

**SUBSTITUTE FOR
HOUSE BILL NO. 5388**

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
by amending sections 105, 106, 131, 202, 211, and 911 (MCL
450.1105, 450.1106, 450.1131, 450.1202, 450.1211, and 450.1911),
sections 105, 106, 211, and 911 as amended by 2012 PA 569 and
sections 131 and 202 as amended by 2018 PA 85.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 105. (1) "Administrator" means the chief officer of the
2 department or ~~of~~ any other agency or department authorized by law
3 to administer this act, or ~~his or her~~ **the** designated representative
4 **of the chief officer.**

5 (2) "Articles of incorporation" includes any of the following:

6 (a) The original articles of incorporation or any other



1 instrument filed or issued under any statute to organize a domestic
 2 or foreign corporation, as amended, supplemented, or restated by
 3 certificates of amendment, merger, conversion, or consolidation or
 4 other certificates or instruments filed or issued under any
 5 statute.

6 (b) A special act or charter creating a domestic or foreign
 7 corporation, as amended, supplemented, or restated.

8 (3) "Authorized shares" means shares of all classes that a
 9 corporation is authorized to issue.

10 (4) **"Benefit corporation" means a domestic corporation that**
 11 **meets the requirements for being a benefit corporation under**
 12 **chapter 9A and has not terminated its status as a benefit**
 13 **corporation under that chapter.**

14 (5) ~~(4)~~—"Board" means board of directors or other governing
 15 board of a corporation.

16 (6) ~~(5)~~—"Bonds" includes secured and unsecured bonds,
 17 debentures, and notes.

18 Sec. 106. (1) "Corporation" or "domestic corporation" means a
 19 corporation formed under this act, or existing on January 1, 1973
 20 and formed under any other statute of this state for a purpose for
 21 which a corporation may be formed under this act. **Corporation or**
 22 **domestic corporation includes a benefit corporation.**

23 (2) "Department" means the department of licensing and
 24 regulatory affairs.

25 (3) "Director" means a member of the board of a corporation.

26 (4) "Distribution" means a direct or indirect transfer of
 27 money or other property, except the corporation's shares, or the
 28 incurrence of indebtedness by the corporation to or for the benefit
 29 of its shareholders in respect to the corporation's shares. A



1 distribution may be in the form of a dividend, a purchase,
2 redemption or other acquisition of shares, an issuance of
3 indebtedness, or any other declaration or payment to or for the
4 benefit of the shareholders.

5 (5) "Electronic transmission" or "electronically transmitted"
6 means any form of communication that meets all of the following:

7 (a) It does not directly involve the physical transmission of
8 paper.

9 (b) It creates a record that may be retained and retrieved by
10 the recipient.

11 (c) It may be directly reproduced in paper form by the
12 recipient through an automated process.

13 Sec. 131. (1) A document **that is** required or permitted to be
14 filed under this act ~~shall~~**must** be submitted by delivering the
15 document to the administrator together with the fees and
16 accompanying documents required by law. The administrator may
17 establish a procedure for accepting delivery of a document
18 submitted under this subsection by facsimile or other electronic
19 transmission. However, by December 31, 2006, the administrator
20 shall establish a procedure for accepting delivery of a document
21 submitted under this subsection by ~~electronic mail~~**email** or over
22 the internet. Beginning January 1, 2007, the administrator shall
23 accept delivery of documents submitted by ~~electronic mail~~**email** or
24 over the internet.

25 (2) If a document submitted under subsection (1), **other than**
26 **an annual benefit report under section 961**, substantially conforms
27 to the requirements of this act, the administrator shall endorse
28 ~~upon~~**on** it the word "filed" with ~~his or her~~**the administrator's**
29 official title and the date of receipt and of filing and shall file



1 and index the document or a photostatic, micrographic,
2 photographic, optical disc media, or other reproduced copy in ~~his~~
3 ~~or her~~ **the administrator's** office. If requested at the time of the
4 delivery of the document to ~~his or her~~ **the administrator's** office,
5 the administrator shall include the hour of filing in the
6 endorsement on the document.

7 (3) The administrator may return the original or a copy of a
8 document filed under subsection (2) to the person that submitted it
9 for filing. The administrator shall mark the filing date on the
10 copy or original before returning it or may provide proof of the
11 filing date to the person that submitted the document for filing in
12 another manner determined by the administrator.

13 (4) The records and files of the administrator relating to
14 domestic and foreign corporations ~~shall~~ **must** be open to reasonable
15 inspection by the public. The administrator may maintain records or
16 files in their original form or may maintain records or files in
17 the form of reproductions ~~pursuant to~~ **in accordance with** the
18 records reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and
19 may destroy the originals of the reproduced documents.

20 (5) The administrator may make reproductions of any documents
21 filed under this act or any predecessor act ~~pursuant to~~ **in**
22 **accordance with** the records reproduction act, 1992 PA 116, MCL
23 24.401 to 24.406, and may destroy the originals of the reproduced
24 documents. A reproduced copy of a document certified by the
25 administrator, including a copy sent by facsimile or other
26 electronic transmission, is considered an original document for all
27 purposes and is admissible in evidence in like manner as an
28 original document.

29 (6) Except as provided in section 806, a document filed under



1 subsection (2) is effective at the time it is endorsed unless a
2 subsequent effective time, not later than 90 days after the date of
3 delivery, is ~~set forth~~**stated** in the document.

4 (7) The administrator shall charge 1 of the following
5 nonrefundable fees if expedited filing of a document by the
6 administrator is requested and the administrator shall retain the
7 revenue collected under this subsection and the department shall
8 use it to carry out its duties required by law:

9 (a) For any filing that a person requests the administrator to
10 complete within 1 hour on the same day as the day of the request,
11 \$1,000.00. The department may establish a deadline by which a
12 person must submit a request for filing under this subdivision.

13 (b) For any filing that a person requests the administrator to
14 complete within 2 hours on the same day as the day of the request,
15 \$500.00. The department may establish a deadline by which a person
16 must submit a request for filing under this subdivision.

17 (c) Except for a filing request under subdivision (a) or (b),
18 for the filing of any formation or qualification document that a
19 person requests the administrator to complete on the same day as
20 the day of the request, \$100.00. The department may establish a
21 deadline by which a person must submit a request for filing under
22 this subdivision.

23 (d) Except for a filing request under subdivision (a) or (b),
24 for the filing of any other document concerning an existing
25 domestic corporation or a qualified foreign corporation that a
26 person requests the administrator to complete on the same day as
27 the day of the request, \$200.00. The department may establish a
28 deadline by which a person must submit a request for filing under
29 this subdivision.



1 (e) For the filing of any formation or qualification document
2 that a person requests the administrator to complete within 24
3 hours of the time the administrator receives the request, \$50.00.

4 (f) For the filing of any other document concerning an
5 existing domestic corporation or a qualified foreign corporation
6 that a person requests the administrator to complete within 24
7 hours of the time the administrator receives the request, \$100.00.

8 Sec. 202. The articles of incorporation ~~shall~~**must** contain all
9 of the following:

10 (a) The name of the corporation.

11 (b) The purposes for which the corporation is formed. All of
12 the following apply for purposes of this subdivision:

13 (i) Except as otherwise provided in subparagraph (ii), ~~or (iii)~~,
14 **or (iv)**, it is a sufficient compliance with this subdivision to
15 state substantially, alone or with specifically enumerated
16 purposes, that the corporation may engage in any activity within
17 the purposes for which corporations may be formed under the
18 business corporation act, and all activities ~~shall~~**must** by the
19 statement be considered within the purposes of the corporation,
20 subject to expressed limitations.

21 (ii) Any corporation that proposes to conduct educational
22 purposes shall state the purposes and shall comply with all
23 requirements of sections 170 to 177 of 1931 PA 327, MCL 450.170 to
24 450.177.

25 (iii) A professional corporation shall comply with section
26 283(2) and (3).

27 **(iv) Each purpose of a benefit corporation must comply with**
28 **section 953.**

29 (c) The aggregate number of shares that the corporation has



1 authority to issue.

2 (d) If the shares are, or are to be, divided into classes, or
 3 into classes and series, the designation of each class and series,
 4 the number of shares in each class and series, and a statement of
 5 the relative rights, preferences and limitations of the shares of
 6 each class and series, to the extent that the designations,
 7 numbers, relative rights, preferences, and limitations have been
 8 determined.

9 (e) If the shares are to be designated and issued in 1 or more
 10 classes or series, a statement of any authority vested in the board
 11 to designate and issue shares in 1 or more classes or series, and
 12 to determine or change for any class or series its designation,
 13 number of shares, relative rights, preferences and limitations.

14 (f) Except as otherwise provided in section 611(2)(c), the
 15 street address, and the mailing address if different from the
 16 street address, of the corporation's initial registered office and
 17 the name of the corporation's initial resident agent at that
 18 address.

19 (g) The names and addresses of the incorporators.

20 (h) The duration of the corporation if other than perpetual.

21 Sec. 211. **(1)** Except as provided in chapter 2A for a
 22 professional corporation **and subsection (2) for a benefit**
 23 **corporation**, the corporate name of a domestic corporation ~~shall~~
 24 **must** contain the word "corporation", "company", "incorporated", or
 25 "limited" or ~~shall~~ **must** contain 1 of the following abbreviations:
 26 corp., co., inc., or ltd., with or without periods.

27 **(2) The corporate name of a benefit corporation must contain**
 28 **the words "benefit corporation" or "benefit company" or must**
 29 **contain the initials "B.C.", with or without periods.**



1 Sec. 911. (1) A domestic corporation and each foreign
2 corporation subject to chapter 10 shall file a report with the
3 administrator ~~no~~**not** later than May 15 of each year. The report
4 shall ~~must~~ be on a form approved by the administrator, signed by an
5 authorized officer or agent of the corporation, and contain all of
6 the following information:

7 (a) The name of the corporation.

8 (b) The name of ~~its~~**the corporation's** resident agent and
9 address of ~~its~~**the corporation's** registered office in this state.

10 (c) The names and addresses of ~~its~~**the corporation's**
11 president, secretary, treasurer, and directors.

12 (d) ~~General~~**The general** nature and kind of business in which
13 the corporation is engaged.

14 (e) For each foreign corporation authorized to transact
15 business in this state, the total number of authorized shares and
16 the most recent percentage used in computation of the tax required
17 by the Michigan business tax act, 2007 PA 36, MCL 208.1101 to
18 ~~208.1601~~**208.1519**.

19 (f) For each professional corporation, the names and addresses
20 of its shareholders and a certification that both of the following
21 are met:

22 (i) Each shareholder is a licensed person in 1 or more of the
23 professional services provided by the professional corporation.

24 (ii) The corporation meets the other requirements of chapter
25 2A.

26 **(2) A corporation that is a benefit corporation shall include**
27 **the annual benefit report that is required under section 961 with**
28 **the report under subsection (1).**

29 **(3) ~~(2)~~A corporation that is formed or authorized to do**



1 business on or after January 1 and before May 16 of a calendar year
2 is not required to file the report described in subsection (1) for
3 that calendar year.

4 **(4) (3)**—If there are no changes in the information provided in
5 the last filed report required under subsection (1), the
6 corporation may file a report that certifies to the administrator
7 that no changes in the required information have occurred since the
8 last filed report. A report filed under this subsection ~~shall~~**must**
9 be on a form approved by the administrator and filed ~~no~~**not** later
10 than the date required under **this** section. ~~911.~~**A corporation that**
11 **is a benefit corporation that files a report under this subsection**
12 **shall include the annual benefit report that is required under**
13 **section 961 with that report.**

14 Enacting section 1. This amendatory act does not take effect
15 unless House Bill No. 5387 of the 102nd Legislature is enacted into
16 law.

