

# SENATE BILL No. 218

February 26, 2003, Introduced by Senators ALLEN and SCHAUER and referred to the Committee on Commerce and Labor.

A bill to amend 1972 PA 284, entitled  
"Business corporation act,"  
by amending sections 506, 511, 611, and 798 (MCL 450.1506,  
450.1511, 450.1611, and 450.1798), sections 506 and 511 as  
amended by 1989 PA 121, section 611 as amended by 1997 PA 118,  
and section 798 as added by 1988 PA 58.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 506. (1) The articles of incorporation or a bylaw  
2 adopted by the shareholders or incorporators may provide that in  
3 lieu of annual election of all directors, the ~~directors be~~  
4 **board is** divided into 2 or 3 classes, each ~~to be~~ **with** as nearly  
5 equal ~~in~~ **a number of directors** as possible. The term of office  
6 of directors in the first class shall expire at the first annual  
7 meeting of shareholders after their election, that of the second  
8 class shall expire at the second annual meeting after their

1 election, and that of the third class, if any, shall expire at  
2 the third annual meeting after their election. At each annual  
3 meeting after ~~such classification,~~ **the directors are divided**  
4 **into classes, the shareholders shall elect** a number of directors  
5 equal to the number of the class whose term expires at the time  
6 of the meeting, ~~shall be elected~~ to hold office until the  
7 second succeeding annual meeting if there are 2 classes ~~—~~ or  
8 until the third succeeding annual meeting if there are 3  
9 classes.

10 (2) Unless the articles of incorporation otherwise provide,  
11 if a board is divided into classes under subsection (1), a  
12 corporation shall not by amendment to its articles of  
13 incorporation or bylaws reduce the term of office of a director,  
14 amend or repeal a provision dividing the board into classes, or  
15 increase or decrease the number of directors without the prior  
16 approval of a majority of the directors then in office.

17 (3) ~~(2)~~ A corporation ~~having~~ **that has** more than 1 class  
18 or series of shares may provide in its articles for election of 1  
19 or more directors by shareholders of a class or series, to the  
20 exclusion of other shareholders.

21 Sec. 511. (1) The shareholders may remove 1 or more  
22 directors with or without cause unless the articles of  
23 incorporation provide that directors may be removed only for  
24 cause **and except that, for a corporation whose board is divided**  
25 **into classes under section 506(1), shareholders may remove**  
26 **directors only for cause unless the articles of incorporation**  
27 **allow removal without cause.** The vote ~~for removal shall be by~~

1 of a majority of shares entitled to vote at an election of  
 2 directors **is required for removal** except that the articles may  
 3 require a higher vote for removal without cause. This section  
 4 ~~shall~~ **does** not invalidate any bylaw adopted before ~~the~~  
 5 ~~effective date of the act which added this sentence~~ **October 1,**  
 6 **1989** insofar as the bylaw applies to removal without cause.

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

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

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

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

1 (a) Extend the duration of the corporation if it was  
2 incorporated at a time when limited duration was required by  
3 law.

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

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

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

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

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

19 (3) Other amendments of the articles of incorporation, except  
20 as otherwise provided in this act, shall be approved by the  
21 shareholders as provided in this section.

22 **(4) If a corporation has securities registered under section**  
23 **12 of the securities exchange act of 1934, chapter 404, 48**  
24 **Stat. 892, 15 U.S.C. 78l, a proposed amendment to the articles of**  
25 **incorporation must be adopted by the board of directors.**

26 **(5) —(4)—** Notice of a meeting setting forth the proposed  
27 amendment or a summary of the changes to be effected by the

1 proposed amendment shall be given to each shareholder of record  
2 entitled to vote on the proposed amendment within the time and in  
3 the manner provided in this act for giving notice of meetings of  
4 shareholders.

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

17       **(7)** ~~—(6)— Any—~~ **The shareholders may act on any** number of  
18 amendments ~~—may be acted upon at 1—~~ **at a** meeting.

19       **(8)** ~~—(7)—~~ Upon adoption, a certificate of amendment shall be  
20 filed as provided in section 631.

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

26       (2) To be approved **by the shareholders** under ~~—this section,~~  
27 ~~the—~~ **subsection (1), a** resolution shall be approved by ~~—both—~~ **all**

1 of the following:

2 (a) A majority of the votes cast by the ~~holders of shares~~  
3 **shareholders** entitled to vote ~~thereon, and if the~~ **on the**  
4 **resolution.**

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

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

15 (3) To be approved by the directors under subsection (1), a  
16 resolution shall be approved by 1 of the following:

17 (a) If before or at the time of a control share acquisition,  
18 by a majority of the directors.

19 (b) If after a control share acquisition, by a majority of  
20 those directors in office at the time of the approval who also  
21 were directors at the time of the control share acquisition.