

Act No. 57
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Senators Bullard and Steil

ENROLLED SENATE BILL No. 206

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 105, 106, 122, 123, 131, 133, 141, 143, 151, 338, 342a, 344, 404, 405, 407, 413, 488, 489, 521, 525, 563, 564b, 703a, 753, 754, 901, and 1060 (MCL 450.1105, 450.1106, 450.1122, 450.1123, 450.1131, 450.1133, 450.1141, 450.1143, 450.1151, 450.1338, 450.1342a, 450.1344, 450.1404, 450.1405, 450.1407, 450.1413, 450.1488, 450.1489, 450.1521, 450.1525, 450.1563, 450.1564b, 450.1703a, 450.1753, 450.1754, 450.1901, and 450.2060), sections 106, 122, 133, 141, 405, 521, 525, and 563 as amended and sections 342a and 754 as added by 1989 PA 121, section 123 as amended by 1993 PA 357, sections 131, 338, 407, and 1060 as amended by 1993 PA 91, and sections 151, 344, 404, 489, 564b, 703a, and 753 as amended and section 488 as added by 1997 PA 118, and by adding section 406a.

The People of the State of Michigan enact:

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

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

(a) The original articles of incorporation or any other instrument filed or issued under any statute to organize a domestic or foreign corporation, as amended, supplemented, or restated by certificates of amendment, merger, or consolidation or other certificates or instruments filed or issued under any statute.

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

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

(4) "Board" means board of directors or other governing board of a corporation.

(5) "Bonds" includes secured and unsecured bonds, debentures, and notes.

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

(2) "Department" means the department of consumer and industry services.

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

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

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

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

- (a) It does not directly involve the physical transmission of paper.
- (b) It creates a record that may be retained and retrieved by the recipient.
- (c) It may be directly reproduced in paper form by the recipient through an automated process.

Sec. 122. (1) A reference in any statute of this state to parts of any act that are repealed by this act is considered to be a reference to this act, unless the context requires otherwise.

(2) The following statutes do not apply to a corporation as defined in section 106:

- (a) 1846 RS 55, MCL 450.504 to 450.525.
- (b) 1955 PA 156, MCL 450.701 to 450.704.

(3) The uniform fraudulent transfer act, 1998 PA 434, MCL 566.31 to 566.43, does not apply to distributions governed by this act.

Sec. 123. (1) Unless otherwise provided in, or inconsistent with, the act under which a corporation is or has been formed, this act applies to deposit and security companies, summer resort associations, brine pipeline companies, telegraph companies, telephone companies, safety and collateral deposit companies, canal, river, and harbor improvement companies, cemetery, burial, and cremation associations, railroad, bridge, and tunnel companies, agricultural and horticultural fair societies, and professional service corporations formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235. The entities specified in this subsection shall not be incorporated under this act.

(2) This act does not apply to insurance, surety, savings and loan associations, fraternal benefit societies, and banking corporations.

Sec. 131. (1) A document required or permitted to be filed under this act shall be filed by delivering the document to the administrator together with the fees and accompanying documents required by law. The administrator may establish a procedure for accepting delivery by facsimile or other electronic transmission. If the document substantially conforms to the requirements of this act, the administrator shall endorse upon it the word "filed" with his or her official title and the date of receipt and of filing and shall file and index the document or a photostatic, micrographic, photographic, optical disc media, or other reproduced copy in his or her office. If so requested at the time of the delivery of the document to his or her office, the administrator shall include the hour of filing in his or her endorsement. The administrator shall prepare and return a true copy of the document other than an annual report, or at his or her discretion the original, to the person who submitted it for filing showing the filing date. The records and files of the administrator relating to domestic and foreign corporations shall be open to reasonable inspection by the public. The records or files, at the discretion of the administrator, may be maintained either in their original form or in photostatic, micrographic, photographic, optical disc media, or other reproduced form. The administrator may make reproductions of documents filed under this act, or any predecessor act, by photostatic, micrographic, photographic, optical disc media, or other reproduced form and may destroy the originals of the documents so reproduced.

(2) A photostatic, micrographic, photographic, optical disc media, or other reproduced copy certified by the administrator, which may be sent by facsimile or other electronic transmission, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

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

Sec. 133. If a document relating to a domestic or foreign corporation filed with the administrator under this act was at the time of filing an inaccurate record of the corporation action referred to in the document, or was defectively or erroneously executed, or the document was electronically transmitted and the electronic transmission was defective, the document may be corrected by filing with the administrator a certificate of correction on behalf of the corporation. A certificate, entitled "certificate of correction of . . . (correct title of document and name of corporation)" shall be signed as provided in this act with respect to the document being corrected and filed with the administrator. The certificate shall set forth the name of the corporation, the date the document to be corrected was filed by the administrator, the provision in the document as it should have originally appeared, and if the execution was defective, the proper execution. The corrected document is effective in its corrected form as of its original filing date except as to a person who relied upon the inaccurate portion of the document and was, as a result of the inaccurate portion of the document, adversely affected by the correction.

Sec. 141. When, under this act or the articles of incorporation or bylaws of a corporation or by the terms of an agreement or instrument, a corporation or the board or any committee of the board may take action after notice to any person or after lapse of a prescribed period of time, the action may be taken without notice and without lapse of the period of time, if at any time before or after the action is completed the person entitled to notice or to participate in the action to be taken or, in case of a shareholder, his or her attorney-in-fact, submits a signed waiver or a waiver by electronic transmission of the requirements.

Sec. 143. (1) When a notice or communication is required or permitted by this act to be given by mail, it shall be mailed, except as otherwise provided in this act, to the person to whom it is directed at the address designated by him or her for that purpose or, if none is designated, at his or her last known address. The notice or communication is given when deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. The mailing shall be registered, certified, or other first-class mail except where otherwise provided in this act.

(2) When a notice is required or permitted by this act to be given in writing, electronic transmission is written notice.

(3) When a notice or communication is permitted by this act to be transmitted electronically, the notice or communication is given when electronically transmitted to the person entitled to the notice or communication in a manner authorized by the person.

Sec. 151. (1) If the administrator 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. If the document was not originally submitted by electronic transmission, the administrator shall not give the written notice by electronic transmission. The person may seek judicial review of the refusal to file the document pursuant to sections 103, 104, and 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.303, 24.304, and 24.306.

(2) If the administrator refuses 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. 338. (1) A corporation may issue fractions of shares and may do 1 of the following:

(a) Issue certificates for fractions of shares that entitle the holders to exercise voting rights and to receive dividends and distributions in proportion to their fractional holdings.

(b) Pay in cash the fair value of fractions of shares as of the time when those entitled to receive the fractions are determined.

(c) Issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the corporation or of its agent, exchangeable as provided in the scrip for full shares. The scrip shall not entitle the holder to any right of a shareholder except as provided in the scrip. The scrip shall be issued subject to the condition that it becomes void if not exchanged for certificates representing full shares before a specified date. The scrip may be subject to the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds of the sale distributed to the holders of the scrip, or subject to any other condition that the board may determine.

(2) A corporation may provide reasonable opportunity for persons entitled to fractions of a share or scrip to sell them or to purchase additional fractions of a share or scrip needed to acquire a full share.

Sec. 342a. (1) A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

(2) The terms and conditions of any right, option, or warrant issued under subsection (1), including those outstanding on the effective date of the amendatory act that added this subsection, may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer, or receipt of the right, option, or warrant by any person owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of a corporation, or any transferee or transferees of that person, or that invalidate or void the right, option, or warrant held by a person or his or her transferee.

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) A corporation that acquires its own shares may grant a security interest in the shares as security for the payment of the purchase price of the shares. Any shares acquired by the corporation in which it has granted a security interest are not canceled and do not constitute authorized but unissued shares until the corporation pays the purchase price. If the corporation has granted a security interest in the shares, the shares shall not be voted directly or indirectly 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 agreement creating the security interest in the event of default. Upon payment of the purchase price, the 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. 404. (1) Except as otherwise provided in this act, written notice of the time, place if any, 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 to each shareholder of record entitled to vote at the meeting. Notice may be given personally, by mail, or by electronic transmission. If a shareholder or proxy holder may be present and vote at the meeting by remote communication, the means of remote communication allowed shall be included in the notice.

(2) Unless the corporation has securities registered under section 12 of title I of the securities exchange act of 1934, chapter 404, 48 Stat. 892, 15 U.S.C. 78l, 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 if any, to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. A shareholder or proxy holder may be present and vote at the adjourned meeting by a means of remote communication if he or she was permitted to be present and vote by that means of remote communication in the original meeting notice. At the adjourned meeting, only business that might have been transacted at the original meeting may be transacted if a notice of the adjourned meeting is not given. If after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder 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. 405. (1) Unless otherwise restricted by the articles of incorporation or bylaws, a shareholder may participate in a meeting of shareholders by a conference telephone or by other means of remote communication through which all persons participating in the meeting may communicate with the other participants. All participants shall be advised of the means of remote communication and the names of the participants in the meeting shall be divulged to all participants.

(2) Participation in a meeting pursuant to this section constitutes presence in person at the meeting.

(3) Unless otherwise restricted by the articles of incorporation or bylaws, the board of directors may hold a meeting of shareholders conducted solely by means of remote communication.

(4) Subject to any guidelines and procedures adopted by the board of directors, shareholders and proxy holders not physically present at a meeting of shareholders may participate in the meeting by means of remote communication and are considered present in person and may vote at the meeting if all of the following are met:

(a) The corporation implements reasonable measures to verify that each person considered present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy holder.

(b) The corporation implements reasonable measures to provide each shareholder and proxy holder a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings.

(c) If any shareholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action is maintained by the corporation.

Sec. 406a. In addition to any other form of notice to a shareholder permitted by the articles of incorporation, the bylaws, or this chapter, any notice given to a shareholder by a form of electronic transmission to which the shareholder has consented is effective.

Sec. 407. (1) The articles of incorporation may provide that any action required or permitted by this act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. A written consent shall bear the date of signature of the shareholder who signs the consent. Written consents are not effective to take corporate action unless within 60 days after the record date for determining shareholders entitled to express consent to or to dissent from a proposal without a meeting, written consents dated not more than 10 days before the record date and signed by a sufficient number of shareholders to take the action are delivered to the corporation. Delivery shall be to the corporation's registered office, its principal place of business, or an officer or agent of the corporation having custody of the minutes of the proceedings of its shareholders. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to shareholders who would have been entitled to notice of the shareholder meeting if the action had been taken at a meeting and who have not consented to the action in writing. If the action consented to would have required filing of a certificate under any other section of this act if the action had been voted upon by shareholders at a meeting of the shareholders, the certificate filed under the other section shall state, in lieu of any statement required by the section concerning a vote of shareholders, that both written consent and written notice have been given as provided in this section.

(2) Any action required or permitted by this act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if before or after the action all the shareholders entitled to vote consent in writing. If the action consented to would have required filing of a certificate under any other section of this act if the action had been voted upon by shareholders at a meeting, the certificate filed under the other section shall state, in lieu of any statement required by the section concerning a vote of shareholders, that written consent has been given as provided in this section.

(3) An electronic transmission consenting to an action transmitted by a shareholder or proxy holder, or by a person authorized to act for the shareholder or proxy holder, is written, signed, and dated for the purposes of this section if the electronic transmission is delivered with information from which the corporation can determine that the electronic transmission was transmitted by the shareholder or proxy holder, or by the person authorized to act for the shareholder or proxy holder, and the date on which the electronic transmission was transmitted. The date on which an electronic transmission is transmitted is the date on which the consent was signed for purposes of this section. A consent given by electronic transmission is not delivered until reproduced in paper form and the paper form delivered to the corporation by delivery to its registered office in this state, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded. Delivery to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Delivery to a corporation's principal place of business or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of shareholders are recorded shall be made by hand, by certified or registered mail, return receipt requested, or in any other manner provided in the articles of incorporation or bylaws or by resolution of the board of directors of the corporation.

Sec. 413. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make and certify a complete list of the shareholders entitled to vote at a shareholders' meeting or any adjourned shareholders' meeting. The list shall be all of the following:

(a) Arranged alphabetically within each class and series, with the address of and the number of shares held by each shareholder.

(b) Produced at the time and place of the meeting.

(c) Subject to inspection by any shareholder during the entire meeting. If the meeting is held solely by means of remote communication, then the list shall be open to the examination of any shareholder during the entire meeting by posting the list on a reasonably accessible electronic network and the information required to access the list shall be provided with the notice of the meeting.

(d) Prima facie evidence as to who are the shareholders entitled to examine the list or to vote at the meeting.

(2) If the requirements of this section have not been complied with, and a shareholder present in person or by proxy in good faith challenges the existence of sufficient votes to carry any action at the meeting, the meeting shall be adjourned until the requirements are complied with. Failure to comply with the requirements of this section does not affect the validity of an action taken at the meeting before a challenge described in this subsection.

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) In general or in regard to specific matters, it governs 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.

(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 did not have knowledge of the existence of the agreement at the time ownership is transferred is entitled to rescission of the purchase. A purchaser has 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 without shareholder action adopt an amendment to the articles of incorporation or bylaws 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 are 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) An award of damages to the corporation or a shareholder. An action seeking an award of damages must be commenced within 3 years after the cause of action under this section has accrued, or within 2 years after the shareholder discovers or reasonably should have discovered the cause of action under this section, whichever occurs first.

(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.

(3) As used in this section, “willfully unfair and oppressive conduct” means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

Sec. 521. (1) Regular or special meetings of a board may be held either in or outside this state.

(2) A regular meeting may be held with or without notice as prescribed in the bylaws. A special meeting shall be held upon notice as prescribed in the bylaws. A director’s attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting. Unless required by the bylaws, neither the business to be transacted at, nor the purpose of, a regular or special meeting need be specified in the notice or waiver of notice of the meeting.

(3) Unless otherwise restricted by the articles of incorporation or bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or other means of remote communication through which all persons participating in the meeting can communicate with the other participants. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

Sec. 525. Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board, may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

Sec. 563. To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in section 561 or 562, or in defense of a claim, issue, or matter in the action, suit, or proceeding, the corporation shall indemnify him or her against actual and reasonable expenses, including attorneys’ fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this section.

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 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 applicable standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) The undertaking required by subsection (1) 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) An evaluation of reasonableness under this section shall be made in the manner specified in section 564a(1) for an evaluation of reasonableness of expenses, and an authorization shall be made in the manner specified in section 564a(4) unless an advance is mandatory.

(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. 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, events occurring after the board adopts the plan, contractual obligations, 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 are entitled to dissent under section 762 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 is approved if it receives 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 or share exchange, if the board of directors determines on a reasonable basis that the class or series is to receive consideration under the plan of merger or share exchange that has a fair value that is not less than the fair value of the shares of the class or series on the date of adoption of the plan.

(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.

(g) A plan of merger or share exchange may provide for differing forms of consideration for holders of shares within the same class based upon the election of the holders, the amount of shares held, or another reasonable basis.

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. A corporation has not disposed of all or substantially all of its property and assets if it retains a significant continuing business activity. For purposes of this subsection, it is conclusively presumed that a corporation has retained a significant continuing business activity if the corporation retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis.

(2) The board must recommend the proposed transaction to the shareholders unless the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, 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 are entitled to dissent under section 762 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 on a consolidated basis 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. 754. Shareholders of a corporation that proposes to issue, directly or through a subsidiary, its shares, obligations, or securities in the course of a merger, acquisition of some or all of the outstanding shares of another corporation or interests in another entity, or acquisition of some or all of the assets other than cash of a corporation or other entity, have the rights to receive notice and to vote on the proposed merger or acquisition provided in section 703a(2) and to receive dissenters' rights as provided in section 762 if both of the following apply:

(a) The securities to be issued or delivered in the acquisition are or may be converted into shares of the acquiring corporation's common stock.

(b) The number of the acquiring corporation's common shares to be issued or delivered, plus those initially issuable upon conversion or exchange of any other securities to be issued or delivered, will exceed 100% of the number of its common shares outstanding immediately prior to the acquisition plus the number of its common shares, if any, initially issuable upon conversion or exchange of any other securities then outstanding.

Sec. 901. (1) Each domestic corporation at least once in each year shall cause a financial report of the corporation for the preceding fiscal year to be made and distributed to each shareholder thereof within 4 months after the end of the fiscal year. The report shall include the corporation's statement of income, its year-end balance sheet, its statement of source and application of funds if prepared by the corporation, and any other information as may be required by this act.

(2) The financial report required by subsection (1) may be distributed electronically, either by electronic transmission of the report or by making the report available for electronic transmission. If the report is distributed electronically under this subsection, the corporation shall provide the report in written form to a shareholder on request.

Sec. 1060. (1) The fees to be paid to the administrator when the documents described in this subsection are delivered to him or her for filing are as follows:

(a) Articles of domestic corporations, \$10.00.

(b) Application of a foreign corporation for a certificate of authority to transact business in this state, \$10.00.

(c) Amendment to the articles of a domestic corporation, \$10.00.

(d) Amended application for a certificate of authority to transact business in this state, \$10.00.

(e) Certificate of merger or share exchange as provided in chapter 7, \$50.00.

(f) Certificate attesting to the occurrence of a merger of a foreign corporation as provided in section 1021, \$10.00.

(g) Certificate of dissolution, \$10.00.

(h) Application for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, \$10.00.

(i) Application for reservation of corporate name, \$10.00.

(j) Certificate of assumed name or a certificate of termination of assumed name, \$10.00.

(k) Statement of change of registered office or resident agent, \$5.00.

(l) Restated articles of domestic corporations, \$10.00.

- (m) Certificate of abandonment, \$10.00.
- (n) Certificate of correction, \$10.00.
- (o) Certificate of revocation of dissolution proceedings, \$10.00.
- (p) Certificate of renewal of corporate existence, \$10.00.
- (q) For examining a special report required by law, \$2.00.
- (r) Certificate of registration of corporate name of a foreign corporation, \$50.00.
- (s) Certificate of renewal of registration of corporate name of a foreign corporation, \$50.00.
- (t) Certificate of termination of registration of corporate name of a foreign corporation, \$10.00.

(2) The fees prescribed in subsection (1), no part of which shall be refunded, shall be in addition to the franchise fees prescribed in this act, and shall, when collected, be paid into the treasury of the state and credited to the administrator to be used solely by the department in carrying out those duties required by law.

(3) Fees paid by or on behalf of domestic and foreign regulated investment companies as defined in section 1064 are the same as are charged foreign and domestic corporations for the purposes specified in this section.

(4) The fees received pursuant to section 915 shall be deposited in the state treasury to the credit of the administrator to be used by the department in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of the state.

(5) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a corporation for which provision for payment is not set forth in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies pursuant to a schedule of fees which the administrator shall adopt with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection to be used by the department to defray the costs for its copying and certifying services.

(6) If a domestic or foreign corporation pays fees or penalties by check and the check is dishonored, the fee is unpaid and the filing of all related documents will be rescinded.

(7) The administrator may accept a credit card, in lieu of cash or check, as payment of a fee under this act. The administrator shall determine which credit cards may be accepted for payment.

(8) The administrator may charge a nonrefundable fee of up to \$50.00 for any document submitted or certificate sent by facsimile or electronic transmission. The administrator shall retain the revenue collected under this section and to be used by the department in carrying out its duties required by law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Ray E. Randall

Clerk of the House of Representatives.

Approved

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Governor.