

Act No. 9
Public Acts of 2008
Approved by the Governor
February 29, 2008
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Sanborn, Richardville, Hardiman, Garcia, McManus, Van Woerkom, Olshove and Cropsey

ENROLLED SENATE BILL No. 123

AN ACT to amend 1982 PA 162, entitled "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," by amending sections 106, 133, 141, 143, 151, 404, 405, 407, 413, 421, 441, 446, 451, 521, 525, 901, 1103, and 1144 (MCL 450.2106, 450.2133, 450.2141, 450.2143, 450.2151, 450.2404, 450.2405, 450.2407, 450.2413, 450.2421, 450.2441, 450.2446, 450.2451, 450.2521, 450.2525, 450.2901, 450.3103, and 450.3144), sections 1103 and 1144 as added by 1984 PA 209, and by adding section 406a.

The People of the State of Michigan enact:

Sec. 106. (1) "Corporation" or "domestic corporation" means a nonprofit corporation.

(2) "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.

(3) "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.

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.

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.

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 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.

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.

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 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. 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 or member of record on the new record date entitled to notice under subsection (1).

(3) 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.

(4) 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.

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:

(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.

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.

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.

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.

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 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.

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.

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.

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.

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.

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.

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 or member on request.

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.

(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.

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.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor