

BUSINESS CORPORATION ACT (EXCERPT)

Act 284 of 1972

CHAPTER 4

SHAREHOLDERS

450.1401 Meetings of shareholders; place.

Sec. 401. Meetings of shareholders may be held at a place within or without this state as provided in the bylaws. In the absence of such a provision, meetings shall be held at the registered office or such other place as may be determined by the board.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1402 Annual meeting of shareholders.

Sec. 402. An annual meeting of shareholders for election of directors and for such other business as may come before the meeting shall be held at a time as provided in the bylaws, unless such action is taken by written consent as provided in section 407. Failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or any adjournment thereof, does not affect otherwise valid corporate acts or work a forfeiture or give cause for dissolution of the corporation, except as provided in section 823. If the annual meeting is not held on the date designated therefor, the board shall cause the meeting to be held as soon thereafter as convenient. If the annual meeting is not held for 90 days after the date designated therefor, or if no date has been designated for 15 months after organization of the corporation or after its last annual meeting, the circuit court of the county in which the principal place of business or registered office of the corporation is located, upon application of a shareholder, may summarily order the meeting or the election, or both, to be held at such time and place, upon such notice and for the transaction of such business as may be designated in the order. At any such meeting ordered to be called by the court, the shareholders present in person or by proxy and having voting powers constitute a quorum for transaction of the business designated in the order.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1403 Special meeting of shareholders.

Sec. 403. A special meeting of shareholders may be called by the board, or by officers, directors or shareholders as provided in the bylaws. Notwithstanding any such provision, upon application of the holders of not less than 10% of all the shares entitled to vote at a meeting, the circuit court of the county in which the principal place of business or registered office is located, for good cause shown, may order a special meeting of shareholders to be called and held at such time and place, upon such notice and for the transaction of such business as may be designated in the order. At any such meeting ordered to be called by the court, the shareholders present in person or by proxy and having voting powers constitute a quorum for transaction of the business designated in the order.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1404 Meetings of shareholders; notice; adjournment; result of shareholder's attendance at meeting.

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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1405 Participating in meeting of shareholders by conference telephone or remote communications.

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 if all of the following are met:

(a) The use of the means of remote communication is authorized by the board of directors in its sole discretion.

(b) The means of remote communication meet the requirements of subsection (4).

(c) All participants are advised of the means, if any, of remote communication.

(2) Participation in a meeting under 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) If authorized by the board of directors in its sole discretion, and subject to any guidelines and procedures adopted by the board of directors, shareholders and proxy holders that are 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.

History: Add. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013;—Am. 2018, Act 85, Eff. June 24, 2018.

450.1406 Meeting of shareholders; duties of chairperson.

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.

History: Add. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1406a Electronic transmission as notice; consent.

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.

History: Add. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1407 Corporate action without meeting, notice, or vote of shareholders.

Sec. 407. (1) The articles of incorporation may provide that any action required or permitted under 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 that have at least 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 that 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 that has 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 that would have been entitled to notice of the shareholder meeting if the action had been taken at a meeting and that 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 on by shareholders at a meeting of the shareholders, the certificate filed under the other section shall state, in lieu of any statement required under that 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 under 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 under that 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 that has 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 that has 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.

(4) A person may execute a shareholder consent under this section that directs that the shareholder consent will take effect at a future time. All of the following apply for purposes of this subsection:

(a) The person may provide the direction through an agent or in some other manner.

(b) Subject to subdivision (c), the person shall select a specific date on which the consent takes effect that is not more than 60 days after the date the person provides the direction.

(c) The person may direct that the consent will take effect at the time a specified future event occurs rather than on a specific date under subdivision (b), if that event will occur not more than 60 days after the date the person provides the direction.

(d) The consent shall only take effect if the person is a shareholder on the record date applicable to the consent under section 412(2). A person is not required to be a shareholder at the time the consent is executed or evidence of the direction is provided to the corporation for the consent to take effect.

(e) Unless otherwise provided in the direction, a direction is revocable at any time before the consent becomes effective.

(f) For the purposes of this section, if evidence of a direction under this subsection is provided to the corporation and is not revoked, the future time established in the direction is considered the time the consent takes effect and is considered the date of signature of the consent.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2018, Act 85, Eff. June 24, 2018.

450.1411 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to record date for determination of shareholders.

450.1412 Fixing record dates for certain purposes.

Sec. 412. (1) For the purpose of determining shareholders entitled to notice of and to vote at a meeting of shareholders or an adjournment of a meeting, the bylaws may provide for fixing, or in the absence of a provision the board may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted by the board. The date shall not be more than 60 nor less than 10 days before the date of the meeting. If a record date is not fixed, the record date for determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be the close of business on the day next preceding the day on which notice is given, or if no notice is given, the day next preceding the day on which the meeting is held. When a determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders has been made as provided in this section, the determination applies to any adjournment of the meeting, unless the board fixes a new record date under this section for the adjourned meeting.

(2) For the purpose of determining shareholders entitled to express consent to or to dissent from a proposal without a meeting, the bylaws may provide for fixing a record date, which shall not be more than 60 days before effectuation of the action proposed to be taken. In the absence of a provision, the board may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted by the board and shall not be more than 10 days after the board resolution. If a record date is not fixed and prior action by the board is required with respect to the corporate action to be taken without a meeting, the record date shall be the close of business on the day on which the resolution of the board is adopted. If a record date is not fixed and prior action by the board is not required, the record date shall be the first date on which a signed written consent is delivered to the corporation as provided in section 407.

(3) For the purpose of determining shareholders entitled to receive payment of a share dividend or distribution, or allotment of a right, or for the purpose of any other action, the bylaws may provide for fixing, or in the absence of a provision the board may fix a record date, which shall not precede the date on which the resolution fixing the record date is adopted by the board. The date shall not be more than 60 days before the payment of the share dividend or distribution or allotment of a right or other action. If a record date is not fixed, the record date shall be the close of business on the day on which the resolution of the board relating to the corporate action is adopted.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1413 List of shareholders entitled to vote.

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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1415 Shareholder meeting; quorum.

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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1974, Act 303, Imd. Eff. Oct. 21, 1974;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1421 Proxy; expiration; means; use of reproduction of writing or transmission; revocability; incompetence or death of shareholder.

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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1422 Irrevocable proxy.

Sec. 422. A proxy which is entitled "irrevocable proxy", and which states that it is irrevocable, is irrevocable when it is held by any of the following or a nominee of any of the following:

(a) A pledgee of or other holder of a security interest in the shares.

(b) A person who has purchased or agreed to purchase the shares.

(c) A creditor of the corporation who extends or continues credit to the corporation in consideration of the proxy.

(d) A person who has contracted to perform services as a director, officer, or employee of the corporation, if a proxy is required by the contract of employment.

(e) A person designated by or under an agreement under section 461.

(f) A holder of any other proxy coupled with an interest.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1423 Revocable proxy.

Sec. 423. (1) A proxy becomes revocable, notwithstanding a provision making it irrevocable, after the pledge is redeemed or the security interest is terminated, or the debt of the corporation is paid, or the period of

employment provided for in the contract of employment has terminated, or the agreement under section 461 has terminated. In a case provided for in section 422(c) or (d), the proxy is revocable 3 years after the date of the proxy or at the end of any period specified in the proxy, whichever period is less, unless the period of irrevocability is renewed by execution of a new irrevocable proxy. This subsection does not affect the duration of a proxy under section 421(2).

(2) A proxy is revocable, notwithstanding a provision making it irrevocable, by a purchaser of shares who did not know of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the face or back of the certificate representing the shares.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1431 Inspectors at shareholders' meetings.

Sec. 431. (1) If the bylaws require inspectors at a shareholders' meeting, the requirement is waived unless compliance therewith is requested by a shareholder present in person or by proxy and entitled to vote at the meeting. Unless otherwise provided in the bylaws, the board, in advance of a shareholders' meeting, may appoint 1 or more inspectors to act at the meeting or any adjournment thereof. If inspectors are not so appointed, the person presiding at a shareholders' meeting may, and on request of a shareholder entitled to vote thereat shall, appoint 1 or more inspectors. In case a person appointed fails to appear or act, the vacancy may be filled by appointment made by the board in advance of the meeting or at the meeting by the person presiding thereat.

(2) The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine challenges and questions arising in connection with the right to vote, count and tabulate votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or a shareholder entitled to vote thereat, the inspectors shall make and execute a written report to the person presiding at the meeting of any of the facts found by them and matters determined by them. The report is prima facie evidence of the facts stated and of the vote as certified by the inspectors.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1432 Procedure recognizing beneficial owner of shares as shareholder.

Sec. 432. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The procedure established may determine the extent of this recognition.

(2) The procedure may set forth any of the following:

- (a) The types of nominees to which it applies.
- (b) The rights or privileges that the corporation recognizes in a beneficial owner.
- (c) The manner in which the procedure is selected by the nominee.
- (d) The information that must be provided when the procedure is selected.
- (e) The period for which selection of the procedure is effective.
- (f) Other aspects of the rights and duties created.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1441 Voting by shareholders.

Sec. 441. (1) Each outstanding share is entitled to 1 vote on each matter submitted to a vote of the shareholders, unless otherwise provided in the articles of incorporation. A vote may be cast either orally or in writing, unless otherwise provided in the bylaws.

(2) Other than the election of directors, if an action is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote on the action, unless a greater vote is required in the articles of incorporation or another section of this act. Unless otherwise provided in the articles of incorporation, abstaining from a vote or submitting a ballot marked "abstain" with respect to an action is not a vote cast on that action. Unless otherwise provided in the articles, directors shall be elected by a plurality of the votes cast at an election.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1988, Act 58, Eff. Apr. 1, 1988;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2006, Act 66, Imd. Eff. Mar. 20, 2006.

Compiler's note: Section 2 of Act 58 of 1988 provides: "This amendatory act shall not apply to any domestic corporation before June 1, 1989, unless the corporation's board of directors adopts a resolution, pursuant to this section, electing to have this act apply to the corporation. The resolution shall specify the date after January 1, 1988 and before June 1, 1989 on which this act will apply to the corporation. The resolution shall be filed with the department of commerce, corporation and securities bureau, on or before the date that the act will apply to the corporation."

450.1442 Voting as a class or series.

Sec. 442. (1) The articles of incorporation may provide that a class or series of shares shall vote as a class or series to authorize any action, including amendment to the articles. Any voting as a class or series shall be in addition to any other vote required by this act. If voting as a class or series is provided in the articles, it shall be by the proportionate vote provided in the articles or, if a proportionate vote is not so provided, then for any action other than the election of directors, by a majority of the votes cast by the holders of shares of that class or series entitled to vote on that action.

(2) If voting as a class or series is required by this act to authorize an action, the action shall be authorized by a majority of the votes cast by the holders of shares of each class or series entitled to vote on that action, unless a greater vote is required by the articles of incorporation or another section of this act. Any voting as a class or series shall be in addition to any other vote required by this act.

(3) Unless otherwise provided in the articles of incorporation, abstaining from a vote or submitting a ballot marked "abstain" with respect to an action that requires authorization by a vote of a class or series is not a vote cast on that action.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2006, Act 67, Imd. Eff. Mar. 20, 2006.

450.1444 Voting shares standing in name of another corporation; voting pledged shares.

Sec. 444. (1) Shares standing in the name of another domestic or foreign corporation, whether or not the corporation is subject to this act, may be voted by an officer or agent, or by proxy appointed by an officer or agent or by some other person, who by action of its board or pursuant to its bylaws, shall be appointed to vote the shares.

(2) A shareholder whose shares are pledged is entitled to vote the shares until they have been transferred into the name of the pledgee, or a nominee of the pledgee.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1445 Voting shares held by representatives or fiduciaries.

Sec. 445. (1) Shares held by a person in a representative or fiduciary capacity may be voted by him without a transfer of the shares into his name.

(2) Shares held jointly by fiduciaries, where the instrument or order appointing the fiduciaries does not otherwise direct, shall be voted as follows:

(a) If only 1 fiduciary votes, his act binds all.

(b) If more than 1 fiduciary votes, the shares shall be voted as the majority of the fiduciaries determines.

(c) If the fiduciaries are equally divided as to how the shares shall be voted, a court having jurisdiction, in an action brought by any of the fiduciaries or by any beneficiary, may appoint an additional person to act with the fiduciaries in such matter, and the stock shall be voted by the majority of such fiduciaries and such additional person.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1446 Voting by joint tenants or tenants in common.

Sec. 446. Shares held by 2 or more persons as joint tenants or as tenants in common may be voted at a meeting of shareholders by any of such persons, unless another joint tenant or tenant in common seeks to vote any of such shares in person or by proxy. In the latter event, the written agreement, if any, which governs the manner in which the shares shall be voted, controls if presented at the meeting. If no such agreement is presented at the meeting, the majority in interest of the joint tenants or tenants in common present shall control the manner of voting. If there is no such majority, the shares, for the purpose of voting, shall be divided among such joint tenants or tenants in common in accordance with their interest in the shares.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1447 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to voting of treasury shares or shares sufficient to elect majority of directors of another corporation.

450.1447a Voting shares owned by second corporation.

Sec. 447a. Absent an order of a court of competent jurisdiction based upon a determination that special circumstances exist and the best interests of the corporation would be served, the shares of a corporation shall not be voted on any matter or considered to be outstanding shares for any purpose related to voting if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1448 Voting of redeemable shares.

Sec. 448. After written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, the shares shall not be voted on any matter nor deemed to be outstanding shares.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1451 Cumulative voting.

Sec. 451. The articles of incorporation may provide that a shareholder entitled to vote at an election for directors may vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving 1 candidate as many votes as the number of such directors multiplied by the number of his shares, or by distributing his votes on the same principle among any number of the candidates.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1455 Articles control where voting requirements exceed those of act.

Sec. 455. With respect to an action to be taken by the shareholders, if the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of a class or series of shares, than required by this act with respect to the action, the articles shall control. An amendment of the articles which changes or deletes such a provision shall be authorized by the vote required to amend the articles pursuant to section 611, or by the same vote as would be required to take action under the provision, whichever is greater. The failure to include a provision of the kind described in this section in the articles shall not invalidate any bylaw or agreement which would otherwise be considered valid.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1461 Voting agreements between shareholders.

Sec. 461. An agreement between 2 or more shareholders, if in writing and signed by the parties, may provide that in exercising voting rights, the shares held by them shall be voted as provided in the agreement, or as they may agree, or as determined in accordance with a procedure agreed upon by them. A voting agreement executed pursuant to this section, whether or not proxies are executed pursuant to the agreement, is not subject to sections 466 through 468. A voting agreement under this section shall be specifically enforceable.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1463 Repealed. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

Compiler's note: The repealed section pertained to management provision in articles of incorporation.

450.1466 Voting trust agreement; certificates.

Sec. 466. A shareholder may confer upon a trustee the right to vote or otherwise represent his shares for not to exceed 10 years, by entering into a written voting trust agreement setting forth the terms and conditions of the voting trust, by filing an executed counterpart of the agreement at the registered office of the corporation, and by transferring his shares to the trustee for purposes of the agreement. After filing of the agreement, certificates for shares so transferred shall be surrendered and canceled and new certificates therefor issued to the trustee stating that they are issued under the agreement. In the entry of such ownership in the records of the corporation that fact shall also be noted, and the trustee may vote the transferred shares during the term of the agreement. The filed copy of the voting trust agreement is subject to inspection at any reasonable time by a shareholder or a holder of a beneficial interest in the voting trust, in person or by agent or attorney. Voting trust certificates shall be issued to evidence beneficial interests in the voting trust.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1467 Responsibility of voting trustee; determination of right to vote and manner of voting.

Sec. 467. (1) A trustee who votes shares subject to a voting trust incurs no responsibility as shareholder, trustee or otherwise, except for his malfeasance.

(2) Where 2 or more persons are designated as voting trustees, and the right and method of voting shares in their names at a meeting of shareholders are not fixed by the agreement appointing the trustees, the right to vote and the manner of voting the shares at the meeting shall be determined by a majority of the trustees. If

the trustees are equally divided as to how the shares shall be voted, the vote shall be divided equally among the trustees.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1468 Extending duration of voting trust agreement.

Sec. 468. (1) At any time within 12 months before expiration of a voting trust agreement as originally fixed or as extended as herein provided, 1 or more beneficiaries of the voting trust, by agreement in writing and with written consent of the voting trustees, may extend the duration of the voting trust agreement with regard to the shares subject to their beneficial interest for an additional period not exceeding 10 years. The voting trustees, before expiration of the voting trust agreement as originally fixed or as previously extended, shall file in the registered office of the corporation an executed counterpart of the extension agreement and of their consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement. An extension agreement does not affect the rights or obligations of persons not parties thereto.

(2) The validity of a voting trust or of an extension thereof, otherwise lawful, is not affected during a period of 10 years from the date of its commencement by the fact that by its terms it will or may last beyond such 10-year period; but it shall become inoperative at the end of such 10-year period.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1471 Shares as personal property; shares transferable.

Sec. 471. The shares of a corporation are personal property and are transferable in accordance with article 8 of the uniform commercial code, 1962 PA 174, MCL 440.8101 to 440.8601, except as otherwise provided in this act.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2000, Act 358, Eff. Mar. 28, 2001.

450.1472 Restriction on transfer or registration of transfer of bond or share; imposition; enforcement.

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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1473 Permissible restrictions on transfer or registration of transfer of bonds or shares.

Sec. 473. In particular and without limitation of the generality of the power granted by subsection (1) of section 472 to impose restrictions, a restriction on the transfer or registration of transfer of bonds or shares of a corporation is permitted if it does any of the following:

(a) Obligates the holders of the restricted instruments to offer to the corporation or to any other holders of bonds or shares of the corporation or to any other person or to any combination thereof, a prior opportunity to acquire the restricted instruments.

(b) Obligates the corporation or a holder of bonds or shares of the corporation or any other person or any combination thereof, to purchase the instruments which are the subject of an agreement respecting the purchase and sale of the restricted instruments.

(c) Requires the corporation or the holders of a class of bonds or shares of the corporation to consent to a proposed transfer of the restricted instruments or to approve the proposed transferee of the restricted instruments.

(d) Prohibits the transfer of the restricted instruments to designated persons or classes of persons, and the designation is not contrary to public policy.

(e) Exists for the purpose of maintaining the status of the corporation as a corporation under subchapter S of the United States internal revenue code.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1481 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to preemptive rights.

450.1485 Corporate books, records, and minutes.

Sec. 485. A corporation shall keep books and records of account and minutes of the proceedings of its shareholders, board, and executive committee, if any. Unless otherwise provided in the bylaws, the books, records, and minutes may be kept outside this state. The corporation shall keep at its registered office, or at the office of its transfer agent in or outside this state, records containing the names and addresses of all shareholders, the number, class and series of shares held by each, and the dates when they respectively became holders of record. Any of the books, records, or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. A corporation shall convert into written form without charge any record not in written form, unless otherwise requested by a person entitled to inspect the record.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1487 Request for balance sheet, statement of income, and statement of source and application of funds; inspection of records; court order; definition; holder of voting trust certificate deemed shareholder.

Sec. 487. (1) Upon written request of a shareholder, a corporation shall mail to the shareholder its balance sheet as at the end of the preceding fiscal year; its statement of income for the fiscal year; and, if prepared by the corporation, its statement of source and application of funds for the fiscal year.

(2) Any shareholder of record, in person or by attorney or other agent, shall have the right during the usual hours of business to inspect for any proper purpose the corporation's stock ledger, a list of its shareholders, and its other books and records, if the shareholder gives the corporation written demand describing with reasonable particularity his or her purpose and the records he or she desires to inspect, and the records sought are directly connected with the purpose. A proper purpose shall mean a purpose reasonably related to such person's interest as a shareholder. The demand shall be delivered to the corporation at its registered office in this state or at its principal place of business. In every instance where an attorney or other agent shall be the person who seeks to inspect, the demand shall be accompanied by a power of attorney or other writing which authorizes the attorney or other agent to act on behalf of the shareholder.

(3) If the corporation does not permit an inspection within 5 business days after a demand has been received in compliance with subsection (2), or imposes unreasonable conditions upon the inspection, the shareholder may apply to the circuit court of the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. If the shareholder seeks to inspect the corporation's books and records other than its stock ledger or list of shareholders, he or she shall first establish that he or she has complied with this section respecting the form and manner of making demand for inspection of the documents, that the inspection he or she seeks is for a proper purpose, and that the documents sought are directly connected with the purpose. If the shareholder seeks to inspect the corporation's stock ledger or list of shareholders and has established compliance with this section respecting the form and manner of making demand for the inspection of the documents, the burden of proof shall be upon the corporation to establish that the inspection that is sought is for an improper purpose or that the records sought are not directly connected with the person's purpose. The court may, in its discretion, order the corporation to permit the shareholder to inspect the corporation's stock ledger, a list of shareholders, and its other books and records on conditions and with limitations as the court may prescribe and may award other or further relief as the court may consider just and proper. The court may order books, documents and records, pertinent extracts, or duly authenticated copies, to be brought within this state and kept in this state upon terms and conditions as the court may prescribe.

(4) A director shall have the right to examine any of the corporation's books and records for a purpose reasonably related to his or her position as a director. The director may apply to the circuit court of the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection. The court may, in its discretion, order the corporation to permit the director to inspect any and all books and records, on conditions and with limitations as the court may prescribe and may award other and further relief as the court may consider just and proper.

(5) If the court orders inspection of the records demanded under subsection (3) or (4), it shall also order the

corporation to pay the shareholder's or director's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it failed to permit the inspection in good faith because it had a reasonable basis to doubt the right of the shareholder or director to inspect the records demanded.

(6) As used in this section, "the right to inspect records" includes the right to copy and make extracts from the records and, if reasonable, the right to require the corporation to supply copies made by photographic, xerographic, or other means. The corporation may require the shareholder to pay a reasonable charge, covering the costs of labor and material, for copies of the documents provided to the shareholder.

(7) A holder of a voting trust certificate representing shares of the corporation is deemed a shareholder for the purpose of this section and section 485.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1488 Shareholder agreement.

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 if a specified event or contingency occurs.

(h) It establishes that shares of the corporation are assessable and includes the procedures for an assessment and the consequences of a failure by a shareholder to pay an assessment.

(i) 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) Is set forth in a provision of the articles of incorporation or bylaws approved by all persons that are shareholders at the time of the agreement, or in a written agreement that is signed by all persons that are shareholders at the time of the agreement and that is made known to the corporation.

(b) Is subject to amendment only by all persons that are shareholders at the time of the amendment, unless the agreement provides otherwise.

(3) The existence of an agreement authorized under 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 under 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 that 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 before the time ownership of the shares is transferred. An action to enforce the right of rescission authorized under 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 under 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 an agreement authorized under this section is no longer 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 under this section that limits the discretion or powers of the board shall relieve the directors of, and impose on the person or persons in which 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 under 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 under this section if shares have not been issued when the agreement is made.

(10) The failure to satisfy the unanimity requirement of subsection (2) with respect to an agreement authorized under this section does not invalidate any agreement that would otherwise be considered valid.

History: Add. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1489 Action by shareholder.

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. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected 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.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2006, Act 68, Imd. Eff. Mar. 20, 2006.

450.1491 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to parties and complaint in derivative action.

450.1491a Definitions.

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.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1492 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to discontinuance, compromise, or settlement of derivative action.

450.1492a Commencement of derivative proceeding by shareholder; criteria.

Sec. 492a. A shareholder may not commence or maintain a derivative proceeding unless the shareholder meets all of the following criteria:

(a) The shareholder was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(b) The shareholder fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

(c) The shareholder continues to be a shareholder until the time of judgment, unless the failure to continue to be a shareholder is the result of corporate action in which the former shareholder did not acquiesce and the derivative proceeding was commenced prior to the termination of the former shareholder's status as a shareholder.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1493 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to expenses of derivative action.

450.1493a Commencement of derivative proceeding by shareholder; criteria.

Sec. 493a. A shareholder may not commence a derivative proceeding until all of the following have occurred:

(a) A written demand has been made upon the corporation to take suitable action.

(b) Ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1494 Stay of derivative proceeding; condition.

Sec. 494. If the corporation commences an investigation of the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period as the court considers appropriate.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1495 Dismissal of derivative proceeding; determination.

Sec. 495. (1) The court shall dismiss a derivative proceeding if, on motion by the corporation, the court finds that 1 of the groups specified in subsection (2) has made a determination in good faith after conducting a reasonable investigation upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. If the determination is made pursuant to subsection (2)(a) or (b), the corporation shall have the burden of proving the good faith of the group making the determination and the reasonableness of the investigation. If the determination is made pursuant to subsection (2)(c) or (d), the plaintiff shall have the burden of proving that the determination was not made in good faith or that the investigation was not reasonable.

(2) A determination under subsection (1) may be made by any 1 of the following:

(a) By a majority vote of the disinterested directors, if the disinterested directors constitute a quorum at a meeting of the board.

(b) By a majority vote of a committee consisting of 2 or more disinterested directors appointed by a majority vote of disinterested directors present at a meeting of the board, whether or not the disinterested

directors constitute a quorum at the meeting.

(c) By a panel of 1 or more disinterested persons appointed by the court upon motion by the corporation.

(d) By all disinterested independent directors.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1496 Discontinuance or settlement of derivative proceeding; judicial approval; notice; expense.

Sec. 496. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected. If notice is directed to be given to the affected shareholders, the court may determine whether 1 or more of the parties to the action shall bear the expense of giving the notice, in the amount as the court determines and finds to be reasonable under the circumstances. The amount of expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1497 Termination of derivative proceeding; order of court.

Sec. 497. On termination of the derivative proceeding, the court may order 1 of the following:

(a) The plaintiff to pay any of the defendant's reasonable expenses, including reasonable attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained in bad faith or without reasonable cause.

(b) The corporation to pay the plaintiff's reasonable expenses, including reasonable attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation. The court shall direct the plaintiff to account to the corporation for any proceeds received by the plaintiff in excess of expenses awarded by the court, except that this shall not apply to a judgment rendered for the benefit of an injured shareholder only and limited to a recovery of the loss or damage sustained by him or her.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.