

HOUSE BILL No. 5323

October 18, 2005, Introduced by Reps. Tobocman and Huizenga and referred to the Committee on Commerce.

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
by amending sections 106, 261, and 489 (MCL 450.1106, 450.1261, and
450.1489), sections 106 and 489 as amended by 2001 PA 57 and
section 261 as amended by 1993 PA 91.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) "Department" means the department of ~~consumer and~~
6 ~~industry services~~ **LABOR AND ECONOMIC GROWTH.**

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

1 (4) "Distribution" means a direct or indirect transfer of
2 money or other property, except the corporation's shares, or the
3 incurrence of indebtedness by the corporation to or for the benefit
4 of its shareholders in respect to the corporation's shares. A
5 distribution may be in the form of a dividend, a purchase,
6 redemption or other acquisition of shares, an issuance of
7 indebtedness, or any other declaration or payment to or for the
8 benefit of the shareholders.

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

11 (a) It does not directly involve the physical transmission of
12 paper.

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

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

17 Sec. 261. A corporation, subject to any limitation provided in
18 this act, in any other statute of this state, or in its articles of
19 incorporation, shall have power in furtherance of its corporate
20 purposes to do all of the following:

21 (a) Have perpetual duration.

22 (b) Sue and be sued in all courts and participate in actions
23 and proceedings, judicial, administrative, arbitratative, or
24 otherwise, in the same manner as natural persons.

25 (c) Have a corporate seal, and alter the seal, and use it by
26 causing it or a facsimile to be affixed, impressed, or reproduced
27 in any other manner.

1 (d) Adopt, amend, or repeal bylaws, including emergency
2 bylaws, relating to the business of the corporation, the conduct of
3 its affairs, its rights and powers and the rights and powers of its
4 shareholders, directors, or officers.

5 (e) Elect or appoint officers, employees, and other agents of
6 the corporation, prescribe their duties, fix their compensation and
7 the compensation of directors, and indemnify corporate directors,
8 officers, employees, and agents.

9 (f) Purchase, receive, take by grant, gift, devise, bequest or
10 otherwise, lease, or otherwise acquire, own, hold, improve, employ,
11 use and otherwise deal in and with, real or personal property, or
12 an interest in real or personal property, wherever situated.

13 (g) Sell, convey, lease, exchange, transfer, or otherwise
14 dispose of, or mortgage or pledge, or create a security interest in
15 any of its property or an interest in its property, wherever
16 situated.

17 (h) Purchase, take, receive, subscribe for, or otherwise
18 acquire, own, hold, vote, employ, sell, lend, lease, exchange,
19 transfer or otherwise dispose of, mortgage, pledge, use and
20 otherwise deal in and with, bonds and other obligations, shares or
21 other securities or interests issued by others, whether engaged in
22 similar or different business, governmental, or other activities,
23 including banking corporations or trust companies. A corporation
24 organized or transacting business in this state under this act
25 shall not guarantee or become surety upon a bond or other
26 undertaking securing the deposit of public money.

27 (i) Make contracts, give guarantees and incur liabilities,

1 borrow money at rates of interest as the corporation may determine,
2 issue its notes, bonds, and other obligations, and secure any of
3 its obligations by mortgage or pledge of any of its property or an
4 interest in its property, wherever situated. This power shall
5 include the power to give guarantees ~~which~~ **THAT** are necessary or
6 convenient to the conduct, promotion, or attainment of the business
7 of any of the following corporations, whether or not subject to
8 this act, ~~which~~ **AND DOMESTIC OR FOREIGN LIMITED LIABILITY**
9 **COMPANIES, AND THOSE** guarantees shall be considered to be in
10 furtherance of the corporate purposes of the contracting
11 corporation:

12 (i) All of the outstanding shares **OR INTERESTS** of which are
13 owned, directly or indirectly, by the contracting corporation.

14 (ii) A corporation ~~which~~ **OR LIMITED LIABILITY COMPANY THAT**
15 owns, directly or indirectly, all of the outstanding shares of the
16 contracting corporation.

17 (iii) All of the outstanding shares **OR INTERESTS** of which are
18 owned, directly or indirectly, by a corporation, whether or not
19 subject to this act, ~~which~~ **OR A LIMITED LIABILITY COMPANY THAT**
20 owns, directly or indirectly, all of the outstanding shares of the
21 contracting corporation.

22 (j) Lend money, invest and reinvest its funds, and take and
23 hold real and personal property as security for the payment of
24 funds so loaned or invested.

25 (k) Make donations for any of the following: The public
26 welfare; community fund or hospital; or a charitable, educational,
27 scientific, civic, or similar purpose. A corporation also has the

1 power to provide aid in time of war or other national emergency.

2 (l) Pay pensions, establish and carry out pension, profit
3 sharing, share bonus, share purchase, share option, savings, thrift
4 and other retirement, incentive and benefit plans, trusts, and
5 provisions for any of its directors, officers, and employees.

6 (m) Purchase, receive, take, otherwise acquire, own, hold,
7 sell, lend, exchange, transfer, otherwise dispose of, pledge, use
8 and otherwise deal in and with its own shares, bonds, and other
9 securities.

10 (n) Participate with others in any corporation, partnership,
11 limited partnership, joint venture, or other association of any
12 kind, or in any transaction, undertaking, or agreement which the
13 participating corporation would have power to conduct by itself,
14 whether or not the participation involves sharing or delegation of
15 control with or to others.

16 (o) Cease its corporate activities and dissolve.

17 (p) Transact business, carry on its operations, and have
18 offices and exercise the powers granted by this act in any
19 jurisdiction in or outside the United States.

20 (q) Have and exercise all powers necessary or convenient to
21 effect any purpose for which the corporation is formed.

22 (r) Participate as a member of any mutual insurance company
23 for purposes of insuring property or activities relative to nuclear
24 facilities owned, operated, constructed, or being constructed by
25 the corporation.

26 Sec. 489. (1) A shareholder may bring an action in the circuit
27 court of the county in which the principal place of business or

1 registered office of the corporation is located to establish that
2 the acts of the directors or those in control of the corporation
3 are illegal, fraudulent, or willfully unfair and oppressive to the
4 corporation or to the shareholder. If the shareholder establishes
5 grounds for relief, the circuit court may make an order or grant
6 relief as it considers appropriate, including, without limitation,
7 an order providing for any of the following:

8 (a) The dissolution and liquidation of the assets and business
9 of the corporation.

10 (b) The cancellation or alteration of a provision contained in
11 the articles of incorporation, an amendment of the articles of
12 incorporation, or the bylaws of the corporation.

13 (c) The cancellation, alteration, or injunction against a
14 resolution or other act of the corporation.

15 (d) The direction or prohibition of an act of the corporation
16 or of shareholders, directors, officers, or other persons party to
17 the action.

18 (e) The purchase at fair value of the shares of a shareholder,
19 either by the corporation or by the officers, directors, or other
20 shareholders responsible for the wrongful acts.

21 (f) An award of damages to the corporation or a shareholder.
22 An action seeking an award of damages must be commenced within 3
23 years after the cause of action under this section has accrued, or
24 within 2 years after the shareholder discovers or reasonably should
25 have discovered the cause of action under this section, whichever
26 occurs first.

27 (2) No action under this section shall be brought by a

1 shareholder whose shares are listed on a national securities
2 exchange or regularly traded in a market maintained by 1 or more
3 members of a national or affiliated securities association.

4 (3) As used in this section, "willfully unfair and oppressive
5 conduct" means a continuing course of conduct or a significant
6 action or series of actions that substantially interferes with the
7 interests of the shareholder as a shareholder. **WILLFULLY UNFAIR AND**
8 **OPPRESSIVE CONDUCT MAY INCLUDE THE TERMINATION OF EMPLOYMENT OR**
9 **LIMITATIONS ON EMPLOYMENT BENEFITS TO THE EXTENT THAT THE ACTIONS**
10 **INTERFERE WITH DISTRIBUTIONS OR OTHER SHAREHOLDER INTERESTS**
11 **DISPROPORTIONATELY AS TO THE AFFECTED SHAREHOLDER.** The term does
12 not include conduct or actions that are permitted by an agreement,
13 the articles of incorporation, the bylaws, or a consistently
14 applied written corporate policy or procedure.