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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

Introduced by Senator Bouchard

ENROLLED SENATE BILL No. 414

AN ACT to amend 1972 PA 284, entitled "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," by amending sections 132, 151, 209, 212, 217, 301, 302, 303, 336, 344, 345, 404, 415, 421, 472, 489, 491a, 528, 551, 564a, 564b, 567, 602, 611, 631, 641, 701, 703a, 706, 707, 712, 724, 735, 751, 753, 762, 801, 805, 811, 817, 842a, 855a, 1011, 1041, 1042, and 1062 (MCL 450.1132, 450.1151, 450.1209, 450.1212, 450.1217, 450.1301, 450.1302, 450.1303, 450.1336, 450.1344, 450.1345, 450.1404, 450.1415, 450.1421, 450.1472, 450.1489, 450.1491a, 450.1528, 450.1551, 450.1564a, 450.1564b, 450.1567, 450.1602, 450.1611, 450.1631, 450.1641, 450.1701, 450.1703a, 450.1706, 450.1707, 450.1712, 450.1724, 450.1735, 450.1751, 450.1753, 450.1762, 450.1801, 450.1805, 450.1811, 450.1817, 450.1842a, 450.1855a, 450.2011, 450.2041, 450.2042, and 450.2062), sections 132, 212, 217, 301, 302, 303, 404, 415, 567, 602, 701, 706, 707, 762, 801, 817, and 1041 as amended and sections 336, 489, 491a, 564a, 703a, 724, and 855a as added by 1989 PA 121, sections 209, 344, 345, 472, 528, 551, 564b, 631, 712, 735, 753, 805, 811, 842a, 1042, and 1062 as amended by 1993 PA 91, and section 641 as amended by 1982 PA 407, and by adding sections 406, 488, and 736; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

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. 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.

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. 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.

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 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).

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.

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 prior to 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 prior to 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 the certificate of merger under this subsection shall be treated as a new certificate of assumed name.

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.

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.

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, 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.

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.

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) Shares of a corporation acquired by the corporation may be pledged as security for the payment of the purchase price of the shares and, until the purchase price is paid by the corporation, the shares of the corporation acquired by the corporation are not canceled and do not constitute authorized but unissued shares. However, the acquired and pledged shares shall not be voted directly or indirectly at any meeting or otherwise 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 pledge agreement in the event of default. Upon payment of the purchase price, the acquired and pledged 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.

Sec. 345. (1) A board may authorize and the corporation may make distributions to its shareholders subject 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.

Sec. 404. (1) Except as otherwise provided in this act, written notice of the time, place, 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, either personally or by mail, to each shareholder of record entitled to vote at the meeting.

(2) Unless the corporation has securities registered under section 12 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 to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only business is transacted that might have been transacted at the original meeting. 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.

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. After the polls close, no ballots, proxies, or votes nor any revocations or changes to ballots, proxies, or votes may be accepted.

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.

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.

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.

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) It governs, in general or in regard to specific matters, 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. If amended by an amendment to the articles of incorporation or bylaws, the amendment shall be approved by all shareholders. If amended by written agreement, the amendment shall be in a writing signed by all shareholders and made known to the corporation.

(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, at the time ownership is transferred, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is deemed to have 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 adopt an amendment to the articles of incorporation or bylaws, without shareholder action, 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 shall be treated as a director or directors for purposes of any indemnification and any limitation on liability under section 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.

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) Award of damages to the corporation or a shareholder.

(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.

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.

Sec. 528. (1) A committee designated pursuant to section 527, to the extent provided in the 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.

(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 the resolution, articles, or 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.

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.

Sec. 564a. (1) Except as otherwise provided in subsection (5), an indemnification under section 561 or 562, unless ordered by the court, shall be made by the corporation only as authorized 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) By independent legal counsel in a written opinion, which counsel shall be 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 as 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.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, 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 both of the following apply:

(a) The person furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct set forth in sections 561 and 562.

(b) 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 standard of conduct set forth in sections 561 and 562.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the person but need not be secured and may be accepted without reference to the financial ability of the person to make repayment.

(3) Determinations and evaluations under this section shall be made in the manner specified in section 564a(1), and authorizations shall be made in the manner specified in section 564a(4).

(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.

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).

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.

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

(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 approved by the shareholders as provided in this section.

(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 each such class or series. The voting requirements of this section are subject to greater requirements as prescribed by this act for specific amendments, or as may be provided by the articles of incorporation.

(6) Any number of amendments may be acted upon at 1 meeting.

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

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.

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.

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.

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 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, under section 762, are entitled to dissent, 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 shall be approved upon receiving 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 the sole purpose of which is to change the corporation's jurisdiction of incorporation.

(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.

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 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.

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.

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.

(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.

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.

Sec. 735. (1) One or more foreign corporations may merge or enter into a share exchange with 1 or more domestic corporations if the following apply:

(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 all of the following:

(*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.

(*iii*) The applicable provisions of section 1021 or 1035 if the foreign corporation is authorized to transact business in this state.

(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.

(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.

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 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.

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 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.

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.

(2) The board must recommend the proposed transaction 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 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, under section 762, are entitled to dissent 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 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.

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 by 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) An amendment of the articles of incorporation giving rise to a right to dissent pursuant to section 621.

(e) A transaction giving rise to a right to dissent pursuant to section 754.

(f) 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.

(g) The approval of a control share acquisition giving rise to a right to dissent pursuant to section 799.

(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 not requiring shareholder vote under section 713.

(b) A transaction described in subsection (1)(a) in which shareholders receive cash or shares that satisfy the requirements of subdivision (a) on the effective date of the merger or any combination thereof.

(c) A transaction described in subsection (1)(b) in which shareholders receive cash or shares that satisfy the requirements of subdivision (a) on the effective date of the share exchange or any combination thereof.

(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, where the transaction is for cash or shares that satisfy the requirements of subdivision (a) on the date of closing or any combination thereof.

(3) A shareholder entitled to dissent and obtain payment for his or her shares pursuant to subsection (1)(a) to (e) 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 pursuant to subsection (1)(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.

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.

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.

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.

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.

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 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.

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.

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.

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.

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.

Sec. 1062. (1) A domestic corporation or cooperative association, organized for profit, and a domestic regulated investment company, at the time of filing its articles of incorporation, shall pay to the administrator, as an initial organization fee and as an initial admission fee, a sum equal to $50.00 for the first 60,000 authorized shares and $30.00 for each additional 20,000 authorized shares or portion of 20,000 authorized shares, up to a maximum fee of $5,000.00 for the first 10,000,000 authorized shares. The fee is $30.00 for each 20,000 authorized shares or portion of 20,000 authorized shares in excess of 10,000,000 shares up to a maximum of $200,000.00 for the filing.

(2) The initial admission franchise 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 an additional organization fee of $30.00 for each increase

of 20,000 authorized shares or portion of 20,000 authorized shares. The maximum additional fee on the increase shall not exceed $5,000.00 if the corporation's total authorized shares after the increase is 10,000,000 shares or fewer. The corporation shall pay an additional fee of $30.00 for each 20,000 additional shares or portion of 20,000 additional shares to the extent that the total authorized shares after the increase exceeds 10,000,000 shares up to a maximum of $200,000.00 for each filing.

(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 an additional admission franchise fee of $30.00 for each increase of 20,000 authorized shares or portion of 20,000 authorized shares attributable to this state. The maximum additional fee shall not exceed $5,000.00 if the corporation's total authorized shares attributable to this state after the increase is 10,000,000 shares or fewer. The corporation shall pay an additional fee of $30.00 for each 20,000 additional shares or portion of 20,000 additional shares to the extent that the total authorized shares attributable to this state after the increase exceeds 10,000,000 shares up to a maximum of $200,000.00 for each filing.

(5) The number of authorized shares attributable to this state shall be 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. 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 the 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 partnership associations limited, cooperative associations, joint associations having any of the powers of corporations, and common law trusts created by a statute of this state, another state, or a country exercising common law powers in the nature of corporations, 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, the 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 franchise fees 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 franchise fee.

Enacting section 1. Sections 368 and 463 of the business corporation act, 1972 PA 284, MCL 450.1368 and 450.1463, are repealed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Clerk of the House of Representatives.

Approved _____

_____

Governor.