

## **BUSINESS CORPORATION ACT (EXCERPT)**

### **Act 284 of 1972**

#### **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 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) In addition to amendment under subsection (2) or (3), subject to subsection (7), either of the following may amend the articles of incorporation:

- (a) Before the first meeting of the board, the incorporators.
- (b) If the corporation has not yet issued shares or accepted any written subscription for shares, the board of

directors.

(2) Unless the articles of incorporation provide otherwise, subject to subsection (7), the board may without shareholder action adopt amendments to the corporation's articles of incorporation to do any of the following:

(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 or address of the resident agent or registered office, or both, if a statement that contains the name of the current resident agent and the current registered office 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) Make any other change that this act expressly permits without shareholder action.

(3) Subject to subsection (7), any amendments of the articles of incorporation that are not described in subsection (1) or (2), 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 a proposed amendment to the articles of incorporation or a summary of the changes the proposed amendment will make 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 a meeting described in subsection (4), a vote of shareholders entitled to vote shall be taken on the proposed amendment to the articles of incorporation. The proposed amendment is adopted if it receives 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) The shareholders may act on any number of amendments to the articles of incorporation at a meeting described in subsection (4).

(7) If an amendment to the articles of incorporation is made, a certificate of amendment must 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;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013;—Am. 2018, Act 85, Eff. June 24, 2018.

#### **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.

#### **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 an amendment to the articles of incorporation is made as under section 611(1)(a), a certificate of amendment signed by a majority of the incorporators shall be filed on behalf of the corporation, setting forth the amendment and certifying that the amendment was adopted by unanimous consent of the incorporators before the first meeting of the board.

(2) If an amendment to the articles of incorporation is made under section 611(1)(b) or (2), a certificate of amendment must be filed on behalf of the corporation, setting forth the amendment and certifying that it was adopted by the board of directors.

(3) If an amendment to the articles of incorporation is made under section 611(3), except as otherwise provided in this act, a certificate of amendment must be executed and filed on behalf of the corporation, setting forth the amendment and certifying that the adoption of the amendment complied with section 611(3).

(4) A certificate of amendment to the articles of incorporation 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;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

#### **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) Any of the following may adopt restated articles of incorporation for a corporation, as applicable:

(a) Before the first meeting of the board, all of the incorporators, by complying with the provisions of sections 611(1)(a), 642, and 643(1).

(b) 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.

(c) If the restated articles of incorporation restate, integrate, and also further amend the articles of incorporation, but the amendments include only amendments adopted under section 611(1)(b) or (2), the board may adopt the restated articles of incorporation without a vote of the shareholders.

(d) If the restated articles of incorporation restate, integrate, and amend the articles of incorporation and subdivisions (a), (b), and (c) do not apply, the shareholders must adopt the restated articles of incorporation under section 611.

(3) An amendment made to the articles of incorporation 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, that 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;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

#### **450.1642 Designation and contents of restated articles; omission.**

Sec. 642. (1) Restated articles of incorporation must meet all of the following, as applicable:

(a) Include the designation "restated articles of incorporation" in the heading.

(b) In the heading or in an introductory paragraph, state 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.

(c) If adopted by the incorporators, state that they were duly adopted by unanimous consent of the incorporators before the first meeting of the board under section 611(1)(a). If adopted by the board without a vote of the shareholders, state both of the following:

(i) That they only restate and integrate and do not further amend the articles as amended; or that the restated articles only restate and integrate the articles and include only amendments adopted under section 611(1)(b) or (2).

(ii) There is no material discrepancy between the provisions of the articles of incorporation as amended and the provisions of the restated articles.

(d) If adopted by the shareholders, state that they were duly adopted by the shareholders under section 611(3).

(2) Restated articles of incorporation may omit any provisions of the original articles that named the incorporators, the initial board, or original subscribers for shares, and the omission shall not be considered a further amendment to the articles of incorporation.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

**450.1643 Signing and filing restated articles; execution; original articles superseded; status of restated articles.**

Sec. 643. (1) Restated articles of incorporation adopted under section 641(2)(a) shall be signed by the majority of incorporators and filed in accordance with section 131.

(2) Restated articles of incorporation adopted under section 641(2)(b), (c), or (d) shall be executed on behalf of the corporation and filed in accordance with section 131.

(3) When the filing of restated articles of incorporation becomes effective, the corporation's original articles of incorporation, as amended, are superseded; and the restated articles, including any further amendments made by the restatement of the articles, are 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;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

**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.