

HOUSE BILL No. 4764

May 27, 2003, Introduced by Reps. Huizenga, Taub, Garfield, Amos, Tobocman, Wenke, Howell, Sheen, Brandenburg, Palmer, Hummel, Vander Veen, Ruth Johnson, Kooiman and Emmons and referred to the Committee on Commerce.

A bill to amend 1972 PA 284, entitled
 "Business corporation act,"
 by amending sections 511, 611, 791, and 798 (MCL 450.1511,
 450.1611, 450.1791, and 450.1798), section 511 as amended by 1989
 PA 121, section 611 as amended by 1997 PA 118, section 791 as
 amended by 1993 PA 91, and section 798 as added by 1988 PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 511. (1) The shareholders may remove 1 or more
 2 directors with or without cause unless the articles of
 3 incorporation provide that directors may be removed only for
 4 cause **and except that, for a corporation whose board is divided**
 5 **into classes under section 506(1), shareholders may remove**
 6 **directors only for cause unless the articles of incorporation**
 7 **allow removal without cause.** The vote ~~for removal shall be by~~
 8 of a majority of shares entitled to vote at an election of

1 directors **is required for removal** except that the articles may
 2 require a higher vote for removal without cause. This section
 3 ~~shall~~ **does** not invalidate any bylaw adopted before ~~the~~
 4 ~~effective date of the act which added this sentence~~ **October 1,**
 5 **1989** insofar as the bylaw applies to removal without cause.

6 (2) In the case of a corporation ~~having~~ **that has** cumulative
 7 voting, if less than the entire board is to be removed, ~~no 1 of~~
 8 ~~the directors may be removed~~ **the shareholders may not remove a**
 9 **director** if the votes cast against his or her removal ~~would be~~
 10 **are** sufficient to elect him or her if then cumulatively voted at
 11 an election of the entire board of directors, or, if there are
 12 classes of directors, at an election of the class of directors of
 13 which he or she is a part.

14 (3) If holders of a class or series of stock or of bonds are
 15 entitled by the articles to elect 1 or more directors, this
 16 section applies, with respect to removal of a director ~~se~~
 17 elected **by those holders**, to the vote of the holders of the
 18 outstanding shares of that class or series of stock or the
 19 holders of those bonds.

20 Sec. 611. (1) Before the first meeting of the board, the
 21 incorporators may amend the articles of incorporation by
 22 complying with ~~subsection (1) of~~ section ~~631~~ **631(1)**.

23 (2) Unless the articles of incorporation provide otherwise,
 24 the board may adopt 1 or more of the following amendments to the
 25 corporation's articles of incorporation without shareholder
 26 action:

27 (a) Extend the duration of the corporation if it was

1 incorporated at a time when limited duration was required by
2 law.

3 (b) Delete the names and addresses of the initial directors.

4 (c) Delete the name and address of the initial resident agent
5 or registered office, if a statement of change is on file with
6 the administrator.

7 (d) Change each issued and unissued authorized share of an
8 outstanding class into a greater number of whole shares if the
9 corporation has only shares of that class outstanding.

10 (e) Change the corporate name by substituting the word
11 "corporation", "incorporated", "company", "limited", or the
12 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
13 word or abbreviation in the corporate name, or by adding,
14 deleting, or changing a geographical attribution for the
15 corporate name.

16 (f) Any other change expressly permitted by this act to be
17 made without shareholder action.

18 (3) Other amendments of the articles of incorporation, except
19 as otherwise provided in this act, shall be ~~approved~~ **adopted** by
20 the shareholders as provided in this section. **If the corporation**
21 **has securities registered under section 12 of the securities**
22 **exchange act of 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78l,**
23 **the amendment to the articles of incorporation must be proposed**
24 **to the shareholders by the board of directors.**

25 (4) Notice of a meeting setting forth the proposed amendment
26 or a summary of the changes to be effected by the proposed
27 amendment shall be given to each shareholder of record entitled

1 to vote on the proposed amendment within the time and in the
2 manner provided in this act for giving notice of meetings of
3 shareholders.

4 (5) At the meeting, a vote of shareholders entitled to vote
5 shall be taken on the proposed amendment. ~~The~~ **A** proposed
6 amendment ~~shall be~~ **is** adopted ~~upon receiving~~ **if it receives**
7 the affirmative vote of a majority of the outstanding shares
8 entitled to vote on the proposed amendment and, in addition, if
9 any class or series of shares is entitled to vote on the proposed
10 amendment as a class, the affirmative vote of a majority of the
11 outstanding shares of each ~~such~~ class or series **entitled to**
12 **vote**. The voting requirements of this section are subject to
13 greater requirements as prescribed by this act for specific
14 amendments ~~—~~ or as ~~may be provided by~~ **required in** the
15 articles of incorporation.

16 (6) ~~Any~~ **The shareholders may act on any** number of
17 amendments ~~may be acted upon at 1~~ **at a** meeting.

18 (7) Upon adoption, a certificate of amendment shall be filed
19 as provided in section 631.

20 Sec. 791. (1) As used in this chapter, "control share
21 acquisition" means the acquisition, directly or indirectly, by
22 any person of ownership of, or the power to direct the exercise
23 of voting power with respect to, issued and outstanding control
24 shares.

25 (2) For purposes of this section, shares or the power to
26 direct the exercise of voting power acquired within a 90-day
27 period, or shares or the power to direct the exercise of voting

1 power acquired pursuant to a plan to make a control share
2 acquisition, are considered to have been acquired in the same
3 acquisition.

4 (3) For purposes of this section, a person who acquires
5 shares in the ordinary course of business for the benefit of
6 others in good faith and not for the purpose of circumventing
7 this chapter has voting power only of shares in respect of which
8 that person would be able to exercise or direct the exercise of
9 votes without further instruction from others.

10 (4) For purposes of this section, the acquisition of any
11 shares of an issuing public corporation does not constitute a
12 control share acquisition if the acquisition is consummated in
13 any of the following circumstances:

14 (a) Before January 1, 1988.

15 (b) Pursuant to a contract existing before January 1, 1988.

16 (c) By gift, testamentary disposition, marital settlement,
17 descent and distribution, or otherwise without consideration.

18 (d) Pursuant to the satisfaction of a pledge or other
19 security interest created in good faith and not for the purpose
20 of circumventing this chapter.

21 (e) Pursuant to a merger or share exchange effected in
22 compliance with sections 701 to 735 if the issuing public
23 corporation is a party to the agreement of merger or share
24 exchange.

25 (f) By a governmental official acting in an official or
26 fiduciary capacity.

27 (5) For purposes of this section, the acquisition of shares

1 of an issuing public corporation in good faith and not for the
2 purpose of circumventing this chapter by any person whose voting
3 rights previously had been authorized by shareholders in
4 compliance with this chapter, or whose previous acquisition of
5 shares of an issuing public corporation would have constituted a
6 control share acquisition but for subsection (4), does not
7 constitute a control share acquisition, unless the acquisition
8 entitles a person, directly or indirectly, alone or as part of a
9 group, to exercise or direct the exercise of voting power of the
10 corporation in the election of directors in excess of the range
11 of the voting power which the acquiring person was entitled to
12 exercise or direct prior to ~~such~~ **the** acquisition.

13 **(6) For purposes of this section, the formation of a group,**
14 **before or after the date of the amendatory act that added this**
15 **subsection, does not constitute a control share acquisition of**
16 **shares of an issuing public corporation held by members of the**
17 **group.**

18 Sec. 798. (1) Control shares acquired in a control share
19 acquisition have the same voting rights as were accorded the
20 shares before the control share acquisition only to the extent
21 granted by resolution approved by the shareholders **or directors**
22 of the issuing public corporation.

23 (2) To be approved **by the shareholders** under ~~this section,~~
24 ~~the subsection (1), a~~ resolution shall be approved by ~~both~~ **all**
25 of the following:

26 (a) A majority of the votes cast by the ~~holders of shares~~
27 **shareholders** entitled to vote ~~thereon, and if the~~ **on the**

1 resolution.

2 (b) If a proposed control share acquisition would, if fully
3 carried out, result in any action ~~which~~ **that** would require a
4 vote as class or series, by a majority of the votes cast by the
5 ~~holders of shares~~ **shareholders** of ~~each such~~ **that** class or
6 series. ~~entitled to vote thereon.~~

7 (c) ~~(b)~~ A majority of the votes cast by the ~~holders of~~
8 ~~shares~~ **shareholders** entitled to vote and a majority of the votes
9 cast by the ~~holders of shares~~ **shareholders** of each class or
10 series entitled to vote as a class or series, excluding all
11 interested shares.