships granted and terminated and the amount of member capital paid in during the fiscal year.

(3) A copy of the reports required by this section shall be presented at the annual membership meeting or distributed to each member. Copies of the report shall be kept on file at the principal office of the cooperative and shall be made available to members, subscribers, and applicants for membership during regular business hours. In addition, copies of the report shall be mailed to a member upon written request by the member.

(4) If a membership address list is not accessible to members, then any mailing reasonably related to the affairs of the membership shall be made by a cooperative at the request and expense of a member.

(5) If a member makes a timely request in writing that a cooperative notify the membership of the member's desire to be contacted by other members regarding a proposal then pending for vote by the membership, the cooperative shall include in the next communication sent by the cooperative to all members, if any, a brief notice of that member's request which shall identify the member and shall state whether the member is for or against the proposal and how to contact that member.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3151 Initial board of directors; membership; term.

Sec. 1151. Notwithstanding section 505, the initial board of directors of a cooperative shall consist of at least 5 persons. The term of office of directors shall be no more than 3 years.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3152 Board of directors; election or appointment other than by vote of membership.

Sec. 1152. Notwithstanding section 505, the bylaws of a cooperative may provide for 1/3 or less of the board of directors to be elected or appointed other than by a vote of the membership.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3153 Affiliation with another organization; section inapplicable to allocations of net savings.

Sec. 1153. A vote of the membership shall be required to affiliate with another organization involving the investment of more than 30% of the assets of the cooperative, if the affiliation is not in the usual and regular course of its business. This section shall not apply to any allocations of net savings to the cooperative by any person.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3161 Amendment to articles of incorporation; calling special meeting; consideration of proposed amendment.

Sec. 1161. An amendment to the articles of incorporation may be proposed by the board, by 10% or more of the members, or by some smaller percentage of members established in the articles or bylaws. If proposed

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by the number of members required for calling a special meeting pursuant to section 1141, a special meeting shall be called within a reasonable time. If proposed by less than the number of members required to call a special meeting, then the proposed amendment shall be considered at the next annual or special meeting.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3162 Distribution of assets generally.

Sec. 1162. In the event of an amendment to the articles or bylaws, merger, consolidation, or disposition of substantially all of the assets of the cooperative, or dissolution, which results in a distribution of all or substantially all of the assets of the corporation to members, the distribution shall be in the manner and order provided in section 1183.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3183 Distribution of assets upon dissolution; distribution of assets held for charitable or similar purpose; redemption of investment certificates.

Sec. 1183. (1) Notwithstanding section 855, upon dissolution, the assets of a cooperative shall be distributed in the following manner and order:

(a) By paying or providing for payment of its debts and expenses.

(b) By redeeming member capital by paying to the member in cash or other property (*i*) the lesser of the member's member capital or the member's pro rata share of total member capital of the cooperative determined according to the ratio each member's member capital bears to total member capital, unless a different proration is provided in the articles; or (*ii*) such other amount as may be provided in the articles or bylaws.

(c) By distributing any surplus to (*i*) those patrons who have been members or subscribers at any time during not less than the 6 years preceding dissolution or since formation of the cooperative, whichever is less, on the basis of patronage during that period; (*ii*) any other cooperative, foreign cooperative, or nonprofit organization designated by membership resolution; or (*iii*) both.

(2) Assets held by a cooperative for a charitable or similar purpose shall be distributed pursuant to section 855(c).

(3) Investment certificates issued pursuant to section 1137 shall be redeemed according to the terms of the certificates.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3191 Foreign cooperative.

Sec. 1191. A foreign cooperative shall be entitled to conduct its affairs in this state upon complying with the provisions of chapter 10 and, if a consumer cooperative, by agreeing to provide its members and patrons residing in this state reasonable notice of their membership rights. Reasonable notice shall be considered given if written notice of the matters required to be disclosed by section 1132 is provided to each patron residing in this state and written notice of the matters required to be disclosed by section 1138 is provided to each member residing in this state.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

450.3192 Election by corporation to accept act and chapter; procedure; effect of filing certificate of election.

Sec. 1192. (1) Any corporation may elect to accept this act and this chapter as follows:

(a) The board of directors shall adopt a resolution recommending that the corporation accept this act and this chapter and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon. Written notice stating that the purpose, or 1 of the purposes, of the meeting is to consider electing to accept this act and this chapter, shall be given to each member and stockholder entitled to vote at the meeting, within the time and in the manner provided in this act for the giving of notice of meetings of members. The election to accept this act and this chapter shall require for adoption that vote which is required by that corporation to amend its articles of incorporation.

(b) A certificate of election to accept the act and this chapter shall be filed in accordance with section 131. The certificate shall set forth:

(*i*) The name of the corporation.

(*ii*) A statement by the corporation that it has elected to accept this act and this chapter.

(*iii*) A statement setting forth the date of the meeting of members or stockholders at which the election to accept this act and this chapter was made, that a quorum was present at the meeting, and that the acceptance was authorized by that vote which is required by the corporation to amend its articles of incorporation.

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(*iv*) If the corporation has issued shares of stock, a statement of that fact including the number of shares issued and outstanding, and a statement that all issued and outstanding shares of stock will be canceled upon the filing of the statement and that from and after the effective date of filing the authority of the corporation to issue shares of stock shall be terminated.

(*v*) A statement of the manner and basis of converting shares or memberships, voting rights, and equity interests into memberships, voting rights, and member capital subject to this chapter.

(2) Upon filing of the certificate of election, the election of the corporation to accept this act and this chapter shall become effective and the corporation shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though the corporation had been originally organized under this act and this chapter.

History: Add. 1984, Act 209, Eff. Nov. 1, 1985.

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MICHIGAN LIMITED LIABILITY COMPANY ACT
Act 23 of 1993

AN ACT to provide for the organization and regulation of limited liability companies; to prescribe their duties, rights, powers, immunities, and liabilities; to prescribe the powers and duties of certain state departments and agencies; and to provide for penalties and remedies.

History: 1993, Act 23, Eff. June 1, 1993.

The People of the State of Michigan enact:

ARTICLE 1

450.4101 Short title.

Sec. 101. This act shall be known and may be cited as the "Michigan limited liability company act".

History: 1993, Act 23, Eff. June 1, 1993.

450.4102 Definitions.

Sec. 102. (1) Unless the context requires otherwise, the definitions in this section control the interpretation of this act.

(2) As used in this act:

(a) "Administrator" means the director of the department or his or her designated representative.

(b) "Articles of organization" means the original documents filed to organize a limited liability company, as amended or restated by certificates of correction, amendment, or merger, by restated articles, or by other instruments filed or issued under any statute.

(c) "Constituent" means a party to a plan of merger, including the survivor.

(d) "Contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services performed, or a promissory note or other binding obligation to contribute cash or property, or to perform services.

(e) "Corporation" or "domestic corporation" means any of the following:

(*i*) A corporation formed under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

(*ii*) A corporation existing on January 1, 1973 and formed under another statute of this state for a purpose for which a corporation may be formed under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

(*iii*) A corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(f) "Department" means the department of consumer and industry services.

(g) "Distribution" means a direct or indirect transfer of money or other property or the incurrence of indebtedness by a limited liability company to or for the benefit of its members or assignees of its members in respect of the members' membership interests.

(h) "Electronic transmission" or "electronically transmitted" means any form of communication that meets all of the following:

(*i*) It does not directly involve the physical transmission of paper.

(*ii*) It creates a record that may be retained and retrieved by the recipient.

(*iii*) It may be directly reproduced in paper form by the recipient through an automated process.

(i) "Foreign limited liability company" means a limited liability company formed under laws other than the laws of this state.

(j) "Foreign limited partnership" means a limited partnership formed under laws other than the laws of this state.

(k) "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated membership organization formed under this act.

(*l*) "Limited partnership" or "domestic limited partnership" means a limited partnership formed under the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108.

(m) "Majority in interest" means a majority of votes as allocated by an operating agreement, or by the statute in the absence of an allocation by operating agreement, and held by members entitled to vote on a matter submitted for a vote by members.

(n) "Manager" or "managers" means a person or persons designated to manage the limited liability company pursuant to a provision in the articles of organization stating that the business is to be managed by or under the authority of managers.

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(o) “Member” means a person who has been admitted to a limited liability company as provided in section 501, or, in the case of a foreign limited liability company, a person who is a member of the foreign limited liability company in accordance with the laws under which the foreign limited liability company is organized.

(p) “Membership interest” or “interest” means a member's rights in the limited liability company, including, but not limited to, any right to receive distributions of the limited liability company's assets and any right to vote or participate in management.

(q) “Operating agreement” means a written agreement by the member of a limited liability company that has 1 member, or between all of the members of a limited liability company having more than 1 member, pertaining to the affairs of the limited liability company and the conduct of its business. The term includes any provision in the articles of organization pertaining to the affairs of the limited liability company and the conduct of its business.

(r) “Person” means an individual, partnership, limited liability company, trust, custodian, estate, association, corporation, governmental entity, or any other legal entity.

(s) “Services in a learned profession” means services rendered by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law.

(t) “Surviving company”, “surviving entity”, or “survivor” means the constituent that survives a merger, as identified in the certificate of merger.

(u) “Vote” means an affirmative vote, approval, or consent.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2000, Act 336, Imd. Eff. Dec. 21, 2000;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4103 Documents; signatures; requirements.

Sec. 103. (1) One or more persons organizing a limited liability company shall sign the original articles of organization as organizers. The articles shall state the names of the organizers beneath or opposite their signatures.

(2) Any document other than original articles of organization required or permitted to be filed under this act that this act requires be executed on behalf of the domestic limited liability company shall be signed by a manager of the company if management is vested in 1 or more managers, by at least 1 member if management remains in the members, or by an authorized agent of the company. A document required to be executed on behalf of a foreign limited liability company shall be signed by a person with authority to do so under the laws of the jurisdiction of its organization. The document shall state the name of the person signing the document and the capacity in which he or she signs beneath or opposite his or her signature.

(3) A person executing a document under this section may sign the document by an attorney in fact. Powers of attorney relating to the signing of a document by an attorney in fact need not be sworn to, verified, acknowledged, or filed with the administrator. A document signed by a person by an attorney in fact shall state the capacity of the person signing the document by the attorney in fact.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4104 Documents; filing; delivery; endorsement; returning copy; inspection by public; copies admissible in evidence; effective date; form; fees.

Sec. 104. (1) A document required or permitted to be filed under this act shall be submitted by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish a procedure for accepting delivery of a document submitted under this subsection by facsimile or other electronic transmission. However, by December 31, 2006, the administrator shall establish a procedure for accepting delivery of a document submitted under this subsection by electronic mail or over the Internet. Beginning January 1, 2007, the administrator shall accept delivery of documents submitted by electronic mail or over the Internet.

(2) If a document submitted under subsection (1) substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing, and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in the endorsement on the document.

(3) The administrator shall return a copy of a document filed under subsection (2), or, at his or her discretion, the original, to the person who submitted it for filing. The administrator shall mark the filing date on the copy or original before returning it or, if the document was submitted by electronic mail or over the Internet, may provide proof of the filing date to the person who submitted the document for filing in another manner determined by the administrator.

(4) The records and files of the administrator relating to domestic and foreign limited liability companies

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shall be open to reasonable inspection by the public. The administrator may maintain the records or files either in their original form or in a photostatic, micrographic, photographic, optical disc media, or other reproduced form.

(5) The administrator may make copies of any documents filed under this act or any predecessor act by a photostatic, micrographic, photographic, optical disc media, or other process, and may destroy the originals of the copied documents. A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, including a copy sent by facsimile or other electronic transmission, is considered an original for all purposes and is admissible in evidence in like manner as an original.

(6) A document filed under subsection (2) is effective at the time it is endorsed unless a subsequent effective time is set forth in the document that is not later than 90 days after the date of delivery.

(7) The administrator may require that a person submit a document described in subsection (1) on a form prescribed by the administrator.

(8) The administrator shall charge 1 of the following nonrefundable fees if expedited filing of a document by the administrator is requested and the administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law:

(a) For any filing that a person requests the administrator to complete within 1 hour on the same day as the day of the request, $1,000.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(b) For any filing that a person requests the administrator to complete within 2 hours on the same day as the day of the request, $500.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(c) Except for a filing request under subdivision (a) or (b), for the filing of any formation or qualification document that a person requests the administrator to complete on the same day as the day of the request, $100.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(d) Except for a filing request under subdivision (a) or (b), for the filing of any other document concerning an existing domestic limited liability company or a qualified foreign limited liability company that a person requests the administrator to complete on the same day as the day of the request, $200.00. The department may establish a deadline by which a person must submit a request for filing under this subdivision.

(e) For the filing of any formation or qualification document that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, $50.00.

(f) For the filing of any other document concerning an existing domestic limited liability company or a qualified foreign limited liability company that a person requests the administrator to complete within 24 hours of the time the administrator receives the request, $100.00.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002;—Am. 2005, Act 218, Eff. Jan. 1, 2006.

450.4105 Failure to promptly file document; notice of refusal to file; judicial review.

Sec. 105. (1) If the administrator fails promptly to file a document submitted for filing under this act, the administrator, within 10 days after receipt from the person submitting the document for filing of a written request for the filing of the document, shall give to that person written notice of the refusal to file that states the reasons for the failure to file the document. If the document was originally submitted by electronic transmission, the administrator may give the written notice by electronic transmission.

(2) A person may seek judicial review of the administrator's decision under sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.305.

(3) If the administrator refuses or revokes the authorization of a foreign limited liability company to transact business in this state pursuant to this act, the foreign limited liability company may seek judicial review under sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.305.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4106 Documents; inaccurate record or defective execution; certificate of correction; filing; signature; contents; effective date of corrected document.

Sec. 106. (1) If a document relating to a domestic or foreign limited liability company filed with the administrator under this act was at the time of filing an inaccurate record of the action referred to in the document, or was defectively or erroneously executed, or was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the administrator a certificate of correction on behalf of the company.

(2) The certificate shall be signed as provided by this act in the same manner as required for the document

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being corrected.

(3) The certificate shall set forth the name of the company, the date the document to be corrected was filed by the administrator, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution.

(4) The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was as a result of the inaccurate portion of the document adversely affected by the correction.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

ARTICLE 2

450.4201 Limited liability company; purpose.

Sec. 201. A limited liability company may be formed under this act for any lawful purpose for which a domestic corporation or a domestic partnership could be formed, except as otherwise provided by law. A limited liability company formed to provide services in a learned profession, or more than 1 learned profession, shall comply with article 9.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4202 Limited liability company; formation; filing as evidence that all conditions performed; exception; duration.

Sec. 202. (1) One or more persons, who may or may not become members, may be the organizers of a limited liability company by filing executed articles of organization.

(2) The existence of the limited liability company begins on the effective date of the articles of organization as provided in section 104. Filing is conclusive evidence that all conditions precedent required to be performed under this act are fulfilled and that the company is formed under this act, except in an action or special proceeding by the attorney general. The maximum duration of the limited liability company is perpetual unless otherwise provided in the articles of organization.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4203 Articles of organization; contents.

Sec. 203. (1) The articles of organization shall contain all of the following:

(a) The name of the limited liability company.

(b) The purposes for which the limited liability company is formed. It is sufficient to state substantially, alone or with specifically enumerated purposes, that the limited liability company may engage in any activity for which limited liability companies may be formed under this act.

(c) The street address, and the mailing address if different from the street address, of the limited liability company's initial registered office and the name of its initial resident agent at that address.

(d) If the business of the limited liability company is to be managed by managers, a statement that the business is to be managed by or under the authority of managers.

(e) The maximum duration of the limited liability company, if other than perpetual.

(2) The articles of organization may contain any provision not inconsistent with this act or another statute of this state, including any provision that is required or permitted to be in an operating agreement under this act.

(3) The articles of organization need not set out the powers of the limited liability company as described in section 210.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4204 Limited liability company; name; requirements; rights.

Sec. 204. (1) The name of a domestic limited liability company shall contain the words “limited liability company” or the abbreviation “L.L.C.” or “L.C.”, with or without periods or other punctuation.

(2) The name of a domestic or foreign limited liability company formed under or subject to this act shall conform to all of the following:

(a) Shall not contain a word or phrase, or abbreviation or derivative of a word or phrase, that indicates or implies that the company is formed for a purpose other than the purpose or purposes permitted by its articles of organization.

(b) Shall not contain the word “corporation” or “incorporated” or the abbreviation “corp.” or “inc.”.

(c) Shall distinguish the name upon the records in the office of the administrator from all of the following:

(*i*) The name of a domestic limited liability company, or a foreign limited liability company authorized to

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transact business in this state, that is in good standing.

(*ii*) The name of a corporation subject to the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or a nonprofit corporation subject to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(*iii*) A name reserved, registered, or assumed under this act, under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(*iv*) The name of a domestic or foreign limited partnership as filed or registered, reserved, or assumed under the Michigan revised uniform limited partnership act, 1982 PA 213, MCL 449.1101 to 449.2108.

(d) Shall not contain a word or phrase, an abbreviation, or derivative of a word or phrase, the use of which is prohibited or restricted by any other statute of this state.

(3) If a foreign limited liability company is unable to obtain a certificate of authority to transact business in this state because its name does not comply with subsection (1) or (2), the foreign limited liability company may apply for authority to transact business in this state by adding to its name in the application a word, abbreviation, or other distinctive and distinguishing element, or alternatively, adopting for use in this state an assumed name otherwise available for use. If in the judgment of the administrator that name would comply with subsections (1) and (2), those subsections shall not bar the issuance to the foreign limited liability company of a certificate of authority to transact business in this state. The certificate of authority to transact business in this state issued to the foreign limited liability company shall be issued in the name applied for and the foreign limited liability company shall use that name in all its dealings with the administrator and in the transaction of business in this state.

(4) The fact that a limited liability company name complies with this section does not create substantive rights to the use of the name.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4204a Limited liability company licensed as nursing home; use of terms.

Sec. 204a. A limited liability company formed or existing under or subject to this act that is licensed or is to be licensed as a nursing home under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, may use the term “health center” or “health care center” or a term conveying a meaning substantially similar to those terms, or the term “rehabilitation center”, as long as those terms do not conflict with the terms prohibited by section 21712 of the public health code, 1978 PA 368, MCL 333.21712.

History: Add. 2001, Act 277, Imd. Eff. Jan. 11, 2002.

450.4205 Reserving right to use of name; application; transfer of right.

Sec. 205. (1) A person may reserve the right to use of a limited liability company name by executing and filing with the administrator an application to reserve the name. If the administrator finds that the name is available for use, the administrator shall reserve it for exclusive use of the applicant for a period expiring at the end of the sixth full calendar month following the month in which the application was filed.

(2) The right to exclusive use of a reserved name may be transferred to another person by filing a notice of the transfer, executed by the applicant for whom the name was reserved, and stating the name and address of the transferee.

History: 1993, Act 23, Eff. June 1, 1993.

450.4206 Transacting business under assumed name; certificate; effective period; extension; notice of expiration; rights not created; same name assumed in partnership or joint venture; transfer of assumed name to survivor; use of name by surviving company.

Sec. 206. (1) A domestic or foreign limited liability company may transact business under an assumed name or names other than its name as set forth in its articles of organization or certificate of authority, if not precluded from use of the assumed name or names under section 204(2), by filing a certificate stating the true name of the company and the assumed name or names under which business is to be transacted.

(2) The certificate of assumed name is effective, unless terminated by filing a certificate of termination or by the dissolution or withdrawal of the company, for a period expiring on December 31 of the fifth full calendar year following the year in which the certificate of assumed name was filed. The certificate of assumed name may be extended for additional consecutive periods of 5 full calendar years each by filing a similar certificate of assumed name not earlier than 90 days before the expiration of the initial or any subsequent 5-year period.

(3) The administrator shall notify the company of the impending expiration of the certificate of assumed name not later than 90 days before the expiration of the initial or any subsequent 5-year period.

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(4) Filing a certificate of assumed name under this section does not create substantive rights to the use of a particular assumed name.

(5) The same name may be assumed by 2 or more limited liability companies or by 1 or more companies and 1 or more corporations, limited partnerships, or other enterprises participating together in a partnership or joint venture. Each participating limited liability company shall file a certificate of assumed name under this section.

(6) A limited liability company participating in a merger, or any other entity participating in a merger under section 705a, may transfer to the survivor the use of an assumed name for which a certificate of assumed name is on file with the administrator prior to the merger, if the transfer of the assumed name is noted in the certificate of merger as provided in section 703(1)(c), 705a(7)(c), or other applicable statute. The use of an assumed name transferred under this subsection may continue for the remaining effective period of the certificate of assumed name on file prior to the merger and the survivor may terminate or extend the certificate in accordance with subsection (2).

(7) A limited liability company surviving a merger may use as an assumed name the name of a merging limited liability company, or the name of any other entity participating in the merger under section 705a, by filing a certificate of assumed name under subsection (1) or by providing for the use of the assumed name in the certificate of merger. The surviving limited liability company may also file a certificate of assumed name under subsection (1) or provide in the certificate of merger for the use of an assumed name of a merging entity not transferred pursuant to subsection (6). A provision in the certificate of merger pursuant to this subsection is treated as a new certificate of assumed name.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4207 Maintaining registered office and resident agent; service of process, notice, or demand; appointment of agent; annual statement; service of process by mail.

Sec. 207. (1) Each domestic limited liability company and foreign limited liability company authorized to transact business in this state shall have and continuously maintain in this state both of the following:

(a) A registered office that may, but need not be, the same as its place of business.

(b) A resident agent. The resident agent may be either an individual resident in this state whose business office or residence is identical with the registered office or any of the following having a business office identical with the registered office:

(*i*) A domestic corporation.

(*ii*) A foreign corporation authorized to transact business in this state.

(*iii*) A domestic limited liability company.

(*iv*) A foreign limited liability company authorized to transact business in this state.

(2) The resident agent appointed by a limited liability company is an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served.

(3) A domestic limited liability company or foreign limited liability company authorized to transact business in this state shall file with the administrator an annual statement executed as provided in section 103 containing the name of its resident agent and the address of its registered office in this state. The statement shall be filed not later than February 15 of each year, except that a limited liability company formed after September 30 or a foreign limited liability company authorized to transact business in this state after September 30 need not file a statement on the February 15 immediately succeeding its formation or authorization.

(4) If a limited liability company fails to appoint or maintain an agent for service of process, or the agent for service of process cannot be found or served through the exercise of reasonable diligence, service of process may be made by delivering or mailing by registered mail to the administrator a summons and copy of the complaint.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4207a Certificate of good standing.

Sec. 207a. (1) Except as provided in this section, and section 909 for a professional limited liability company, from the effective date of the articles of organization as provided in section 104 until dissolution for a domestic limited liability company, or from the effective date of the certificate of authority to transact business in this state until withdrawal from this state for a foreign limited liability company, a limited liability company is entitled to issuance by the administrator, upon request, of a certificate of good standing. A certificate of good standing issued to a domestic limited liability company shall state that it has been validly organized as a domestic limited liability company, that it is validly in existence under the laws of this state, and that it has satisfied its annual filing obligations. A certificate of good standing issued to a foreign limited

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liability company shall state that it has been validly authorized to transact business in this state, that it holds a valid certificate of authority to transact business in this state, and that it has satisfied its annual filing obligations.

(2) If a domestic limited liability company or a foreign limited liability company authorized to transact business in this state fails to file an annual statement required by section 207 for 2 consecutive years, the administrator shall notify the company of the consequences of the failure to file under subsection (3).

(3) If a limited liability company does not file all annual statements it has failed to file, and the applicable fees, within 60 days after the administrator's notice under subsection (2) is sent, the limited liability company is not in good standing. A limited liability company that is not in good standing is not entitled to issuance by the administrator of a certificate of good standing described in subsection (1), the name of the company is available for use by another entity filing with the administrator, and the administrator shall not accept for filing any document submitted by the limited liability company other than a certificate of restoration of good standing provided for in subsection (4). A limited liability company that is not in good standing remains in existence and may continue to transact business in this state.

(4) A domestic limited liability company or a foreign limited liability company authorized to transact business in this state that is not in good standing under subsection (3) may file a certificate of restoration of good standing, accompanied by the annual statements and fees for all of the years for which they were not filed and paid, and the fee for filing the certificate of restoration of good standing. The certificate shall include all of the following:

(a) The name of the limited liability company at the time it ceased to be in good standing. If that name is not available when the certificate of restoration of good standing is filed, the limited liability company shall select a new name that complies with section 204. The new name shall be the name of the domestic limited liability company or the name used in this state by the foreign limited liability company from the date of filing of the certificate.

(b) The name of the limited liability company's current resident agent and the address of the current registered office in this state.

(c) A statement that the certificate is accompanied by the annual statements and applicable fees for all of the years for which statements were not filed and fees were not paid.

History: Add. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4208 Resident agent; resignation; notice; appointment of successor; termination of appointment.

Sec. 208. (1) A resident agent of a limited liability company may resign as agent upon filing a written notice of resignation with the administrator and with a member or manager of the limited liability company.

(2) The company shall promptly appoint a successor resident agent.

(3) The appointment of the resigning agent terminates 30 days after the date the notice is filed with the administrator or upon the appointment of a successor, whichever occurs first.

History: 1993, Act 23, Eff. June 1, 1993.

450.4209 Changing registered office or resident agent; statement; filing; contents; changing business or residence address of resident agent.

Sec. 209. (1) A domestic limited liability company or foreign limited liability company authorized to transact business in this state may change its registered office or resident agent, or both, upon filing with the administrator a statement executed as provided in section 103 and setting forth all of the following:

(a) The name of the limited liability company.

(b) The address of its then registered office and the new address if the registered office is to be changed.

(c) The name of its then resident agent and the name of the successor if the resident agent is to be changed.

(d) A statement that the address of the registered office and the address of the resident agent are identical.

(e) A statement that the change was authorized in accordance with an operating agreement, or, if not provided for in an operating agreement, by affirmative vote of a majority of the members voting in accordance with section 502(1) or managers voting in accordance with section 405.

(2) If a resident agent changes its business or residence address to another place within this state, the resident agent may change the address of the registered office of the domestic or foreign limited liability company of which the person is a resident agent by filing a statement as required in subsection (1) and mailing a copy of the statement to the limited liability company. The statement need only to be signed by the resident agent and need not contain the statement required by subsection (1)(e).

History: 1993, Act 23, Eff. June 1, 1993.

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450.4210 Limited liability company; powers.

Sec. 210. Subject to the limitations provided in this act, any other statute of this state, or its articles of organization, a limited liability company has all powers necessary or convenient to effect any purpose for which the company is formed, including all powers granted to corporations in the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4211 Validity of action or transfer of property; asserting lack of capacity or power.

Sec. 211. An act of a limited liability company and a transfer of real or personal property to or by a limited liability company, otherwise lawful, is not invalid because the company was without capacity or power to do the act or make or receive the transfer, except that the lack of capacity or power may be asserted in any of the following:

(a) In an action by a member against the company to enjoin the doing of an act or the transfer of real or personal property by or to the company.

(b) In an action by or in the right of the company to procure a judgment in its favor against an incumbent or former member or manager of the company for loss or damage due to his or her unauthorized act.

(c) In an action or special proceeding by the attorney general to dissolve the company or to enjoin it from the transaction of unauthorized business.

History: 1993, Act 23, Eff. June 1, 1993.

450.4212 Interest rate; agreement.

Sec. 212. A domestic or foreign limited liability company, whether or not formed at the request of a lender, may agree in writing to pay any rate of interest as long as that rate of interest is not in excess of the rate set forth in Act No. 259 of the Public Acts of 1968, being sections 438.41 to 438.42 of the Michigan Compiled Laws.

History: 1993, Act 23, Eff. June 1, 1993.

450.4213 Registered office or principal place of business; documents required to be kept.

Sec. 213. A limited liability company shall keep at its registered office or principal place of business in this state all of the following:

(a) A current list of the full name and last known address of each member and manager.

(b) A copy of the articles or restated articles of organization, together with any amendments to the articles.

(c) Copies of the limited liability company's federal, state, and local tax returns and reports, if any, for the 3 most recent years.

(d) Copies of any financial statements of the limited liability company for the 3 most recent years.

(e) Copies of operating agreements.

(f) Copies of records that would enable a member to determine the members' relative shares of the limited liability company's distributions and the members' relative voting rights.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4214 Conflict between articles of organization and operating agreement.

Sec. 214. If there is a conflict between the articles of organization and an operating agreement of a limited liability company, the articles of organization shall control.

History: Add. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4215 Operating agreement unenforceable.

Sec. 215. An operating agreement of a limited liability company that has 1 member is not unenforceable because only 1 person is a party to the operating agreement.

History: Add. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

ARTICLE 3

450.4301 Members; contribution.

Sec. 301. (1) A contribution of a member to a limited liability company may consist of any tangible or intangible property or benefit to the company, including cash, property, services performed, promissory notes, contracts for services to be performed, or other binding obligation to contribute cash or property or to perform services.

(2) A contribution of an obligation to contribute cash or property or to perform services may be in exchange for a present membership interest or for a future membership interest, including a future profits

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interest, as provided in an operating agreement.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4302 Promise by member to contribute; enforcement; obligation to perform; rights of company; compromising obligation; enforcement by creditor of original member's obligation.

Sec. 302. (1) A promise by a member to contribute to the limited liability company is not enforceable unless the promise is in writing and signed by the member.

(2) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if he or she is unable to perform because of death, disability, or other reason. If a member does not make the required contribution of property or services, he or she is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that is not made.

(3) The rights of the limited liability company under subsection (2) are in addition to any other rights that the limited liability company may have under an operating agreement or applicable law.

(4) Unless otherwise provided in an operating agreement, a member's obligation to make a contribution or to return money or other property paid or distributed in violation of this act may be compromised only upon the unanimous vote of the members of the limited liability company entitled to vote. Notwithstanding a compromise of a member's obligation, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the member's obligation after the member signs a writing that reflects the obligation and before the amendment of the writing to reflect the compromise may enforce the member's original obligation.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4303 Distribution of assets; allocation; manner; basis.

Sec. 303. (1) Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members in the manner provided in an operating agreement. If an operating agreement does not provide for an allocation, distributions shall be allocated as follows:

(a) Prior to July 1, 1997, on the basis of the value, as stated in the records the limited liability company is required to keep under section 213 or as determined by any other reasonable method, of the contributions made by each member to the extent that the contributions have been received by the limited liability company and have not been returned.

(b) On and after July 1, 1997, except as otherwise provided in subsection (2), in equal shares to all members. A membership interest held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is considered as held by 1 member for an allocation under this subdivision.

(2) If a limited liability company in existence before July 1, 1997 allocated distributions on the basis of subsection (1)(a), the limited liability company shall continue to allocate distributions pursuant to subsection (1)(a) until the allocation is changed by an operating agreement.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4304 Distributions; conditions for receiving.

Sec. 304. Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company before the withdrawal of the member from the limited liability company and before the dissolution and winding up of the limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4305 Distributions to withdrawing member.

Sec. 305. Until the effective date of withdrawal, a withdrawing member shall share in any distribution made in accordance with section 304. An operating agreement may provide for an additional distribution to a withdrawing member. If a provision in an operating agreement permits withdrawal but is silent on an additional withdrawal distribution, a member withdrawing in accordance with the operating agreement is entitled to receive as a distribution, within a reasonable time after withdrawal, the fair value of the member's interest in the limited liability company as of the date of withdrawal based upon the member's share of distributions as determined under section 303.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

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450.4306 Distributions; demand, acceptance, and receipt of distribution; form.

Sec. 306. Except as provided in an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive a distribution from a limited liability company in any form other than cash, and a member may not be compelled to accept from a limited liability company a distribution of an asset in kind to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

History: 1993, Act 23, Eff. June 1, 1993.

450.4307 Distributions prohibited under certain situations; exceptions; effect of distribution under subsection (1); remedies available; future payments to withdrawing members; effect of subsection (1) on third party; asserting legal or equitable rights.

Sec. 307. (1) Except as otherwise provided in subsection (5), a distribution shall not be made if, after giving the distribution effect, 1 or more of the following situations would occur:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business.

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless an operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member or members receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances, on a fair valuation, or on another method that is reasonable under the circumstances.

(3) The effect of a distribution under subsection (1) is measured at the following times:

(a) Except as provided in subsection (5), in the case of a distribution to a withdrawing member, as of the earlier of the date money or other property is transferred or debt incurred by the limited liability company, or the date the member ceases to be a member.

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is authorized if distribution occurs within 120 days after the date of authorization, or the date the indebtedness is distributed if it occurs more than 120 days after the date of authorization.

(c) In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date the payment is made if it occurs more than 120 days after the date of authorization.

(4) At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. A company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors except as otherwise agreed.

(5) If the limited liability company distributes an obligation to make future payments to a withdrawing member, and distribution of the obligation would otherwise be prohibited under subsection (1) at the time it is made, the company may issue the obligation and the following apply:

(a) The portion of the obligation that could have been distributed without violating subsection (1) is indebtedness to the withdrawing member under subsection (4).

(b) All of the following apply to the portion of the obligation that exceeds the amount of the obligation that is indebtedness to the withdrawing member under subdivision (a):

(*i*) At any time prior to the due date of the obligation, payments of principal and interest may be made as a distribution to the extent that a distribution may then be made under this section.

(*ii*) At any time on or after the due date, the obligation to pay principal and interest is considered distributed and treated as indebtedness described in subsection (4) to the extent that a distribution may then be made under this section.

(c) Unless otherwise provided in an agreement with the withdrawing member, the obligation is considered a liability or debt for purposes of determining whether distributions other than payments on the obligation may be made under this section, except for purposes of determining whether distributions may be made to members having preferential rights superior to the rights of the withdrawing member.

(6) The enforceability of a guaranty or other undertaking by a third party relating to a distribution is not affected by the prohibition of the distribution under subsection (1).

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(7) If a claim is made to recover a distribution made contrary to subsection (1) or if a violation of subsection (1) is raised as a defense to a claim based upon a distribution, this section does not prevent the person receiving the distribution from asserting a right of rescission or other legal or equitable rights.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4308 Distributions; violating operating agreement or MCL 450.4307; personal liability of members or managers; presumption of assent; knowledge of violation; contribution; commencement of proceeding.

Sec. 308. (1) A member or manager who votes for or assents to a distribution in violation of an operating agreement or section 307 is personally liable, jointly and severally, to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating the operating agreement or section 307 if it is established that the member or manager did not comply with section 404.

(2) For purposes of liability under subsection (1), a member or manager entitled to participate in a decision to make a distribution is presumed to have assented to a distribution unless he or she files a written dissent with the limited liability company either at the meeting at which the distribution decision is made if it is made at a meeting and he or she is present or within a reasonable time after he or she has knowledge of the decision.

(3) A member who accepts or receives a distribution with knowledge of facts indicating it is in violation of an operating agreement or section 307 is liable to the limited liability company for the amount the member accepts or receives that exceeds the member's share of the amount that could have been distributed without violating section 307 or the operating agreement.

(4) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution from each other member or manager who could be held liable under subsection (1) or (3). The contribution of a person held liable under both subsections (1) and (3) shall not exceed his or her liability under either subsection (1) or (3), whichever is greater.

(5) A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution is measured under section 307.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

ARTICLE 4

450.4401 Management vested in members.

Sec. 401. Unless the articles of organization state that the business of the limited liability company is to be managed by managers, the business of the limited liability company shall be managed by the members, subject to any provision in an operating agreement restricting or enlarging the management rights and duties of any member or group of members. If management is vested in the members, both of the following apply:

(a) The members are considered managers for purposes of applying this act, including section 406 regarding the agency authority of managers, unless the context clearly requires otherwise.

(b) The members have, and are subject to, all duties and liabilities of managers and to all limitations on liability and indemnification rights of managers.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4402 Managers; delegation; qualifications; number; notice of delegation.

Sec. 402. (1) The articles of organization may provide that the business of the limited liability company shall be managed by or under the authority of 1 or more managers. The delegation of the management of a limited liability company to managers is subject to any provision in the articles of organization or in an operating agreement restricting or enlarging the management rights and duties of any manager or group of managers.

(2) An operating agreement may prescribe qualifications for managers, including a requirement that the managers be members.

(3) The number of managers shall be specified in or fixed in accordance with an operating agreement.

(4) If the articles of organization delegate management of a limited liability company to managers, the articles of organization constitute notice to third parties that managers, not members, have the agency authority described in section 406.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4403 Managers; selection; vote; removal; notice.

Sec. 403. (1) A vote of a majority in interest of the members entitled to vote in accordance with section 502(1) is required to select managers to fill initial positions or vacancies.

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(2) The members may remove 1 or more managers with or without cause unless an operating agreement provides that managers may be removed only for cause.

(3) The members may remove a manager for cause only at a meeting called expressly for that purpose, and that manager shall have reasonable advance notice of the allegations against him or her and an opportunity to be heard at the meeting.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4404 Managers; duties; action for failure to perform duties.

Sec. 404. (1) A manager shall discharge his or her duties as a manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the limited liability company.

(2) In discharging his or her duties, a manager may rely on information, opinions, reports, or statements, including, but not limited to, financial statements or other financial data, if prepared or presented by any of the following:

(a) One or more other managers or members or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matter presented.

(b) Legal counsel, public accountants, engineers, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence.

(c) A committee of managers of which he or she is not a member if the manager reasonably believes the committee merits confidence.

(3) A manager is not entitled to rely on the information, opinions, reports, or statements described in subsection (2) if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A manager is not liable for an action taken as a manager or the failure to take an action if he or she performs the duties of his or her office in compliance with this section.

(5) Except as otherwise provided in an operating agreement or by vote of the members pursuant to section 502(4) and (7), a manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by the manager of its property.

(6) An action against a manager for failure to perform the duties imposed by this act shall be commenced within 3 years after the cause of action has accrued or within 2 years after the cause of action is discovered or should reasonably have been discovered by the complainant, whichever occurs first.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4405 Managers; voting requirements.

Sec. 405. (1) Except as otherwise provided in the articles of organization or an operating agreement, voting by managers shall be as provided in this section.

(2) If management of a limited liability company is delegated to managers under section 402 and the limited liability company has more than 1 manager, each manager has 1 vote and the vote of a majority of all managers is required to decide or resolve any difference on any matter connected with carrying on the business of the limited liability company that is within the scope of the managers' authority.

(3) If management of a limited liability company remains in the members, section 502 applies to voting by the members.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4406 Manager as agent.

Sec. 406. A manager is an agent of the limited liability company for the purpose of its business, and the act of a manager, including the execution in the limited liability company name of any instrument, that apparently carries on in the usual way the business of the limited liability company of which he or she is a manager binds the limited liability company, unless both of the following apply:

(a) The manager does not have the authority to act for the limited liability company in that particular matter.

(b) The person with whom the manager is dealing has actual knowledge that the manager lacks authority to act or the articles of organization or this act establishes that the manager lacks authority to act.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4407 Managers; eliminating or limiting liability; exceptions.

Sec. 407. A provision in the articles of organization or an operating agreement may eliminate or limit the

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monetary liability of a manager to the limited liability company or its members for breach of any duty established in section 404, except that the provision does not eliminate or limit the liability of a manager for any of the following:

(a) The receipt of a financial benefit to which the manager is not entitled.

(b) Liability under section 308.

(c) A knowing violation of law.

(d) An act or omission occurring before the date when the provision becomes effective.

History: 1993, Act 23, Eff. June 1, 1993.

450.4408 Managers; indemnification; insurance against liability.

Sec. 408. (1) A limited liability company may indemnify and hold harmless a manager from and against any and all losses, expenses, claims, and demands sustained by reason of any acts or omissions or alleged acts or omissions as a manager, including judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which the person is a party or threatened to be made a party because he or she is or was a manager, to the extent provided for in an operating agreement or in a contract with the person, or to the fullest extent permitted by agency law subject to any restriction in an operating agreement or contract, except that the company may not indemnify any person for conduct described in section 407(a), (b), or (c).

(2) A limited liability company may purchase and maintain insurance on behalf of a manager against any liability or expense asserted against or incurred by him or her in any such capacity or arising out of his or her status as a manager, whether or not the company could indemnify him or her against liability.

History: 1993, Act 23, Eff. June 1, 1993.

ARTICLE 5

450.4501 Members; admission; liability for acts, debts, or obligations.

Sec. 501. (1) A person may be admitted as a member of a limited liability company in 1 or more of the following ways:

(a) In connection with the formation of the limited liability company, by signing the initial operating agreement.

(b) After the formation of the limited liability company, in 1 or more of the following ways:

(*i*) In the case of a person acquiring a membership interest directly from the limited liability company, by complying with the provisions of an operating agreement prescribing the requirements for admission or, in the absence of provisions prescribing the requirements for admission in an operating agreement, upon the unanimous vote of the members entitled to vote.

(*ii*) In the case of an assignee of a membership interest, as provided in section 506.

(2) A limited liability company may admit a person as a member who does not make a contribution or incur an obligation to make a contribution to the limited liability company.

(3) Unless otherwise provided by law or in an operating agreement, a person who is a member or manager, or both, of a limited liability company is not liable for the acts, debts, or obligations of the limited liability company.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4502 Members; voting rights.

Sec. 502. (1) An operating agreement may establish and allocate the voting rights of members and may provide that certain members or groups of members have only limited or no voting rights. If an operating agreement does not address voting rights, votes are allocated as follows:

(a) Prior to July 1, 1997, the members of a limited liability company shall vote in proportion to their shares of distributions of the company, as determined in accordance with section 303.

(b) On and after July 1, 1997, except as otherwise provided in subsection (2), each member of a limited liability company has 1 vote. For purposes of this subdivision, a membership interest held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, is treated as held by 1 member.

(2) If a limited liability company in existence before July 1, 1997 allocated votes on the basis of subsection (1)(a), the company shall continue to allocate votes pursuant to subsection (1)(a) until the allocation is changed by an operating agreement.

(3) If a membership interest that has voting rights is held by 2 or more persons, whether as fiduciaries, members of a partnership, tenants in common, joint tenants, tenants by the entirety, or otherwise, the voting of the interest shall be in accordance with the instrument or order appointing them or creating the relationship if

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a copy of that instrument or order is furnished to the limited liability company. If an instrument or order is not furnished to the limited liability company, 1 of the following applies to the voting of that membership interest:

(a) If an operating agreement applies to the voting of the membership interest, the vote shall be in accordance with that operating agreement.

(b) If an operating agreement does not apply to the voting of the membership interest and only 1 of the persons who hold the membership interest votes, that person's vote determines the voting of the membership interest.

(c) If an operating agreement does not apply to the voting of the membership interest and 2 or more of the persons who hold the membership interest vote, the vote of a majority determines the voting of the membership interest, and if there is no majority, the voting of the membership interest is divided among those voting.

(4) Only members of a limited liability company, and not its managers, may authorize the following actions:

(a) The dissolution of the limited liability company pursuant to section 801(c).

(b) Merger of the limited liability company pursuant to sections 701 through 706.

(c) An amendment to the articles of organization.

(5) Unless authorized in advance by an operating agreement, a transaction with the limited liability company or a transaction connected with the conduct or winding up of the limited liability company in which a manager of the limited liability company has a direct or indirect interest or a manager's personal use of property of the limited liability company may be authorized or ratified only by a vote of the disinterested members entitled to vote. The manager shall disclose all material facts regarding the transaction and the manager's interest in the transaction or all material facts about the manager's personal use of the limited liability company's property before the members vote on that transaction or use.

(6) Unless otherwise provided in an operating agreement, the sale, exchange, lease, or other transfer of all or substantially all of the assets of a limited liability company, other than in the ordinary course of business, may be authorized only by a vote of the members entitled to vote.

(7) The articles of organization or an operating agreement may provide for additional voting rights of members of the limited liability company.

(8) Unless the vote of a greater percentage of the voting interest of members is required by this act, the articles of organization, or an operating agreement, a vote of a majority in interest of the members entitled to vote is required to approve any matter submitted for a vote by the members.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4503 Members; obtaining certain financial statements and tax returns; inspecting and copying records; obtaining other information; formal accounting of company's affairs.

Sec. 503. (1) Upon written request of a member, a limited liability company shall send a copy of its most recent annual financial statement and its most recent federal, state, and local income tax returns and reports to the member by mail or electronic transmission. Upon reasonable request, a member may obtain true and full information regarding the current state of the limited liability company's financial condition.

(2) Upon reasonable written request and during ordinary business hours, a member or his or her designated representative may inspect and copy, at the member's expense, any of the records required to be maintained under section 213, at the location where the records are kept.

(3) Upon reasonable written request, a member may obtain other information regarding the limited liability company's affairs or may inspect, personally or through a representative and during ordinary business hours, other books and records of the limited liability company, as is just and reasonable.

(4) A member may have a formal accounting of the limited liability company's affairs as provided in an operating agreement or whenever circumstances render it just and reasonable.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4504 Membership interest as personal property.

Sec. 504. (1) A membership interest is personal property and may be held in any manner in which personal property may be held. A husband and wife may hold a membership interest in joint tenancy in the same manner and subject to the same restrictions, consequences, and conditions that apply to the ownership of real estate held jointly by a husband and wife under the laws of this state, with full right of ownership by survivorship in case of the death of either.

(2) A member has no interest in specific limited liability company property.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

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450.4505 Membership interest; assignment; liability of assignee; assignor as member; liability of assignor not released.

Sec. 505. (1) Except as provided in an operating agreement, a membership interest is assignable in whole or in part.

(2) An assignment of a membership interest does not of itself entitle the assignee to participate in the management and affairs of the company or to become or exercise any rights of a member. An assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled.

(3) Unless otherwise provided in an operating agreement and except to the extent assumed by agreement, an assignee has no liability as a member solely as a result of the assignment.

(4) Except as provided in an operating agreement, a member ceases to be a member upon assignment of all of his or her membership interest. The assignor is not released from his or her liability to the company under sections 302 and 308, even if the assignee becomes a member.

History: 1993, Act 23, Eff. June 1, 1993.

450.4506 Assignee of membership interest; conditions for membership; rights and powers; liability for obligations of assignor.

Sec. 506. (1) Unless otherwise provided in an operating agreement, an assignee of a membership interest in a limited liability company having more than 1 member may become a member only upon a unanimous vote of the members entitled to vote. An assignee of a membership interest in a limited liability company having 1 member may become a member in accordance with the terms of the agreement between the member and the assignee.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, an operating agreement, and this act. An assignee who becomes a member also is liable for any obligations of his or her assignor to make contributions and to return distributions under sections 302 and 308(3). An assignee is not obligated for liabilities unknown to the assignee when he or she became a member unless the liabilities are shown on the financial records of the limited liability company.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4507 Charging membership interest with payment of judgment; rights of judgment creditor; rights and powers of member.

Sec. 507. (1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment with interest. To the extent the membership interest is so charged, the judgment creditor has only the rights of an assignee of the membership interest. This act does not deprive any member of the benefit of any exemption laws applicable to his or her membership interest.

(2) Unless otherwise provided in an operating agreement, the member remains a member and retains all rights and powers of membership except the right to receive distributions to the extent charged.

History: 1993, Act 23, Eff. June 1, 1993.

450.4508 Encumbrance against membership interest; effect.

Sec. 508. Unless otherwise provided in an operating agreement, the pledge or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member does not cause the member to cease to be a member or to lose the power to exercise any rights or powers of a member.

History: 1993, Act 23, Eff. June 1, 1993.

450.4509 Withdrawal of member; distribution; expulsion.

Sec. 509. (1) A member may withdraw from a limited liability company only as provided in an operating agreement. A member withdrawing pursuant to an operating agreement may become entitled to a withdrawal distribution as described in section 305.

(2) An operating agreement may provide for the expulsion of a member or for other events the occurrence of which will result in a person ceasing to be a member of the limited liability company.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4510 Commencement and maintenance of civil suit by company; conditions.

Sec. 510. A member may commence and maintain a civil suit in the right of a limited liability company if all of the following conditions are met:

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(a) Either management of the limited liability company is vested in a manager or managers who have the sole authority to cause the limited liability company to sue in its own right or management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of an operating agreement.

(b) The plaintiff has made written demand on the managers or the members with the authority requesting that the managers or members cause the limited liability company to take suitable action.

(c) Ninety days have expired from the date the demand was made unless the member has earlier been notified that the demand has been rejected or unless irreparable injury to the limited liability company would result by waiting for the expiration of the 90-day period.

(d) The plaintiff was a member of the limited liability company at the time of the act or omission of which he or she complains, or his or her status as a member devolved upon him or her by operation of law or pursuant to the terms of an operating agreement from a person who was a member at that time.

(e) The plaintiff fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

(f) The plaintiff continues to be a member until the time of judgment, unless the failure to continue to be a member is the result of action by the limited liability company in which the former member did not acquiesce and the derivative proceeding was commenced prior to the termination of the former member's status as a member.

History: 1993, Act 23, Eff. June 1, 1993.

450.4511 Investigation of allegations; stay of derivative proceeding.

Sec. 511. If the limited liability company commences an investigation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period as the court considers appropriate.

History: 1993, Act 23, Eff. June 1, 1993.

450.4512 Dismissal of derivative proceeding; findings; burden of proof; determination; "disinterested" defined.

Sec. 512. (1) The court shall dismiss a derivative proceeding if, on motion by the limited liability company, the court finds that 1 of the groups specified in subsection (3) has made a determination in good faith after conducting a reasonable investigation upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the company.

(2) If the determination is made pursuant to subsection (3)(a) or (b), the company 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 pursuant to subsection (3)(c), the plaintiff has the burden of proving that the determination was not made in good faith or that the investigation was not reasonable.

(3) A determination under subsection (1) may be made by any 1 of the following:

(a) By a majority vote of the disinterested managers or members having the authority to cause the company to sue in its own right, if the disinterested managers or members constitute a majority of those having the authority to cause the company to sue in its own right.

(b) By a majority vote of a committee consisting of 2 or more disinterested managers or members appointed by a majority vote of disinterested managers or members, whether or not the disinterested managers or members constitute a majority of those having the authority to cause the company to sue in its own right.

(c) By a panel of 1 or more disinterested persons appointed by the court upon motion by the company.

(4) For purposes of this section, "disinterested" means a person who is not a party to a derivative proceeding or a person who is a party if the limited liability company demonstrates that the claim asserted against the person is frivolous or insubstantial.

History: 1993, Act 23, Eff. June 1, 1993.

450.4513 Discontinued or settled derivative proceeding; court approval required; notice; expense.

Sec. 513. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of members of the limited liability company, the court shall direct that notice be given to the members affected. If notice is directed to be given to the affected members, the court may determine whether 1 or more of the parties to the action shall bear the expense of giving the notice, in the amount as the court determines and finds to be reasonable under the circumstances. The amount of expense shall be awarded as special costs of the action and is recoverable in the same manner as statutory taxable costs.

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History: 1993, Act 23, Eff. June 1, 1993.

450.4514 Termination of derivative proceeding; court order.

Sec. 514. Upon termination of the derivative proceeding, the court may order 1 of the following:

(a) The plaintiff to pay any of the defendants' 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 limited liability company 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 company. The court shall direct the plaintiff to account to the company for any proceeds received by the plaintiff in excess of expenses awarded by the court, except that this provision does not apply to a judgment rendered for the benefit of an injured member only and limited to a recovery of the loss or damage sustained by him or her.

History: 1993, Act 23, Eff. June 1, 1993.

450.4515 Action in circuit court; grounds; order or grant of relief; "willfully unfair and oppressive conduct" defined.

Sec. 515. (1) A member of a limited liability company may bring an action in the circuit court of the county in which the limited liability company's principal place of business or registered office is located to establish that acts of the managers or members in control of the limited liability company are illegal or fraudulent or constitute willfully unfair and oppressive conduct toward the limited liability company or the member. If the member establishes grounds for relief, the circuit court may issue an order or grant relief as it considers appropriate, including, but not limited to, an order providing for any of the following:

(a) The dissolution and liquidation of the assets and business of the limited liability company.

(b) The cancellation or alteration of a provision in the articles of organization or in an operating agreement.

(c) The direction, alteration, or prohibition of an act of the limited liability company, or of members, managers, or other persons party to the action.

(d) The purchase at fair value of the member's interest in the limited liability company, either by the company or by the managers or other members responsible for the wrongful acts.

(e) An award of damages to the limited liability company or to the member. An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued or within 2 years after the member discovers or reasonably should have discovered the cause of action under this section, whichever occurs first.

(2) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the member as a member. The term does not include conduct or actions that are permitted by the articles of organization, an operating agreement, another agreement to which the member is a party, or a consistently applied written company policy or procedure.

History: Add. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

ARTICLE 6

450.4601 Articles of organization; amendment.

Sec. 601. A limited liability company may amend its articles of organization if the amendment contains only provisions that might lawfully be contained in original articles of organization filed at the time the amendment is made.

History: 1993, Act 23, Eff. June 1, 1993.

450.4602 Articles of organization; conditions requiring amendment.

Sec. 602. A limited liability company shall amend its articles of organization if any of the following occur:

(a) A change in the name of the limited liability company.

(b) A change in the purposes of the limited liability company.

(c) A change to or from the management of the limited liability company by managers.

(d) A change in the maximum duration of the limited liability company.

(e) A statement in the articles of organization has become false or erroneous, except that a change in registered office or resident agent may be made as provided for in section 209.

History: 1993, Act 23, Eff. June 1, 1993.

450.4603 Articles of organization; certificate of amendment; filing; contents.

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Sec. 603. The articles of organization are amended by filing a certificate of amendment signed as provided in section 103 that contains all of the following:

(a) The name of the limited liability company.

(b) The date of filing of its original articles of organization.

(c) The entire article or articles being amended, or the section or sections being amended if the article being amended is divided into identified sections.

(d) A statement that the amendment or amendments were approved by the unanimous vote of all of the members entitled to vote or by a majority in interest if an operating agreement authorizes amendment of the articles of organization by majority vote.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4604 Restated articles of organization.

Sec. 604. (1) A limited liability company may integrate into a single instrument the provisions of its articles of organization that are then in effect and operative by filing restated articles of organization executed as provided in section 103.

(2) A limited liability company may at the same time amend its articles of organization and include the amendment in the restated articles. An amendment effected in connection with the integration and restatement of the articles is subject to any other provision of this act that would apply if a certificate of amendment were to be filed to effect the amendment, including the requirement of member approval.

(3) Restated articles of organization shall be specifically designated as such in the heading and shall state, either in the heading or in an introductory paragraph, the present name of the limited liability company and, if the name has changed, all of its former names, and the date of filing of its original articles of organization. If the restated articles include a further amendment pursuant to subsection (2), the articles shall state that the amendment was approved by the members.

(4) When the restated articles of organization become effective in accordance with section 104, the limited liability company's original articles of organization are superseded and the restated articles are the articles of organization of the company.

History: 1993, Act 23, Eff. June 1, 1993.

ARTICLE 7

450.4701 Domestic limited liability companies; merger; plan.

Sec. 701. (1) Two or more domestic limited liability companies may merge pursuant to a plan of merger approved as provided in section 702.

(2) The plan of merger shall set forth all of the following:

(a) The name of each constituent company and the name of the surviving company.

(b) The terms and conditions of the proposed merger, including the manner and basis of converting the membership interests in each limited liability company into membership interests in the surviving company, or into cash or other property, or into a combination thereof.

(c) A statement of any amendment to the articles of organization of the surviving company to be effected by the merger or any restatement of the articles of organization, or a statement that no changes are to be made in the articles of organization of the surviving company.

(d) Other provisions with respect to the proposed merger that the constituent companies consider necessary or desirable.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1994, Act 410, Imd. Eff. Dec. 29, 1994;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4702 Merger; approval of plan by members; withdrawal and distribution.

Sec. 702. (1) A plan of merger shall be submitted to the members of each constituent company for approval, and approval shall be by unanimous vote of the members entitled to vote in each constituent company, unless an operating agreement of a constituent company provides otherwise.

(2) If an operating agreement of a constituent company provides for approval by less than unanimous vote of members entitled to vote and the merger is approved, a member who voted against the merger may withdraw from the limited liability company and receive, within a reasonable time, the fair value of the member's interest in the limited liability company, based upon the member's share of distributions as determined under section 303.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1994, Act 410, Imd. Eff. Dec. 29, 1994;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4703 Plan of merger; execution; certificate; contents and effectiveness.

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Sec. 703. (1) After a plan of merger is approved, a certificate of merger shall be executed as provided in section 103 and filed on behalf of each constituent company. The certificate shall set forth all of the following:

(a) The statements required by section 701(2)(a) and (c).

(b) A statement that the plan of merger has been approved by the members of the constituent company in accordance with section 702(1).

(c) A statement of any assumed names of merging limited liability companies transferred to the surviving company as authorized by section 206(6), specifying each transferred assumed name and the name of the limited liability company from which it is transferred. The certificate may include a statement of limited liability company names or assumed names of merging limited liability companies that are to be treated as newly filed assumed names of the survivor pursuant to section 206(7).

(d) The effective date of the merger if later than the date the certificate of merger is filed.

(2) The certificate of merger is effective in accordance with section 104.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1994, Act 410, Imd. Eff. Dec. 29, 1994;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4704 Merger; provisions.

Sec. 704. When a merger takes effect, all of the following apply:

(a) Every other constituent company merges into the surviving company and the separate existence of every constituent company except the surviving company ceases.

(b) All property, real, personal, and mixed, all debts due on whatever account, including promises to make contributions, all other choses in action, and any other interest of or belonging to or due to each constituent company are vested in the surviving company without further act or deed and without reversion or impairment.

(c) The surviving company may use the name and the assumed names of any constituent company, if the filings required under section 206(6) and (7) are made.

(d) The surviving company has all of the liabilities of each constituent company.

(e) A proceeding pending against any constituent company may be continued as if the merger had not occurred or the surviving company may be substituted in the proceeding for the limited liability company whose existence ceased.

(f) The articles of organization of the surviving company are amended to the extent provided in the certificate of merger.

(g) The membership interests in each constituent company are converted into membership interests in the surviving company, cash, or other property as provided in the plan of merger.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4705 Merger of foreign limited liability companies with domestic limited liability companies; conditions; compliance and liability of surviving company.

Sec. 705. (1) One or more foreign limited liability companies may merge with 1 or more domestic limited liability companies if both of the following are satisfied:

(a) The merger is permitted by the law of the jurisdiction under whose law each foreign constituent company is organized and each foreign constituent company complies with that law in effecting the merger.

(b) Each domestic constituent company complies with the provisions of sections 701 through 703.

(2) If the surviving company is to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of this act with respect to foreign limited liability companies if it is to transact business in this state.

(3) The surviving company is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a domestic constituent company, including any obligation to a member of the domestic constituent company who has dissented from the merger and withdrawn pursuant to section 702(2).

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1994, Act 410, Imd. Eff. Dec. 29, 1994;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4705a Definitions; merger of domestic limited liability companies with business organizations.

Sec. 705a. (1) As used in this section:

(a) "Business organization" means a domestic or foreign corporation, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic limited liability company.

(b) "Entity" means a business organization or a domestic limited liability company.

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(c) “Obligated person” means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise who, under applicable law, is generally liable for the obligations of the business enterprise.

(2) If all of the business organizations in a merger with 1 or more domestic limited liability companies are foreign limited liability companies, the merger shall comply with section 705 and not this section.

(3) Except as otherwise provided in subsection (2), 1 or more domestic limited liability companies may merge with 1 or more business organizations if all of the following requirements are satisfied:

(a) The merger is permitted under the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger.

(b) Each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(c) Each domestic limited liability company complies with this section.

(4) If 1 or more domestic limited liability companies propose to merge with 1 or more business organizations, each domestic limited liability company shall prepare a plan of merger that contains all of the following:

(a) The name of each constituent entity, the name of the surviving entity, the street address of the surviving entity's principal place of business, and the type of organization of the surviving entity.

(b) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests or obligations of the surviving entity, or into cash or other consideration, which may include ownership interests or obligations of an entity not a party to the merger, or into a combination thereof.

(c) If the surviving entity is to be a domestic limited liability company, a statement of the amendments to the articles of organization of the surviving company if the articles are changed by the merger, a restatement of the articles of organization, or a statement that the articles of organization of the surviving domestic limited liability company are unchanged.

(d) Any other provision that the domestic limited liability company considers necessary or desirable.

(5) A constituent domestic limited liability company shall submit a plan of merger to the members for approval. A unanimous vote by the members entitled to vote in the constituent domestic limited liability company is required to approve a plan of merger unless an operating agreement of the constituent domestic limited liability company provides otherwise.

(6) If an operating agreement of a constituent domestic limited liability company provides for approval by less than unanimous vote of members entitled to vote and the merger is approved, a member who voted against the merger may withdraw from the domestic limited liability company and receive, within a reasonable time, the fair value of the member's interest in the domestic limited liability company, based upon the member's share of distributions as determined under section 303.

(7) If a plan of merger is approved, a certificate of merger shall be executed as provided in section 103 and filed on behalf of each constituent domestic limited liability company. The certificate of merger shall contain all of the following:

(a) The information required under subsection (4)(a) and the statement required under subsection (4)(c).

(b) A statement that the plan of merger was approved by the members of each constituent domestic limited liability company in accordance with subsection (5).

(c) A statement of any assumed names of merging entities transferred to the surviving entity in accordance with section 206(6), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic limited liability company or a foreign limited liability company authorized to transact business in this state, the certificate may include a statement of 1 or more names or assumed names of merging entities that are to be treated as new certificates of assumed names of the surviving company under section 206(7).

(d) The effective date of the merger if later than the date the certificate of merger is filed.

(8) A certificate of merger is effective in accordance with section 104.

(9) When a merger is effective under this section, all of the following apply:

(a) Every other constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases.

(b) The title to all property, real, personal, and mixed, and rights owned by each constituent entity are vested in the surviving entity without reversion or impairment.

(c) A surviving company may use the name and the assumed names of any merging entity if a filing required under section 206(6) or (7) or other applicable statute is made.

(d) The surviving entity has all of the liabilities of each constituent entity. This section does not affect

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liability, if any, of a person who was an obligated person with respect to a merging entity for acts or omissions that occurred before the merger.

(e) A proceeding pending against any constituent entity may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of organization of a surviving domestic limited liability company are amended to the extent provided in the plan of merger.

(g) The ownership interests of each constituent entity that are to be converted into ownership interests or obligations of the surviving entity or into cash or other property are converted.

(10) If the surviving entity is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state by a foreign business organization if it transacts business in this state. The surviving entity is liable for, and is subject to service of process in a proceeding in this state for the enforcement of, any obligation of a constituent domestic limited liability company, including an obligation to a member of the constituent domestic limited liability company who has dissented from the merger and withdrawn in accordance with subsection (6).

History: Add. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4706 Abandoning plan of merger; procedure.

Sec. 706. (1) Unless a plan of merger provides otherwise, at any time before the effective date of a certificate of merger, the merger may be abandoned in accordance with the procedure set forth in the plan of merger or, if no procedure to abandon the merger is set forth in the plan of merger, by the unanimous vote of the members entitled to vote in each domestic limited liability company that is a constituent entity, unless an operating agreement of a domestic limited liability company provides otherwise.

(2) If a certificate of merger has been filed by a constituent domestic limited liability company, it shall file a certificate of abandonment within 10 days after the abandonment but not later than the effective date of the certificate of merger.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1994, Act 410, Imd. Eff. Dec. 29, 1994;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4707 Conversion of domestic partnership or domestic limited partnership to limited liability company.

Sec. 707. (1) A domestic partnership or domestic limited partnership may convert to a limited liability company in accordance with this section.

(2) The terms and conditions of a conversion under this section shall be approved by the partners in the manner provided in the partnership agreement for amendments to the partnership agreement or, if no provision for amendments to the partnership agreement is made in the partnership agreement, by all of the partners.

(3) If a conversion under this section is approved, the converting partnership or limited partnership shall file both of the following:

(a) Articles of organization that comply with section 203.

(b) A certificate of conversion, stating the name of the partnership or limited partnership and the date it was formed. In the case of a limited partnership, the certificate of conversion shall include a statement that the certificate of limited partnership is canceled as of the effective date of the articles of organization.

(4) If a limited partnership converts to a limited liability company under this section, the certificate of limited partnership is canceled as of the effective date of the articles of organization.

(5) If a conversion under this section takes effect, the limited liability company is considered the same entity that existed before the conversion. All property and rights of the converting partnership or limited partnership remain vested in the converted limited liability company. All liabilities of the converting partnership or limited partnership continue as liabilities of the converted limited liability company. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion under this section had not occurred. The liability, if any, of a general partner of the converting partnership or limited partnership for acts or omissions that occurred before a conversion under this section is not affected by a conversion under this section.

History: Add. 1997, Act 52, Imd. Eff. July 1, 1997.

ARTICLE 8

450.4801 Dissolution and winding up; conditions.

Sec. 801. A limited liability company is dissolved and its affairs shall be wound up when the first of the following occurs:

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(a) Automatically at the time specified in the articles of organization.

(b) Upon the happening of an event specified in the articles of organization or in an operating agreement, including a vote of members.

(c) Upon the unanimous vote of all members entitled to vote.

(d) Automatically upon the entry of a decree of judicial dissolution.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4802 Dissolution; decree by circuit court.

Sec. 802. Upon application by or for a member, the circuit court for the county in which the registered office of a limited liability company is located may decree dissolution of the company whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements.

History: 1993, Act 23, Eff. June 1, 1993.

450.4803 Dissolution; action by attorney general; grounds; other actions not excluded.

Sec. 803. (1) The attorney general may bring an action in the circuit court for the county in which the registered office of a limited liability company is located for dissolution of the company upon the ground that the company has committed any of the following acts:

(a) Procured its organization through fraud.

(b) Repeatedly and willfully exceeded the authority conferred upon it by law.

(c) Repeatedly and willfully conducted its business in an unlawful manner.

(2) This section does not exclude any other statutory or common law action by the attorney general for dissolution of a limited liability company.

History: 1993, Act 23, Eff. June 1, 1993.

450.4804 Certificate of dissolution; filing; contents.

Sec. 804. Upon the dissolution and commencement of winding up of the limited liability company under section 801(b) or (c), a certificate of dissolution shall be signed as provided in section 103 and filed with the administrator. The certificate shall set forth all of the following:

(a) The name of the limited liability company.

(b) The reason for the dissolution.

(c) The effective date of the dissolution if later than the date of filing of the certificate of dissolution.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4805 Winding up by managers, members, or circuit court; procedures; right to maintain actions.

Sec. 805. (1) Except as otherwise provided in the articles of organization, an operating agreement, or this section, the members or managers who have not wrongfully dissolved a limited liability company may wind up the company's affairs, but the circuit court for the county in which the registered office is located may wind up the limited liability company's affairs on application of, and for good cause shown by, any member, his or her legal representative, or assignee.

(2) The members or managers who are winding up the limited liability company's affairs shall continue to function, for the purpose of winding up, in accordance with the procedures established by this act, the articles of organization, and operating agreements, shall be held to no greater standard of conduct than that described by section 404, and shall be subject to no greater liabilities than would apply in the absence of dissolution.

(3) The limited liability company may sue and be sued in its name and process may issue by and against the company in the same manner as if dissolution had not occurred. An action brought by or against the company before its dissolution does not abate because of the dissolution.

History: 1993, Act 23, Eff. June 1, 1993.

450.4806 Dissolution; notice to existing claimants; contents; validity of claim not recognized; claims barred under certain conditions; "existing claim" defined; effective date of notice.

Sec. 806. (1) The dissolved limited liability company may notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

(a) A description of the information that must be included in a claim. The limited liability company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

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(b) A mailing address where a claim may be sent.

(c) The deadline, which may not be less than 6 months after the effective date of the written notice, by which the dissolved limited liability company must receive the claim.

(d) A statement that the claim will be barred if not received by the deadline.

(2) The giving of notice provided for in subsection (1) does not constitute recognition that a person to whom the notice is directed has a valid claim against the limited liability company.

(3) A claim against the dissolved limited liability company is barred if either of the following applies:

(a) If a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved limited liability company by the deadline.

(b) If a claimant whose claim was rejected by a written notice of rejection by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days after the effective date of the written notice of rejection.

(4) For purposes of this section and section 807, “existing claim” means any claim or right against the limited liability company, liquidated or unliquidated. “Existing claim” does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(5) For purposes of this section, the effective date of the written notice is the earliest of the following:

(a) The date it is received.

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and correctly addressed.

(c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

History: 1993, Act 23, Eff. June 1, 1993.

450.4807 Dissolution; publication of notice; requirements; commencing proceeding to enforce claims; claimants with known existing claims not receiving notice.

Sec. 807. (1) A dissolved limited liability company may also publish notice of dissolution and request that persons with claims against the company present them in accordance with the notice.

(2) The notice shall be in accord with all the following:

(a) Be published 1 time in a newspaper of general circulation in the county in which the dissolved limited liability company's principal place of business, or if none in this state, its registered office, is or was located.

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent. The limited liability company may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

(c) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within 1 year after the publication date of the newspaper notice.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within 1 year after the publication date of the newspaper:

(a) A claimant who did not receive written notice under section 806.

(b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) Notwithstanding subsection (3), a claimant having an existing claim known to the limited liability company at the time of publication in accordance with subsection (2) and who did not receive written notice under section 806 is not barred from suit until 6 months after the claimant has actual notice of the dissolution.

History: 1993, Act 23, Eff. June 1, 1993.

450.4808 Winding up; distribution of assets; order; filing tax returns and paying tax obligations.

Sec. 808. (1) Upon the winding up of a limited liability company, the assets shall be distributed in the following order:

(a) To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members under section 304 or 305. Reasonable provision shall be made for debts, liabilities, and obligations that are not liquidated but will not be barred under section 806 or 807.

(b) Except as provided in an operating agreement, to members and former members in satisfaction of liabilities for distributions under sections 304 and 305.

(c) Except as provided in an operating agreement, all remaining assets to members and former members in

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accordance with their shares of distributions as determined under section 303.

(2) Before the assets of a limited liability company are distributed pursuant to subsection (1), the limited liability company shall file tax returns and pay tax obligations as required by Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws.

History: 1993, Act 23, Eff. June 1, 1993.

ARTICLE 9

450.4901 Limited liability company; rendering professional services; applicability of article.

Sec. 901. (1) A limited liability company formed to render 1 or more professional services, as defined in section 902 may be organized under this article as a professional limited liability company.

(2) A limited liability company formed as a professional limited liability company and its members and managers are subject to this article and this act. This article takes precedence over any other provision of this act in the event of conflict.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4902 Definitions.

Sec. 902. As used in this article:

(a) "Licensed person" means an individual who is licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or an agency of this state or another jurisdiction, any corporation or professional services corporation all of whose shareholders are licensed persons, any partnership all of whose partners are licensed persons, or any limited liability company all of whose members and managers are licensed persons.

(b) "Professional service" means a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. Professional service includes, but is not limited to, services rendered by a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiropodist, architect, professional engineer, land surveyor, and attorney-at-law.

(c) "Professional services corporation" means a corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4903 Professional limited liability company; purpose stated in articles of organization; name.

Sec. 903. (1) One or more licensed persons may organize and become members of a professional limited liability company.

(2) The articles of organization of a professional limited liability company shall state, as its purposes, that the company is formed to render specified professional services.

(3) The name of the limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or "P.L.C." with or without periods or other punctuation.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.4904 Rendering professional services; license or legal authorization of persons required.

Sec. 904. (1) Except as otherwise provided in this section or otherwise prohibited, a professional limited liability company may render 1 or more professional services, and each member and manager shall be a licensed person in 1 or more of the professional services rendered by the company.

(2) If the professional limited liability company renders a professional service that is included within the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, then all members and managers of the company shall be licensed or legally authorized in this state to render the same professional service.

(3) A licensed person of another jurisdiction may become a member, manager, employee, or agent of the professional limited liability company, but shall not render any professional services in this state until the person is licensed or otherwise legally authorized to render the professional service in this state.

(4) A limited liability company may engage in the practice of architecture, professional engineering, or professional surveying in this state if not less than 2/3 of the members or managers of the limited liability company are licensed in this state to render 1 or more of the professional services offered. A professional limited liability company organized under this article may engage in the practice of architecture, professional engineering, or professional surveying in this state if all of the members and managers of the professional

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limited liability company organized under this article are licensed in this state to render 1 or more of the professional services offered.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 1997, Act 123, Imd. Eff. Nov. 3, 1997;—Am. 2000, Act 333, Imd. Eff. Dec. 20, 2000.

450.4905 Professional limited liability company; license required; "employee" explained; effect of act on laws applicable to professional relationship and liabilities; liability for negligent or wrongful acts.

Sec. 905. (1) A professional limited liability company shall not render professional services within this state except through its members, managers, employees, and agents who are licensed or otherwise legally authorized to render the professional services within this state. The term employee does not include secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

(2) This act shall not be construed to abolish, repeal, modify, restrict, or limit the law now in effect applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services and to the standards for professional conduct. A member, manager, employee, or agent of a professional limited liability company shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or her, or by any person under his or her direct supervision and control, while rendering professional services on behalf of the company to the person for whom the professional services were being rendered.

(3) The limited liability company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its members, managers, employees, or agents while they are engaged on behalf of the company in the rendering of professional services.

History: 1993, Act 23, Eff. June 1, 1993.

450.4906 Disqualification, restriction, or limitation on persons rendering professional service; severing employment and financial interest; noncompliance.

Sec. 906. If a member, manager, employee, or agent of a professional limited liability company becomes legally disqualified to render the professional services rendered by the company or accepts employment that, pursuant to existing law, places restrictions or limitations on his or her continued rendering of the professional services, he or she shall sever within a reasonable period all employment with and financial interests in the company. A company's failure to require compliance with this section constitutes a ground for the forfeiture of its articles of organization and its dissolution. If a company's failure to comply with this section is brought to the attention of the administrator, he or she shall certify that fact to the attorney general for appropriate action to dissolve the company.

History: 1993, Act 23, Eff. June 1, 1993.

450.4907 Professional limited liability company; prohibited activities; exception.

Sec. 907. (1) A professional limited liability company shall not engage in any business other than the rendering of the professional services for which it was specifically organized.

(2) This act does not prohibit the company from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments, owning real or personal property necessary for the rendering of professional services, becoming a partner in a partnership formed under Act No. 72 of the Public Acts of 1917, being sections 449.1 to 449.43 of the Michigan Compiled Laws, if the partnership performs the same professional services as the professional limited liability company, or forming or becoming a member or manager of another professional limited liability company organized under this act if both professional limited liability companies perform the same professional services.

History: 1993, Act 23, Eff. June 1, 1993.

450.4908 Sale or transfer of membership interest; restrictions.

Sec. 908. (1) A membership interest in a professional limited liability company shall not be sold or transferred except to a person who is eligible to be a member of the company or to the personal representative or estate of a deceased or legally incompetent member. The personal representative or estate of the member may continue to hold a membership interest for a reasonable period but shall not be authorized to participate in any decisions concerning the rendering of professional service.

(2) The articles of organization or an operating agreement may provide specifically for additional restrictions on the transfer of membership interests.

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History: 1993, Act 23, Eff. June 1, 1993.

450.4909 Annual report; filing fee; penalty for late filing.

Sec. 909. (1) In addition to the annual statement required in section 207(3), a professional limited liability company shall file with the administrator an annual report, together with a $50.00 filing fee, listing the names and addresses of all members and managers and certifying that each member and manager is a licensed person in 1 or more of the professional services rendered by the company. The report shall also certify that any member or manager not licensed or otherwise legally authorized to render professional services in this state does not render professional services in this state.

(2) The professional limited liability company shall file the annual report not later than February 15 of each year, and a penalty of $50.00 shall be added to the fee if the annual report is not filed or the fee is not paid by February 15, except that if a professional limited liability company is formed after September 30, it need not file an annual report on the February 15 immediately succeeding its formation.

(3) If a professional limited liability company fails to file an annual report required by this section for 2 consecutive years, the administrator shall notify the company of the consequences of the failure to file under subsection (4).

(4) If a professional limited liability company does not file all annual reports it has failed to file, the applicable fees, and the penalty described in subsection (2) within 60 days after the administrator's notice under subsection (3) is sent, the professional limited liability company is not in good standing. A professional limited liability company that is not in good standing is not entitled to issuance by the administrator of a certificate of good standing described in section 207a, the name of the company is available for use by another entity filing with the administrator, and the administrator shall not accept for filing any document submitted by the professional limited liability company other than a certificate of restoration of good standing provided for in subsection (5). A professional limited liability company that is not in good standing remains in existence and may continue to transact business in this state.

(5) A professional limited liability company that is not in good standing under subsection (4) may file a certificate of restoration of good standing, accompanied by the annual reports and fees for all of the years for which they were not filed and paid, the penalty described in subsection (2), and the fee for filing the certificate of restoration of good standing. The certificate shall include all of the following:

(a) The name of the professional limited liability company at the time it ceased to be in good standing. If that name is not available when the certificate of restoration of good standing is filed, the professional limited liability company shall select a new name that complies with this act. The new name shall be the name of the professional limited liability company from the date of filing of the certificate.

(b) The name of the professional limited liability company's current resident agent and the address of the current registered office in this state.

(c) A statement that the certificate is accompanied by the annual reports and applicable fees for all of the years for which reports were not filed and fees were not paid and the penalty described in subsection (2).

(6) A professional limited liability company that fails to file annual statements under section 207 as well as annual reports under this section must comply with section 207a and this section to maintain or restore its good standing.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.4910 Merger; limitation.

Sec. 910. A professional limited liability company may merge only with other limited liability companies whose members and managers are licensed persons permitted to be members or managers under this article or other entities that are licensed persons or whose shareholders, partners, or other owners, members, or managers are licensed persons permitted to be members or managers under this article.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

ARTICLE 10

450.5001 Foreign limited liability company; laws of jurisdiction.

Sec. 1001. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs, and a foreign limited liability company shall not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

History: 1993, Act 23, Eff. June 1, 1993.

450.5002 Transacting business; certificate of authority by foreign limited liability company

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required; application; filing; contents.

Sec. 1002. Before transacting business in this state, a foreign limited liability company shall obtain a certificate of authority from the administrator. To obtain a certificate of authority, a foreign limited liability company shall file with the administrator an application, executed as provided in section 103, setting forth all of the following:

(a) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state.

(b) The jurisdiction and date of its organization.

(c) The address of its registered office in this state and the name of its resident agent at that address in accordance with section 207.

(d) A statement that includes both of the following:

(*i*) That the department is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed under subdivision (c), or, if appointed, the agent's authority has been revoked, the agent has resigned, or the agent cannot be found or served through the exercise of reasonable diligence.

(*ii*) The name and address of a member, manager, or other person to whom the administrator is to send copies of any process served on the administrator.

(e) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that state or, if not required to maintain an office by the laws of that state, of the principal office of the foreign limited liability company.

(f) Other additional information as may be necessary or appropriate in order to enable the department to determine whether the limited liability company is entitled to transact business in this state.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997.

450.5003 Certificate of authority; issuance; powers, rights, and privileges of foreign limited liability company.

Sec. 1003. (1) If the administrator finds that an application for a certificate of authority substantially conforms to the requirements of this act and all requisite fees have been paid, the administrator shall file the application and issue to the foreign limited liability company a certificate of authority to transact business in this state, in accordance with section 104.

(2) Upon the issuance of a certificate of authority, the foreign limited liability company may transact in this state any business that a domestic limited liability company formed under this act may lawfully transact, except as limited by statements in its application for a certificate of authority or under the law of its jurisdiction of organization. The authority continues so long as the foreign limited liability company retains its authority to transact such business in the jurisdiction of its organization and its authority to transact business in this state has not been surrendered, suspended, or revoked.

(3) A foreign limited liability company holding a valid certificate of authority in this state has no greater rights or privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

History: 1993, Act 23, Eff. June 1, 1993.

450.5004 Certificate of authority; satisfaction of MCL 450.4204 required for issuance.

Sec. 1004. A certificate of authority shall not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of section 204. If the name of a foreign limited liability company does not satisfy the requirements of section 204, the company may take the action authorized by section 204(3).

History: 1993, Act 23, Eff. June 1, 1993.

450.5005 Inaccurate application; correcting statement; certificate; exception; survivor of merger; certificate attesting to merger; annual statement.

Sec. 1005. (1) If any statement in the application for certificate of authority of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the administrator a certificate, signed as provided in section 103, correcting the statement, except that a change in the resident agent or registered office may be made under section 209.

(2) If a foreign limited liability company authorized to transact business in this state is the survivor of a merger permitted by the laws of the jurisdiction of its organization, the foreign limited liability company shall

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file, not later than 30 days after the merger becomes effective, a certificate issued by the proper officer of the jurisdiction of its organization attesting to the occurrence of the merger. If the merger has changed the name of the foreign limited liability company or has otherwise affected the information set forth in the application, the foreign company shall also comply with subsection (1).

(3) A foreign limited liability company authorized to transact business in this state shall file an annual statement as required by section 207(3), and section 207a applies to the good standing of the company and to failures to file.

History: 1993, Act 23, Eff. June 1, 1993;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002.

450.5006 Certificate of withdrawal; contents, form, manner, and execution of application.

Sec. 1006. (1) A foreign limited liability company authorized to transact business in this state may withdraw from this state upon receiving from the administrator a certificate of withdrawal. In order to obtain the certificate, the foreign limited liability company shall file an application for withdrawal setting forth all of the following:

(a) The name of the foreign limited liability company and the jurisdiction under the laws of which it is organized.

(b) That the foreign limited liability company is not transacting business in this state.

(c) That the foreign limited liability company surrenders its authority to transact business in this state.

(d) That the foreign limited liability company revokes the authority of its resident agent to receive service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on the company by service upon the administrator.

(e) An address to which the administrator is to mail a copy of any process against the foreign limited liability company.

(f) Other additional information as is necessary or appropriate in order to enable the administrator to determine and assess any unpaid fees payable by the foreign limited liability company.

(2) The application for withdrawal shall be in the form and manner designated by the administrator and shall be executed for the foreign limited liability company as provided in section 103, or, if the foreign limited liability company is in the hands of a receiver or trustee, by the receiver or trustee on behalf of the company.

History: 1993, Act 23, Eff. June 1, 1993.

450.5007 Foreign limited liability company; transacting business without certificate of authority.

Sec. 1007. (1) A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain an action, suit, or proceeding in a court of this state until it has obtained a certificate of authority. This prohibition applies to both of the following in addition to the foreign limited liability company:

(a) A successor in interest of the foreign limited liability company, except a receiver, trustee in bankruptcy, or other representative of creditors of the foreign company.

(b) An assignee of the foreign limited liability company, except an assignee for value who accepts an assignment without knowledge that the foreign company should have but has not obtained a certificate of authority in this state.

(2) An action commenced by a foreign limited liability company having no certificate of authority shall not be dismissed if a certificate of authority is obtained before the order of dismissal. Any order of dismissal shall be without prejudice to the recommencement of the action, suit, or proceeding by the foreign limited liability company after it obtains a certificate of authority.

(3) The failure of a foreign limited liability company to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in a court of this state.

(4) A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the administrator as its agent for service of process with respect to a cause of action arising out of the transaction of business in this state.

(5) A foreign limited liability company that transacts business in this state without a certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without a certificate in an amount equal to all fees that would have been imposed under this act upon the foreign limited liability company had it obtained the certificate, filed all documents required by this act, and paid all penalties imposed by this act. The attorney general may bring proceedings to recover all amounts due the state under

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this section.

(6) A foreign limited liability company that transacts business in this state without a certificate of authority is subject to a civil penalty, payable to the state, of not less than $100.00 nor more than $1,000.00 for each calendar month, not more than 5 years prior to the imposition of the penalty, in which it has transacted business without the certificate. The penalty shall not exceed $10,000.00. Each manager, member, or authorized person who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed $10,000.00.

(7) The civil penalties set forth in subsection (6) may be recovered in an action brought by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, managers, or authorized persons have transacted business in this state in violation of this act, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of business by the foreign limited liability company and the further exercise of any rights and privileges in this state. The foreign limited liability company shall be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has obtained a certificate of authority to transact business.

(8) A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

History: 1993, Act 23, Eff. June 1, 1993.

450.5008 Activities not considered to be transacting business in state; applicability of section to other state laws.

Sec. 1008. (1) Without excluding other activities that may not constitute transacting business in this state, a foreign limited liability company is not considered to be transacting business in this state, for the purposes of this act, because it is carrying on in this state any 1 or more of the following activities:

(a) Maintaining, defending, or settling any proceeding.

(b) Holding meetings of its members or carrying on any other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositaries with respect to those securities.

(e) Selling through independent contractors.

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

(g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(i) Owning, without more, real or personal property.

(j) Conducting an isolated transaction that is completed within 30 days and that is not 1 in the course of repeated transactions of a like nature.

(k) Transacting business in interstate commerce.

(2) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

History: 1993, Act 23, Eff. June 1, 1993.

450.5009 Making or purchasing loans or participation or interest in loans.

Sec. 1009. (1) A foreign limited liability company may acquire or, through another person entitled to transact business in this state, may make loans, or participations or interests in loans, insured or guaranteed in whole or in part by the federal housing administration or the veterans' administration or a successor or similar agency of the federal government, which are secured in whole or in part by mortgages of real property located in this state, and a foreign limited liability company may purchase a loan, or participation or interest in a loan, secured in whole or in part by a mortgage of real property located in this state, without maintaining authority to transact business in this state under this act or any other law of this state relating to the qualification or authority and without paying fees as required by law.

(2) Neither the failure of a foreign limited liability company to qualify or maintain authority to transact business in this state under this act or any other law of this state nor its failure to pay fees as required by law affects or impairs its ownership of the loans or participation or interests in the loans, whether made or

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acquired, or its right to collect and service the loans through another person entitled to transact business in this state, or its right to enforce the loans or to acquire, hold, protect, convey, lease, and otherwise contract and deal with respect to the property mortgaged as security.

History: 1993, Act 23, Eff. June 1, 1993.

450.5010 Maintaining action to restrain by attorney general.

Sec. 1010. The attorney general may maintain an action to restrain a foreign limited liability company transacting business in this state, with or without a certificate of authority, from any violation of this act.

History: 1993, Act 23, Eff. June 1, 1993.

ARTICLE 11

450.5101 Filing fees; use; charges for certifying or copying files or records; dishonored checks; payment by credit card.

Sec. 1101. (1) The fees to be paid to the administrator when the documents described in this subsection are delivered to him or her for filing are as follows:

(a) Certificate of correction, $25.00.

(b) Articles of organization, $50.00.

(c) Amendment to the articles of organization, $25.00.

(d) Restated articles of organization, $50.00.

(e) Application for reservation of name, $25.00.

(f) Certificate of assumed name or a certificate of termination of assumed name, $25.00.

(g) Annual statement of resident agent and registered office, $15.00 if paid through September 30, 2003 and after September 30, 2012. Beginning October 1, 2003 through September 30, 2012, the fee is $25.00.

(h) Certificate of restoration of good standing, $50.00.

(i) Notice of resignation of resident agent, or statement of change of registered office or resident agent, $5.00.

(j) Certificate of merger as provided in article 7, $100.00.

(k) Certificate of abandonment, $10.00.

(*l*) Certificate of conversion, $25.00.

(m) Certificate of dissolution, $10.00.

(n) Application of a foreign limited liability company for a certificate of authority to transact business in this state, $50.00.

(o) Certificate correcting statement contained in an application for a certificate of authority to transact business in this state, $25.00.

(p) Certificate attesting to the occurrence of a merger of a foreign limited liability company, as provided in section 1005, $10.00.

(q) Application for withdrawal and issuance of a certificate of withdrawal of a foreign limited liability company, $10.00.

(2) In addition to a fee required to file a document, the administrator may charge a fee of $50.00 if the document is filed by facsimile or other electronic transmission or the administrator is requested to transmit a document by facsimile or other electronic transmission.

(3) The administrator shall not refund all or any part of a fee described in this section. The administrator shall deposit all fees received and collected under this section in the state treasury to the credit of the administrator, who may only use the money credited pursuant to legislative appropriation and only in carrying out those duties of the department required by law.

(4) A minimum charge of $1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a domestic or foreign limited liability company if a fee is not set forth in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies pursuant to a schedule of fees that the administrator shall adopt with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection and use it to defray the costs of the department's copying and certifying services.

(5) If a domestic or foreign limited liability company pays fees or penalties by check and the check is dishonored, the fee is considered unpaid and the filing of all related documents will be rescinded.

(6) The administrator may accept payment by credit card, instead of cash or check, as payment of a fee under this act. The administrator shall determine which credit cards he or she shall accept for payment of a fee.

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History: 1993, Act 23, Eff. June 1, 1993;—Am. 1997, Act 52, Imd. Eff. July 1, 1997;—Am. 2002, Act 686, Imd. Eff. Dec. 30, 2002;—Am. 2003, Act 81, Imd. Eff. July 23, 2003;—Am. 2007, Act 86, Imd. Eff. Sept. 30, 2007.

450.5102 Effect of actions by legislature.

Sec. 1102. This act may be supplemented, altered, amended, or repealed by the legislature, and every limited liability company subject to this act is bound by the changes.

History: 1993, Act 23, Eff. June 1, 1993.

450.5103 Interest as security.

Sec. 1103. An interest in a limited liability company to which this act applies is a security to the same extent as an interest in a corporation, partnership, or limited partnership is a security.

History: 1993, Act 23, Eff. June 1, 1993.

450.5200 Effective date.

Sec. 1200. This act shall take effect June 1, 1993.

History: 1993, Act 23, Eff. June 1, 1993.

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