AMENDMENTS TO MICHIGAN'S BUSINESS CORPORATION ACT AND REPEAL OF THE PROFESSIONAL SERVICE CORPORATION ACT

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I. INTRODUCTION[*]

Amid the turmoil of the final days of its 2011-2012 legislative sessions, the Michigan legislature amended the Michigan Business Corporation Act (BCA)[1] and repealed the Michigan Professional Service

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Corporation Act (PSCA). After more than two years of work by the Corporate Laws Committee of the Business Law section of the State Bar of Michigan (Corporate Laws Committee) and several months of consideration by the legislature, Senate Bills 1317, 1318, 1319, and 1320 were passed during the legislature's lame duck session in late 2012 and became Public Acts 566, 567, 568, and 569 of 2012, respectively.[2] The amendments (2013 Amendments) were signed into law by the governor on January 2, 2013 with immediate effect.[3]

This Article includes the full-text of the amended and new sections of the BCA, together with the comments of the Corporate Laws Committee. The amendments can be summarized as follows:

- They eliminate the PSCA as a separate act and instead bring the PSCA into the body of the BCA as the new chapter 2A.[4]

- They explicitly permit privately held corporations to create classes of assessable shares under BCA section 488.[5]

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finance, corporate governance, and general business law. He is a former chairperson of the State Bar of Michigan's Business Law Section and serves as chairperson both of the section's Corporate Laws Committee and its Ad Hoc Legal Opinions Committee. A contributor to "Michigan Contract Law" (ICLE), Mr. Klimko is included in "The Best Lawyers in America," "Chambers USA," and "Michigan Super Lawyers." He is the recipient of the 2009 Stephen H. Schulman Outstanding Business Lawyer Award, the Best Lawyers' 2012 Detroit Corporate Governance Law Lawyer of the Year award, and the 2013 Lexology/International Law Office Client Choice Award for Mergers and Acquisitions. A former adjunct professor at the University of Detroit Mercy Law School, he has taught several ICLE courses on drafting business and corporate documents and is a frequent author and lecturer on business law topics.

* Editor's Note: A summary of this article was printed in a previous issue of the *Michigan Business Law Journal*, which is published by the Business Law Section of the State Bar of Michigan. *See* James L. Carey & Justin G. Klimko, *Amendments to Michigan's Business Corporation Act and Repeal of the Professional Service Corporation Act*, MICH. BUS. L.J., Summer 2013, at 18, *available at* http://www.michbar.org /business/BLJ/Summer2013/carey_klimko.pdf.

1. MICH. COMP. LAWS ANN. § 450.1101-.2098 (West 2012) (amended 2013).

2. 2012 Mich. Pub. Act No. 569 amends the BCA. 2012 Mich. Pub. Act Nos. 566, 567, and 568 amend other statutes that formerly cross-referenced the PSCA, *to wit* 2012 Mich. Pub. Act No. 566 amended the Occupational Code (MICH. COMP. LAWS ANN. § 339.101-.2919); 2012 Mich. Pub. Act No. 567 amended the Carrying on Business Under Assumed or Fictitious Name Act (MICH. COMP. LAWS ANN. § 445.1-.5); and 2012 Mich. Pub. Act No. 568 amended the Limited Liability Company Act (MICH. COMP. LAWS ANN. § 450.4101-.5200).

3. 2012 Mich. Pub. Act Nos. 566-69.

4. MICH. COMP. LAWS ANN. §§ 450.1281-.1289 (West 2013).

5. MICH. COMP. LAWS ANN. § 450.1488 (West 2013).

- They clarify, in the new section 529, that "a corporation may agree to submit a matter to a vote of its shareholders even if, after initially approving the matter, the board of directors later determines that it no longer recommends the matter or recommends against approval of the matter by the shareholders."[6] These types of provisions are often referred to as "force-the-vote" provisions.[7]

- They amend the indemnification sections of the BCA to limit a corporation's ability to revoke indemnity rights after the occurrence of the events on which a claim or action against the indemnified person is based.[8]

- They add a mechanism by which a corporation's articles of incorporation may be amended after the first meeting of the board of directors but before there are shareholders or subscriptions for shares.[9]

- They correct an oversight in the appraisal provisions of the BCA that inadvertently excluded a reference to BCA section 754 (regarding "upside-down acquisitions").[10]

- They clarify BCA chapter 7A to make explicit the implied understanding that the highest share price paid should be calculated taking into account capitalization changes made by the corporation while the interested shareholder has owned the shares.[11]

- They modify several other BCA sections to better integrate the conversion provisions of the BCA added in the 2009 amendments.[12]

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6. MICH. COMP. LAWS ANN. § 450.1529 (West 2013).
7. *Id.*
8. MICH. COMP. LAWS ANN. § 450.1565 (West 2013).
9. MICH. COMP. LAWS ANN. § 450.1611 (West 2013).
10. MICH. COMP. LAWS ANN. § 450.1762 (West 2013).
11. MICH. COMP. LAWS ANN. § 450.1781 (West 2013).
12. *See* MICH. COMP. LAWS ANN. § 450.1762 (West 2013).

II. BACKGROUND

Michigan has a number of statutes that govern the formation and operation of business entities in the state. Principal among these are the BCA,[13] the Michigan Limited Liability Company Act (LLCA),[14] the PSCA (now repealed),[15] the Michigan Nonprofit Corporation Act,[16] the Michigan Revised Uniform Limited Partnership Act,[17] and the Michigan Uniform Partnership Act.[18] The Corporate Laws Committee monitors the acts that apply to for-profit corporations, principally the BCA and the PSCA, and proposes amendments from time to time. The amendments serve to keep Michigan statutes up-to-date with developments in the corporate laws of other jurisdictions and the Model Business Corporation Act;[19] to reflect general trends in corporate governance and regulation; and to address matters resulting from judicial holdings. The BCA typically is amended on a three- to four-year cycle, with significant previous amendments effective in 1989, 1993, 1997, 2001, 2006, and 2009.

A. Professional Corporations and the New Chapter 2A

1. Background

Historically, the PSCA[20] relied heavily upon the BCA for its basic structure and approach. The PSCA was a lean statute containing a mere fourteen sections; it could fairly be thought of as a bolt-on to the BCA rather than a stand-alone statute.[21] The link between the two statutes was contained in former section 13 of the PSCA, which applied the BCA to professional corporations except in cases of direct conflict.[22] Thus, the great bulk of corporate law applicable to professional corporations (including provisions governing convening of meetings, quorums, required votes, procedures for amending articles of incorporation or for

13. MICH. COMP. LAWS ANN. §§ 450.1101-.2099 (West 2013).
14. MICH. COMP. LAWS ANN. §§ 450.4101-.5200 (West 2013).
15. MICH. COMP. LAWS ANN. §§ 450.221-.235 (West 1982) (repealed 2013).
16. MICH. COMP. LAWS ANN. §§ 450.2101-.3192 (West 2013).
17. MICH. COMP. LAWS ANN. §§ 449.1101-.2108 (West 2013).
18. MICH. COMP. LAWS ANN. §§ 449.1-.48 (West 2013).
19. MODEL BUS. CORP. ACT §§ 1.01-16.22 (2013).
20. MICH. COMP. LAWS ANN. §§ 450.221-.235 (repealed 2013).
21. *Id.*
22. MICH. COMP. LAWS ANN. § 450.223. This section provided, in part, that "[t]he business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, is applicable to a corporation organized under this act except to the extent that a provision of this act is in conflict with the provisions of that act."

effecting corporate combinations, and dissolution) was found in the BCA.[23] The PSCA governed matters such as who could be a shareholder of a professional corporation[24] and the fact that professionals in a professional corporation remained liable for negligent professional services rendered by them or those under their direct supervision and control.[25]

2. OAG 6592

Over time, this dual-statute approach created structural problems for practitioners, who were forced to consult two statutes when planning or implementing corporate measures for professional corporations. Worse, practitioners were unsure of precisely which version of the BCA to consult. This is because of Michigan Attorney General Opinion No. 6592 from July 10, 1989.[26] This opinion quoted Michigan Supreme Court precedent to the effect that

> [t]he general rule is, that an act, which adopts by reference the whole or a portion of another statute, means the law as existing at the time of the adoption, and does not include subsequent additions or modifications of the statute so adopted, unless it does so by express or strongly implied intent.[27]

The attorney general therefore opined that the PSCA's incorporation by reference of the BCA incorporated the BCA only as it existed on July 18, 1980, the effective date of the then-most recent amendment to section 13 of the PSCA.[28] As a result, amendments to the BCA were not automatically incorporated into the PSCA, thus depriving professional corporations of the benefits of BCA amendments.[29] This meant that anytime a section of the BCA was needed to determine matters affecting a professional corporation, a person would need to determine what the BCA contained at the time the PSCA was last amended and use that older version of the BCA as the applicable law. Though the PSCA was

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23. MICH. COMP. LAWS ANN. §§ 450.1101-.2099 (West 2013).

24. *See* MICH. COMP. LAWS ANN. § 450.228 (repealed 2013).

25. *See* MICH. COMP. LAWS ANN. § 450.226 (repealed 2013).

26. MICH. ATT'Y GEN., OP. LETTER No. 6592 (1989).

27. *See* Pub. Schs. of Battle Creek v. Kennedy, 223 N.W. 359, 361 (Mich. 1929) (quoting Culver v. People, 43 N.E. 812 (Ill. 1896)).

28. MICH. ATT'Y GEN., *supra* note 26.

29. *Id.*

amended several times in an attempt to update it for BCA amendments, the PSCA frequently lagged the BCA.[30]

When the LLCA was adopted in 1993, it incorporated professional limited liability company provisions rather than segregating them in a separate statute.[31] Many on the Corporate Laws Committee found the LLCA approach to be more straightforward and sensible. Because such a structure had worked well for the LLCA for twenty years, the committee was confident that bringing the PSCA into a new chapter 2A of the BCA would work equally well for Michigan corporations. The Committee believes that this integration will enable better understanding of the law applicable to business corporations generally and to professional service corporations specifically.[32]

3. Mandatory Versus Permissive Incorporation

The 2013 Amendments, using the LLCA model, also make clear when a corporation must incorporate as a professional corporation and when it may choose to incorporate either as a professional corporation or a regular business corporation.[33] This question had been thrown into doubt in the case of *Miller v Allstate*, a case based on an insurer's challenge to a reimbursement claim.[34] In that case, the court of appeals held that a corporation providing physical therapy services could be incorporated only under the PSCA and could not incorporate under the BCA.[35] In connection with an earlier remand, the supreme court had specifically instructed the court of appeals to consider this question of proper incorporation.[36] Curiously, though, when the case came back for

30. *See* MICH. COMP. LAWS ANN. § 450.4901 (West 2013).

31. *Id.*

32. OAG 6592 poses a similar question of lag for Michigan limited liability companies. *See* MICH. ATT'Y GEN., *supra* note 26. MCLA section 450.4210 provides that "a limited liability company has all powers necessary or convenient to effect any purpose for which the company is formed, including all powers granted to corporations in the business corporation act." MICH. COMP. LAWS ANN. § 450.4210 (West 2013). The BCA and LLCA have each been amended since this language was included in the original LLCA in 1993. *See* MICH. COMP. LAWS ANN. § 450.1261 (West 2013); MICH. COMP. LAWS ANN. § 450.4210. While the clear intent of LLCA section 210 is to put LLCs and corporations on equal footing with respect to entity powers, does OAG 6592 limit LLCs to only those powers available to Michigan corporations under the BCA at the time of the LLCA's adoption or its later amendment?

33. MICH. COMP. LAWS ANN. § 450.1281 (West 2013).

34. Miller v. Allstate Ins. Co., 739 N.W.2d 675, 677 (Mich. Ct. App. 2007).

35. *Id* at 678. The company in question had been incorporated under the BCA, and the insurer argued that it was improperly incorporated and thus not entitled to reimbursement. *Id.* at 677.

36. Miller v. Allstate Ins. Co., 728 N.W.2d 458 (Mich. 2007).

review, the supreme court ignored that issue and instead disposed of the case on the grounds that the insurer lacked standing to challenge the proper incorporation of the corporation.[37]

Section 281 of new chapter 2A[38] determines which corporations *must* incorporate as professional corporations under chapter 2A of the BCA. It codifies the "learned profession" doctrine, which historically had held that professionals engaged in the practice of law, medicine, or divinity could not incorporate.[39] It also tracks the language and approach taken in the LLCA for these matters.[40] Section 281(1) provides that

> [a] corporation must incorporate as a professional corporation under this chapter if it is incorporated to provide 1 or more services in a learned profession, whether or not it is providing other professional services. A corporation may comply with this chapter and incorporate as a professional corporation if it is incorporated to provide 1 or more professional services, none of which are services in a learned profession, or may incorporate as a corporation that is not required to comply with this chapter.[41]

"Services in a learned profession" are defined in section 109(1) as "services provided to the public by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law."[42] "Professional service" is generally defined in section 282(2) to mean

> a type of personal service to the public that requires that the provider obtain a license or other legal authorization as a condition precedent to providing that service. Professional service includes, but is not limited to, services provided by a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiropodist, physician's assistant, architect, professional engineer, land surveyor, or attorney-at-law.[43]

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37. Miller v. Allstate Ins. Co., 751 N.W.2d 463 (Mich. 2008).

38. MICH. COMP. LAWS ANN. § 450.1281.

39. A discussion of the history and rationale of the learned profession doctrine is contained in the above-mentioned Attorney General Opinion 6592. *See* MICH. ATT'Y GEN., *supra* note 26.

40. *See* MICH. COMP. LAWS ANN. §§ 450.4901-.4910 (West 2013).

41. MICH. COMP. LAWS ANN. § 450.1281(1).

42. MICH. COMP. LAWS ANN. § 450.1109(1) (West 2013).

43. MICH. COMP. LAWS ANN. § 450.1282(b).

Under these definitions, services in a learned profession are a subset of the larger group of professional services. Professionals engaged in services in a learned profession may incorporate only under the provisions of chapter 2A.[44] Professionals not engaged in services in a learned profession may choose to incorporate under chapter 2A[45] or, alternatively, may incorporate under the provisions of the BCA that do not apply to professional corporations.[46]

4. Future Review

In integrating the PSCA provisions into the BCA, the Corporate Laws Committee sought primarily to accomplish the integration of the two statutes and not to engage in a major review of the workings of the professional corporation provisions or to make significant changes in how professional corporations function in Michigan. While there were many discussions of possible changes to the professional corporation provisions, the 2013 Amendments did not attempt to address any larger issues.[47] Such a review may be undertaken in the future and, in the opinion of the authors, should be done in conjunction with review of the professional limited liability provisions of the LLCA so that the two acts are harmonized on this point as much as possible.

B. Assessable Shares Under Section 488

BCA section 488[48] was originally added as part of the 1997 amendments. Section 488 gives privately held Michigan corporations a great deal of flexibility to alter some traditional rules of corporate behavior.[49] Through the use of section 488, shareholders in a non-public corporation can individually tailor the structure of their entity to fit their particular needs, even if such approaches otherwise would not be permitted under the BCA.[50] To be valid, a section 488 agreement must be in writing (it is often made a part of the corporation's articles of incorporation or bylaws) and must be agreed to by *all* shareholders of the

44. *Id.* § 450.1281.
45. *Id.* §§ 450.1281-.1289.
46. *See* MICH. COMP. LAWS ANN. § 450.1101.
47. MICH. COMP. LAWS ANN. §§ 450.1281-.1289.
48. MICH. COMP. LAWS ANN. § 450.1488 (West 2013).
49. *Id.*
50. CYRIL MOSCOW ET AL., MICHIGAN CORPORATION LAW AND PRACTICE § 4.21(a) (2009).

corporation.[51] The existence of such an agreement must also be noted conspicuously on the face or back of all share certificates.[52]

Under section 488, a privately held corporation is permitted, among other things, to "eliminate[] the board [of directors] or restrict[] the . . . powers of the board"; "to establish[] who shall be directors or officers of the corporation" and their term of office; and to permit "[one] or more shareholders or other persons . . . to exercise the corporate powers [of the corporation] or to manage the business and affairs of the corporation."[53] In addition to these and other broad provisions that would otherwise be unavailable under traditional rules governing corporate behavior, section 488 contains a catch-all provision that permits a section 488 agreement to "otherwise govern[] the exercise of the corporate powers or management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation."[54]

The 2013 Amendments expressly added to section 488 the ability for privately held corporations to create classes of assessable shares.[55] It could be argued that the ability to create assessable shares is permitted under the catch-all provision of section 488(1).[56] However, prior to the adoption of section 488, both the Michigan Attorney General and the Michigan Corporation Division at various times had interpreted the BCA to prohibit assessable shares.[57] This position was based on BCA language stating that "[w]hen the corporation receives the consideration for which the board authorized the issuance of shares, the shares issued are fully paid and nonassessable."[58]

Section 488 was created to give shareholders of private corporations greater flexibility in ordering their relations, in much the same way permitted to owners of other types of businesses such as partnerships and limited liability companies (LLCs).[59] Lacking explicit previous authorization under section 488 and in light of the earlier interpretations, the Corporate Laws Committee felt it was appropriate to include in the 2013 Amendments a provision allowing those shareholders to agree through a valid section 488 agreement to provide for such future assessments.

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51. MICH. COMP. LAWS ANN. § 450.1488(2) (emphasis added).
52. *Id.* § 450.1488(3).
53. *Id.* § 450.1488(1).
54. *Id.* § 450.1488(1)(i).
55. *Id.* § 450.1488(1)(h).
56. *Id.* § 450.1488(1).
57. *See* MOSCOW, *supra* note 50, at § 4.21(a), note 165(c).
58. MICH. COMP. LAWS ANN. § 450.1314(4) (West 2013).
59. *See* MOSCOW, *supra* note 50, at § 4.21(a), note 165(c).

C. Force-the-Vote

Certain matters, such as a merger[60] or a sale of substantially all its assets,[61] cannot be undertaken by a Michigan corporation unless approved by both the board and the shareholders.[62] The board must first approve the transaction and must recommend its approval 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."[63] In those circumstances when the board decided to make no recommendation, it was required to communicate to the shareholders the basis for its determination that no recommendation could be made.[64]

These provisions did not directly address the issue of whether the board could enter into a merger or sale agreement that required it to submit the matter to the shareholders for approval even if the board determined, following its initial approval, that it no longer recommended the transaction or even recommended against shareholder adoption. In corporate acquisition transactions, acquirers will sometimes seek to increase the odds that shareholders will approve the acquisition by entering into agreements with specific shareholders requiring them to vote in favor of the transaction. These often have the effect of "locking up" sufficient votes to approve the transaction, provided that the deal is actually submitted to the shareholders for approval. Acquirers seek these provisions because they worry that after investing significant time and resources to negotiate a deal, a competing acquirer will try to top the deal in the period between board approval and shareholder vote.

A controversial Delaware case from 2003 held that the use of such lock-up provisions without a so-called "fiduciary out" clause was not consistent with fiduciary duties under Delaware law.[65] Other cases since then[66] have led some to question whether this continues to be good law in Delaware. However, in reaction to this case, the corporate statutes of Delaware and some other states, as well as the Model Business Corporation Act, have been amended to address the related question of whether the board has the corporate authority to bind itself to submit to

60. *See* MICH. COMP. LAWS ANN. § 450.1703a (West 2013).
61. *See* MICH. COMP. LAWS ANN. § 450.1753.
62. *Id.*
63. *Id.* § 450.1703a(2)(a); *id.* § 450.1753(2).
64. MICH. COMP. LAWS ANN. § 450.1703a(2)(a).
65. Omnicare v. NCS Healthcare, 818 A.2d 914, 936 (Del. 2003).
66. *See, e.g.*, *In re* Openlane Inc. S'holders Litig., No. 6849-VCN, 2011 WL 4599662 (Del. Ch. Sept. 30, 2011).

the shareholders a transaction that it no longer recommends, or even recommends against.[67]

New BCA section 529[68] confirms that a corporation may agree to be bound by contract to submit a matter to shareholders for approval even if the directors later determine that they no longer recommend the matter, or even recommend against shareholder adoption. This provision does not relieve the board of directors of its duty to carefully consider the proposed transaction and the interests of the shareholders.[69] It is meant instead to clarify that such force-the-vote provisions may legally be included in contracts adopted by a corporation and are not void or *ultra vires*. The Committee believed that such provisions were permissible under sections 703a and 753 but nevertheless deemed it advisable to address the issue directly in the 2013 Amendments so as to remove any doubt. Therefore, this new section is meant to clarify what many consider to be existing law and does not represent a change in the law.

D. Indemnification Protection

In 2008, the Delaware Court of Chancery ruled that the board of directors of a corporation could unilaterally amend the corporation's bylaws to revoke a former director's advancement rights before the corporation brought a lawsuit against the director.[70] In response to the board's action, the director filed suit to force the company to advance his legal expenses.[71] The director argued that, having been given various indemnification rights, the corporation could not retroactively terminate such rights without his consent.[72] The Delaware trial court, however, disagreed and ruled in favor of the corporation.[73] The court held that the director's rights to indemnification are fully revocable by the corporation for any reason up until a court pleading is filed against the director.[74] Appeals were filed in this case, but the parties settled the case before the Delaware Supreme Court ruled on the topic.

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67. *See* DEL. GEN. CORP. LAW § 146 (2013); GA. BUS. CORP. CODE § 14-2-305 (2013); KAN. GEN. CORP. CODE § 17-6306 (2013); MD. GEN. CORP. LAW § 3-105(d) (2013); MINN. BUS. CORP. ACT § 302A.439 (2013); N.D. BUS. CORP. ACT § 10-19.1-74.1 (2013); OKLA. GEN. CORP. ACT § 18-1027 (2013); TEX. BUS. CORP. CODE § 21.452(g) (2013); WASH. BUS. CORP. ACT § 23B.08.245 (2013); MODEL BUS. CORP. ACT § 8.26 (2008).

68. MICH. COMP. LAWS ANN. § 450.1529 (West 2013).

69. *Id.*

70. Schoon v. Troy Corp., 948 A.2d 1157, 1165 (Del. Ch. 2008)

71. *Id.* at 1163.

72. *Id.* at 1165.

73. *Id.* at 1166.

74. *Id.* at 1165-66.

In response, Delaware[75] and other states amended their corporation acts to restrict a corporation's ability to repeal indemnification or advancement rights after the act or omission giving rise to those rights. Along those lines, the 2013 Amendments amended BCA section 565.[76] This section now provides that, after the occurrence of an act or omission that becomes the subject of any proceeding giving rise to a right to indemnification or advancement of expenses, a corporation may not eliminate or impair those rights by amendment to its articles of incorporation or bylaws, unless the provision granting such indemnification, at the time of the act or omission, explicitly permitted elimination or impairment.[77]

E. Amending the Articles of Incorporation Before Issuance of Shares

BCA section 611[78] has been amended to plug a hole in the process for amending articles of incorporation. The statute formerly provided a process for amendment of the articles by the corporation before the appointment of an initial board of directors, as well as for amendment after the initial board had been appointed and shares had been issued.[79] However, in many instances, the incorporator of a newly-formed corporation designates an initial board of directors before shares are issued to shareholders. The BCA contained no provision as to how the articles could be amended in the period between appointment of the initial board and issuance of initial shares. Start-up corporations may find it necessary to amend the articles in order to induce investors to subscribe to provide the corporation's initial capital. Section 611 has therefore been amended to provide a mechanism for amending a corporation's articles of incorporation after the first meeting of the board but before there are shareholders or subscriptions for shares.[80]

F. Miscellaneous Corrections

The 2013 Amendments also performed some of the general maintenance that is regularly necessary to keep the BCA in good

75. *See* DEL. GEN. CORP. LAW § 145(f); 8 DEL. CODE ANN. tit. 8, § 145(f) (West 2011).

76. MICH. COMP. LAWS ANN. § 450.1565 (West 2013).

77. *Id.* § 450.1565(3).

78. MICH. COMP. LAWS ANN. § 450.1611 (West 2013).

79. MICH. COMP. LAWS ANN. § 450.1611 (West 2006), *amended by* 2012 Mich. Pub. Act No. 569.

80. MICH. COMP. LAWS ANN. § 450.1611 (West 2013).

working order and to address oversights that are inherent in any statute. Some of the 2013 general maintenance amendments include:

- Correcting an oversight in the appraisal provisions of the BCA that inadvertently excluded a reference to section 754 (regarding "upside-down acquisitions");[81]

- Clarifying chapter 7A to make explicit the implied understanding that the highest share price paid should be calculated taking into account capitalization changes made by the corporation while the interested shareholder has owned the shares;[82] and

- Amending several sections[83] to better integrate the conversion provisions of the BCA added in the 2009 amendments.

III. THE AMENDMENTS (FULL TEXT OF STATUTES) AND COMMENTARY

As noted above, the Corporate Laws Committee continually evaluates whether additional modifications to the BCA are appropriate to correct oversights or conflicts within the statute as well as to keep up with judicial decisions, trends in corporate practice, and developments in the laws of other states and the Model Act. Readers with suggestions for additional amendments should feel free to contact either of the authors. The comments accompanying the appendix to this article set forth the Corporate Laws Committee's rationale for the various amendments and additions. While these comments are not official and are not part of the legislative history of the act, we hope that they provide insight into the purposes for the amendments.

450.1105 Definitions; A, B.

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

81. MICH. COMP. LAWS ANN. § 450.1762(1)(f) (West 2013).

82. MICH. COMP. LAWS ANN. § 450.1781 (West 2013).

83. MICH. COMP. LAWS ANN. §§ 450.1105, .1528, .1776, .2021, .2035, .2041 (West 2013).

amendment, merger, conversion, 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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment makes explicit that a business combination accomplished through conversion (sections 745 and 746)[84] is subject to the requirements of this section.

450.1106 Definitions; C to E.

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 licensing and regulatory affairs.

(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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001,

84. *See* MICH. COMP. LAWS ANN. §§ 450.1745-.1746.

Act 57, Imd. Eff. July 23, 2001;—Am. 2006, Act 68, Imd. Eff. Mar. 20, 2006;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment updates the name of the department to conform with Executive Order 2011-4.

450.1108 Definitions; N to P.

Sec. 108. (1) "Nonprofit corporation" or "domestic nonprofit corporation" means a nonprofit, corporation subject to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(2) "Person" means an individual, a partnership, a domestic or foreign corporation, a limited liability company, or any other association, corporation, trust, or legal entity.

(3) "Professional corporation" means a corporation incorporated under former 1962 PA 192, or a corporation incorporated under this act and governed by chapter 2A.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment simply makes explicit that limited liability companies are included in the definition of person. This was implicitly true before this amendment because of the general reference to "any . . . legal entity"[85] and therefore does not represent any change in law or approach. It is simply an acknowledgement of the rise in use of limited liability companies since the last amendment of this section. This amendment also includes the definition of "professional corporation" as part of the integration of the Professional Service Corporation Act[86] into this act.

450.1109 Definitions; S.

Sec. 109. (1) "Services in a learned profession" means services provided to the public by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law.

(2) "Shareholder" means a person that holds units of proprietary interest in a corporation and is considered to be synonymous with "member" in a nonstock corporation.

(3) "Shares" means the units into which proprietary interests in a corporation are divided and is considered to be synonymous with "membership" in a nonstock corporation.

85. MICH. COMP. LAWS ANN. § 450.1108(2) (West 2012) (amended 2013).

86. MICH. COMP. LAWS ANN. §§ 450.221-.235 (West 2012) (repealed 2013).

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is added in order to make the Professional Service Corporation Act[87] a part of this Business Corporation Act rather than a separate act that relies in large part upon the provisions of the Business Corporation Act.

450.1123 Applicability of act generally.

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, and agricultural and horticultural fair societies. 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.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 357, Imd. Eff. Jan. 14, 1994;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[88] into this act.

450.1201 Incorporators.

Sec. 201. (1) One or more persons may be the incorporators of a corporation by signing and filing articles of incorporation for the corporation.

(2) A corporation incorporated to provide 1 or more services in a learned profession must be incorporated as a professional corporation under chapter 2A.

(3) A corporation incorporated to provide professional services other than services in a learned profession may comply with chapter 2A and incorporate as a professional corporation, or may incorporate as a corporation under chapter 2 without complying with chapter 2A.

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87. *Id.*
88. *Id.*

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is added in order to make the Professional Service Corporation Act[89] a part of this Business Corporation Act rather than a separate act that relies in large part upon the provisions of the Business Corporation Act.

450.1202 Articles of incorporation; contents.

Sec. 202. The articles of incorporation shall contain all of the following:

(a) The name of the corporation.

(b) The purposes for which the corporation is formed. All of the following apply for purposes of this subdivision:

(i) Except as otherwise provided in subparagraph (ii) or (iii), it is a sufficient compliance with this subdivision to state substantially, alone or with specifically enumerated purposes, that the corporation may engage in any activity within the purposes for which corporations may be formed under the business corporation act, and all activities shall by the statement be considered within the purposes of the corporation, subject to expressed limitations.

(ii) Any corporation that proposes to conduct educational purposes shall state the purposes and shall comply with all requirements of sections 170 to 177 of 1931 PA 327, MCL 450.170 to 450.177.

(iii) A professional corporation shall comply with section 283(2) and (3).

(c) The aggregate number of shares that the corporation has authority to issue.

(d) If the shares are, or are to be, divided into classes, or into classes and series, the designation of each class and series, the number of shares in each class and series, and a statement of the relative rights, preferences and limitations of the shares of each class and series, to the extent that the designations, numbers, relative rights, preferences, and limitations have been determined.

(e) If any class of shares is to be divided into series, a statement of any authority vested in the board to divide the class of shares into series, and to determine or change for any series its designation, number of shares, relative rights, preferences and limitations.

(f) The street address, and the mailing address if different from the street address, of the corporation's initial registered office and the name of the corporation's initial resident agent at that address.

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89. *Id.*

(g) The names and addresses of the incorporators.

(h) The duration of the corporation if other than perpetual.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment makes professional corporations (and their predecessors, professional service corporations) a part of the Business Corporation Act rather than having professional service corporations under a separate Professional Service Corporation Act[90] that then relies in large part upon the provisions of this Business Corporation Act. Certain difficulties have arisen by having these acts separate but dependent upon each other.

450.1211 Corporate name; required words and abbreviations.

Sec. 211. Except as provided in chapter 2A for a professional corporation, the corporate name of a domestic corporation shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain 1 of the following abbreviations: corp., co., inc., or ltd., with or without periods.

History: 1972, Act 284, Eff. Jan. 1, 1973;-- Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[91] into this act.

450.1241 Registered office and resident agent required; address.

Sec. 241. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state both of the following:

(a) A registered office, which may be the same as its place of business.

(b) A resident agent. A resident agent may be an individual resident of this state; a domestic corporation or limited liability company; or a foreign corporation or limited liability company authorized to transact business in this state.

(2) The address of the business office or residence of a resident agent must be the same as the address of the registered office.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

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90. *Id.*
91. *Id.*

COMMENT: These amendments make clear that that the address for the resident agent and the address for the registered office must be identical for all types of persons serving as resident agent.

450.1281 Incorporation as professional corporation.

Sec. 281. (1) A corporation must incorporate as a professional corporation under this chapter if it is incorporated to provide 1 or more services in a learned profession, whether or not it is providing other professional services. A corporation may comply with this chapter and incorporate as a professional corporation if it is incorporated to provide 1 or more professional services, none of which are services in a learned profession, or may incorporate as a corporation that is not required to comply with this chapter.

(2) A corporation that is incorporated as a professional corporation and its shareholders are subject to this chapter and this act. If there is a conflict between an applicable provision of this chapter and another provision of this act, the provision of this chapter takes precedence.

(3) This chapter applies to a corporation incorporated under former 1962 PA 192, or to a corporation that on the effective date of this chapter was governed by former 1962 PA 192 as if incorporated under that act, as if that corporation were incorporated under this act and pursuant to this chapter.

(4) This chapter does not apply to a corporation organized in this state before the enactment of former 1962 PA 192 to provide professional services to the public, and that did not previously amend its articles of incorporation to bring itself within the provisions of former 1962 PA 192, unless that corporation amends its articles of incorporation in such a manner that it is consistent with all the provisions of this chapter and affirmatively states in its amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this chapter and this act.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act into this act. The Professional Service Corporation Act[92] is repealed pursuant to enacting section 1 (see below).

450.1282 Definitions.

Sec. 282. As used in this chapter:

92. MICH. COMP. LAWS ANN. §§ 450.221-.235 (repealed 2013).

(a) "Licensed person" means an individual who is duly licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or agency of this state or another jurisdiction. The term includes an entity if all of its owners are licensed persons.

(b) "Professional service" means a type of personal service to the public that requires that the provider obtain a license or other legal authorization as a condition precedent to providing that service. Professional service includes, but is not limited to, services provided by a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiropodist, physician's assistant, architect, professional engineer, land surveyor, or attorney-at-law.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[93] into this act.

450.1283 Professional corporation; formation; name.

Sec. 283. (1) Except as provided in this section, 1 or more licensed persons may form a professional corporation under this chapter.

(2) Each shareholder of a professional corporation must be a licensed person in 1 or more of the professional services provided by the professional corporation.

(3) Except as provided in this section or otherwise prohibited, the articles of incorporation of a professional corporation shall state that the professional corporation is formed to provide 1 or more professional services and shall state the specific professional service or services the professional corporation is formed to provide.

(4) The name of a professional corporation shall contain the words "professional corporation" or the abbreviation "P.C." with or without periods or other punctuation.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[94] into this act.

450.1284 Professional corporation subject to MCL 333.26202 to 333.18838.

Sec. 284. (1) Except as otherwise provided in subsection (2) or (3), if a professional corporation provides a professional service that is subject

93. *Id.*

94. *Id.*

to article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, each shareholder of the professional corporation must be licensed or legally authorized in this state to provide the same professional service.

(2) One or more individuals licensed to engage in the practice of medicine under part 170, the practice of osteopathic medicine and surgery under part 175, or the practice of podiatric medicine and surgery under part 180 of article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, may organize a professional corporation under this act with 1 or more other individuals who are licensed to engage in the practice of medicine under part 170, the practice of osteopathic medicine and surgery under part 175, or the practice of podiatric medicine and surgery under part 180 of article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(3) Subject to section 17048 of the public health code, 1978 PA 368, MCL 333.17048, 1 or more individuals licensed to engage in the practice of medicine under part 170, the practice of osteopathic medicine and surgery under part 175, or the practice of podiatric medicine and surgery under part 180 of article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, may organize a professional corporation under this act with 1 or more physician's assistants licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. Beginning July 19, 2010, 1 or more physician's assistants may not organize a professional corporation under this act that will have only physician's assistants as shareholders.

(4) A licensed person of another jurisdiction may become an officer, agent, or employee of a professional corporation but shall not provide any professional service in this state until the person is licensed or otherwise legally authorized to provide the professional service in this state.

(5) A professional corporation that is organized under this act may engage in the practice of public accounting, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in this state if more than 50% of the equity and voting rights of the professional corporation are held directly or beneficially by individuals who are licensed or otherwise authorized to engage in the practice of public accounting under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013;—Am. 2013, Act 132, Imd. Eff. Oct. 15, 2013.

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[95] into this act. In subsection (3), the date July 19, 2010 was the effective date of the amendatory act that originally added the restriction regarding physician assistants organizing professional corporations.

450.1285 Professional services; licensure of officers, employee, and agents; other laws; liability

Sec. 285. (1) A professional corporation shall not provide professional services in this state except through its officers, employees, and agents who are duly licensed or otherwise legally authorized to provide the professional services in this state. The term "employee" does not include a secretary, bookkeeper, technician, or other assistant who is not usually and ordinarily considered by custom and practice to be providing a professional service to the public for which a license or other legal authorization is required.

(2) Nothing contained in this chapter shall be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between a person furnishing a professional service and the person that receives the professional service and to the standards for professional conduct. Any officer, agent, or employee of a professional corporation shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or her, or by any individual under his or her direct supervision and control, while providing professional service on behalf of the professional corporation to the person to which the professional services were provided.

(3) A professional corporation is liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the professional corporation in providing professional services.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[96] into this act.

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95. *Id.*
96. *Id.*

450.1286 Officer, shareholder, agent, or employee; legal disqualification; restriction or limitation of authority to provide services; failure to comply with section.

Sec. 286. If an officer, shareholder, agent, or employee of a professional corporation becomes legally disqualified to provide the professional services provided by the corporation, or accepts employment that under existing law restricts or limits his or her authority to continue providing those professional services, he or she shall sever within a reasonable period all employment with and financial interests in the professional corporation. A professional corporation's failure to require compliance with this section is grounds for the forfeiture of its articles of incorporation and its dissolution. If a professional corporation's failure to comply with this section is brought to the attention of the administrator, he or she shall notify the attorney general of the failure and the attorney general may take appropriate action to dissolve the professional corporation.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[97] into this act.

450.1287 Professional services; limitation.

Sec. 287. (1) A professional corporation shall not engage in any business other than providing the professional service or services for which it was specifically incorporated.

(2) This chapter does not prohibit a professional corporation from doing any of the following:

(a) Investing its money in real estate, mortgages, stocks, bonds, or any other type of investments.

(b) Owning real or personal property necessary to provide a professional service or services.

(c) Becoming a partner in a partnership formed under the uniform partnership act, 1917 PA 72, MCL 449.1 to 449.48, if the partnership provides the same professional services as the professional corporation.

(d) Becoming a member or manager of a professional limited liability company organized under or subject to chapter 9 of the Michigan limited liability company act, 1993 PA 23, MCL 450.4901 to 450.4910, if the professional limited liability company provides 1 or more of the same professional services as the professional corporation.

97. *Id.*

(e) Becoming a shareholder in a professional corporation governed by this chapter, if both professional corporations provide 1 or more of the same professional services.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[98] into this act.

450.1288 Issuance of capital stock; sale or transfer of shares; voting trust or other agreement; redemption or purchase of shares.

Sec. 288. (1) A professional corporation shall not issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to provide the same specific professional services as those for which the professional corporation was incorporated. The uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, or the uniform securities act (2002), 2008 PA 551, MCL 451.2101 to 451.2703, does not apply to the issuance or transfer by a professional corporation of its capital stock.

(2) Shares of a professional corporation shall not be sold or transferred except to a person who is eligible to be a shareholder of the professional corporation; to the personal representative or estate of a deceased or legally incompetent shareholder; or to a trust or split interest trust in which the trustee and the current income beneficiary are each eligible to be a shareholder of the professional corporation. The personal representative or estate of the shareholder may continue to own shares for a reasonable period but is not authorized to participate in any decisions concerning the providing of professional service by the professional corporation.

(3) Except as permitted under subsection (2), a shareholder of a professional corporation shall not enter into a voting trust agreement or any other type agreement that vests another person with the authority to exercise the voting power of any or all of his or her stock, unless that other person is duly licensed or otherwise legally authorized to provide the same specific professional services as those for which the professional corporation was incorporated.

(4) The articles of incorporation, bylaws, or a contract may provide specifically for additional restrictions on the transfer of shares and may provide for the redemption or purchase of the shares by the professional corporation or its shareholders at prices and in a manner specifically set forth in the articles, bylaws, or contract.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

98. MICH. COMP. LAWS ANN. §§ 450.221-.235 (repealed 2013).

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[99] into this act.

450.1289 Professional entity as surviving entity of merger or conversion.

Sec. 289. (1) A professional corporation that is the surviving entity of a merger or conversion shall only have as shareholders licensed persons that are permitted to be shareholders under this chapter.

(2) A professional corporation organized to provide services in a learned profession may merge with, or convert into, only other corporations or entities whose shareholders, members, partners, and managers, following the merger or conversion as applicable, are licensed persons permitted to be shareholders under this chapter.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act[100] into this act. Additionally, this provision expands upon the merger and conversion options for a professional corporation that is not incorporated to provide services in a learned profession.

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 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.

(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) 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:

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99. *Id.*
100. *Id.*

(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

COMMENT: This amendment removes the requirement of disclosing the names of all participants as part of a shareholder meeting held using remote communication. Requiring this disclosure creates great difficulties for larger shareholder meetings and gives to such participants information they otherwise would not have in a shareholder meeting not held using remote communication.

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

COMMENT: These amendments permit non-public corporations to have or adopt assessable shares.

450.1528 Committees; powers and authority; limitations; subcommittees.

Sec. 528. (1) A committee designated under section 527, to the extent provided in a resolution of the board or in the bylaws, may exercise all powers and authority of the board in the management of the business and affairs of the corporation. A committee does not have power or authority to do any of the following:

(a) Amend the articles of incorporation, except that a committee may prescribe the relative rights and preferences of the shares of a series under section 302(3).

(b) Adopt an agreement of merger, conversion, or share exchange.

(c) Recommend to shareholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets.

(d) Recommend to shareholders a dissolution of the corporation or a revocation of a dissolution.

(e) Amend the bylaws of the corporation.

(f) Fill vacancies in the board.

(2) Unless a resolution of the board, the articles of incorporation, or the bylaws expressly provide the power or authority, a committee does not have the power or authority to declare a distribution or dividend or to authorize the issuance of shares.

(3) Unless otherwise provided in a resolution of the board, the articles of incorporation, or the bylaws, a committee may create 1 or more subcommittees. Each subcommittee shall consist of 1 or more members of the committee. The committee may delegate all or part of its power or authority to a subcommittee.

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;-- Am. 2006, Act 65, Imd. Eff. Mar. 20, 2006;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment makes explicit that a business combination accomplished through conversion (sections 745 and 746)[101] is subject to the requirements of this section.

450.1529 Submission of matter for shareholder vote.

Sec. 529. A corporation may agree by contract to submit a matter to a vote of its shareholders even if, after initially approving the matter, the board of directors later determines that it no longer recommends the matter or recommends against approval of the matter by the shareholders.

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101. MICH. COMP. LAWS ANN. §§ 450.1745-.1746 (West 2013).

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is modeled on section 8.26 of the Model Business Corporation Act[102] and is intended to clarify and confirm the power of the board of directors to enter into an agreement, such as a merger agreement, that requires the transaction to be submitted for shareholder approval. Other sections of the Business Corporation Act, such as section 703a, require that a plan submitted for shareholder approval must include the recommendation of the plan by the board, unless the board determines that it should make no recommendation because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances and communicates the basis for its determination to the shareholders with the plan.[103] This section confirms that the corporation may agree to be bound by contract to submit a matter to shareholders for approval even if the directors later determine that they no longer recommend the matter or recommend against shareholder adoption of the matter. This provision is not intended to relieve the board of directors of its duty to consider carefully the proposed transaction and the interests of the shareholders. It is meant merely to clarify that such force-the-vote provisions are permitted, and, therefore, it does not represent a change in the law.

450.1564b Payment or reimbursement of party in advance of final disposition of proceeding; undertaking as unlimited general obligation; evaluation of reasonableness; advancement of expenses.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent of the corporation, or by a person that is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other profit or nonprofit enterprise, that 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 the person's behalf, to repay the advance if it is ultimately determined that the person did not meet the applicable standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) An undertaking required under subsection (1) must be an unlimited general obligation of the person but may be unsecured and

102. MODEL BUS. CORP. ACT § 8.26 (2008).

103. MICH. COMP. LAWS ANN. § 450.1703a (West 2013).

may be accepted without reference to the financial ability of the person to make repayment.

(3) A corporation shall make an evaluation of reasonableness under this section in the manner specified in section 564a(1) for an evaluation of reasonableness of expenses, and shall make an authorization in the manner specified in section 564a(4) unless an advance is mandatory. A corporation may make an authorization of advances with respect to a proceeding and a determination of reasonableness of advances or selection of a method for determining reasonableness in a single action or resolution covering an entire proceeding. However, unless the action or resolution provides otherwise, the authorizing or determining authority may subsequently terminate or amend the authorization or determination with respect to advances not yet made.

(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.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is made to harmonize the language used in section 561[104] to identify whom a corporation may indemnify with the language used to identify to whom a corporation may reimburse or advance funds in this section. The committee believes that most practitioners have considered the different language used in sections 561[105] and 564b[106] as encompassing the same persons, so this change does not represent any change in law or approach.

450.1565 Limitation on total amount of expenses advanced or indemnified; duration of indemnification; elimination or impairment.

Sec. 565. (1) The indemnification or advancement of expenses provided under sections 561 to 564c is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, bylaws, or a contractual agreement. The total amount of expenses advanced or

104. MICH. COMP. LAWS ANN. § 450.1561 (West 2013).
105. *Id.*
106. MICH. COMP. LAWS ANN. § 450.1564b.

indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

(2) The indemnification provided under this section and sections 561 to 564c continues as to a person that ceases to be a director, officer, employee, or agent and inures to the benefit of the heirs, personal representatives, and administrators of the person if the person is an individual.

(3) A corporation shall not eliminate or impair a right to indemnification or to advancement of expenses established in a provision of the articles of incorporation or the bylaws by amending that provision after the occurrence of the act or omission that is the subject of the formal or informal civil, criminal, administrative, or investigative action, suit, or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of that act or omission explicitly authorizes that elimination or impairment after that act or omission occurs.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment prevents a corporation from eliminating indemnification rights provided in the articles or bylaws by amending the providing provision after the event giving rise to the right to indemnification has occurred unless such provision explicitly provides for such power.

450.1569 "Corporation" defined for purposes of MCL 450.1561 to 450.1567; "business organization" defined.

Sec. 569. (1) For purposes of sections 561 to 567, "corporation" includes all constituent corporations absorbed in a consolidation or merger, any corporation converted into another business organization, and the resulting or surviving corporation or other business organization, so that a person that is or was a director, officer, employee, or agent of the constituent corporation or is or was serving at the request of the constituent corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, or other business organization in the same position under this section with respect to the resulting or surviving corporation or other business organization as if that person had served the resulting or surviving corporation or other business organization in the same capacity.

(2) As used in this section, "business organization" means that term as defined in section 736(1).

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: These amendments update this section to expressly include conversions and limited liability companies.

450.1611 Articles of incorporation; amendment procedure.

Sec. 611. (1) In addition to amendment under subsection (2) or (3), subject to subsection (7), either of the following may amend the articles of incorporation:

(a) Before the first meeting of the board, the incorporators.

(b) If the corporation has not yet issued shares or accepted any written subscription for shares, the board of directors.

(2) Unless the articles of incorporation provide otherwise, subject to subsection (7), the board may adopt 1 or more of the following amendments to the corporation's articles of incorporation without shareholder action:

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

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

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

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

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

(f) Any other change that this act expressly permits without shareholder action.

(3) Subject to subsection (7), any amendments of the articles of incorporation that are not described in subsection (1) or (2), except as otherwise provided in this act, shall be proposed by the board and approved by the shareholders as provided in this section. The board may condition its submission of the amendment to the shareholders on any basis.

(4) Notice of a meeting setting forth a proposed amendment to the articles of incorporation or a summary of the changes the proposed amendment will make shall be given to each shareholder of record entitled to vote on the proposed amendment within the time and in the manner provided in this act for giving notice of meetings of shareholders.

(5) At a meeting described in subsection (4), a vote of shareholders entitled to vote shall be taken on the proposed amendment to the articles of incorporation. The proposed amendment is adopted if it receives the affirmative vote of a majority of the outstanding shares entitled to vote on the proposed amendment and, in addition, if any class or series of shares is entitled to vote on the proposed amendment as a class, the affirmative vote of a majority of the outstanding shares of that class or series. The voting requirements of this section are subject to any higher voting requirements provided in this act for specific amendments or provided in the articles of incorporation.

(6) The shareholders may act on any number of amendments to the articles of incorporation at a meeting described in subsection (4).

(7) If an amendment to the articles of incorporation is made, a certificate of amendment must be filed as provided in section 631.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2006, Act 64, Imd. Eff. Mar. 20, 2006;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment permits the board of directors to make changes to the articles of incorporation if changes are desired after the board is in place but before any shareholders have purchased, or subscribed for, shares. Currently, if the board is in place but shareholders do not want to subscribe for shares unless changes are made to the articles of incorporation, there is no express provision addressing if or how such amendments may be adopted.

450.1631 Certificate of amendment.

Sec. 631. (1) If an amendment to the articles of incorporation is made as under section 611(1)(a), a certificate of amendment signed by a majority of the incorporators shall be filed on behalf of the corporation, setting forth the amendment and certifying that the amendment was adopted by unanimous consent of the incorporators before the first meeting of the board.

(2) If an amendment to the articles of incorporation is made under section 611(1)(b) or (2), a certificate of amendment must be filed on behalf of the corporation, setting forth the amendment and certifying that it was adopted by the board of directors.

(3) If an amendment to the articles of incorporation is made under section 611(3), except as otherwise provided in this act, a certificate of amendment must be executed and filed on behalf of the corporation, setting forth the amendment and certifying that the adoption of the amendment complied with section 611(3).

(4) A certificate of amendment to the articles of incorporation shall set forth the entire article being amended. However, if the article being

amended is divided into separately identified sections, the certificate of amendment need only set forth the section of the article being amended.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is necessary to permit the board of directors, pursuant to the amendment proposed in section 611(1)(b), to make changes to the articles of incorporation before any shareholders have purchased, or subscribed for, shares.[107]

450.1641 Adoption of restated articles of incorporation; amendment.

Sec. 641. (1) A corporation may integrate into a single instrument the provisions of its articles of incorporation that are then in effect and operative, as amended, and at the same time may also further amend its articles of incorporation, by adopting restated articles of incorporation.

(2) Any of the following may adopt restated articles of incorporation for a corporation, as applicable:

(a) Before the first meeting of the board, all of the incorporators, by complying with the provisions of sections 611(1)(a), 642, and 643(1).

(b) If the restated articles of incorporation merely restate and integrate, but do not further amend the articles as amended, the restated articles of incorporation may be adopted by the board without a vote of the shareholders.

(c) If the restated articles of incorporation restate, integrate, and also further amend the articles of incorporation, but the amendments include only amendments adopted under section 611(1)(b) or (2), the board may adopt the restated articles of incorporation without a vote of the shareholders.

(d) If the restated articles of incorporation restate, integrate, and amend the articles of incorporation and subdivisions (a), (b), and (c) do not apply, the shareholders must adopt the restated articles of incorporation under section 611.

(3) An amendment made to the articles of incorporation in connection with the restatement and integration of the articles of incorporation is subject to any other provision of this act, not inconsistent with this section, that would apply if a certificate of amendment were filed to effect that amendment.

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107. MICH. COMP. LAWS ANN. § 450.1611 (West 2013).

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff.Jan. 1, 1983;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997; —Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment accommodates the change to section 611 that permits the board of directors, pursuant to the amendment proposed in section 611(1)(b), to make changes to the articles of incorporation before any shareholders have purchased, or subscribed for, shares.[108] It also seeks to clarify the approval requirements for the various restatement and amendment possibilities.

450.1642 Designation and contents of restated articles; omission.

Sec. 642. (1) Restated articles of incorporation must meet all of the following, as applicable:

(a) Include the designation "restated articles of incorporation" in the heading.

(b) In the heading or in an introductory paragraph, state the corporation's present name, and, if it has been changed, all of its former names and the date of filing of its original articles.

(c) If adopted by the incorporators, state that they were duly adopted by unanimous consent of the incorporators before the first meeting of the board under section 611(1)(a). If adopted by the board without a vote of the shareholders, state both of the following:

(i) That they only restate and integrate and do not further amend the articles as amended; or that the restated articles only restate and integrate the articles and include only amendments adopted under section 611(1)(b) or (2).

(ii) There is no material discrepancy between the provisions of the articles of incorporation as amended and the provisions of the restated articles.

(d) If adopted by the shareholders, state that they were duly adopted by the shareholders under section 611(3).

(2) Restated articles of incorporation may omit any provisions of the original articles that named the incorporators, the initial board, or original subscribers for shares, and the omission shall not be considered a further amendment to the articles of incorporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment accommodates the change to section 611 that permits the board of directors, pursuant to the amendment proposed in section 611(1)(b), to make changes to the articles of

108. *Id.*

incorporation before any shareholders have purchased, or subscribed for, shares.[109]

450.1643 Signing and filing restated articles; execution; original articles superseded; status of restated articles.

Sec. 643. (1) Restated articles of incorporation adopted under section 641(2)(a) shall be signed by the majority of incorporators and filed in accordance with section 131.

(2) Restated articles of incorporation adopted under section 641(2)(b), (c), or (d) shall be executed on behalf of the corporation and filed in accordance with section 131.

(3) When the filing of restated articles of incorporation becomes effective, the corporation's original articles of incorporation, as amended, are superseded; and the restated articles, including any further amendments made by the restatement of the articles, are the articles of incorporation of the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment accommodates the change to section 641(2) necessary to accommodate the change to section 611 that permits the board of directors, pursuant to the amendment proposed in section 611(1)(b), to make changes to the articles of incorporation before any shareholders have purchased, or subscribed for, shares.[110]

450.1703a Plan of merger or share exchange; approval.

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) All of the following apply to the approval of a plan of merger or share exchange under this section:

(a) The board must recommend the plan of merger or share exchange to the shareholders, unless section 529 applies or 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. If the board does not recommend the plan of merger or share exchange to the shareholders, or recommends against the plan of merger or share exchange, in either case because 1 or

109. *Id.*

110. *Id.*; *see also* MICH. COMP. LAWS ANN. § 450.1641 (West 2013).

more of the exceptions described in this subdivision apply, the board must communicate to the shareholders the basis for its decision.

(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 on request.

(ii) A statement informing shareholders that 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, the shareholders shall vote 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 in the same class based on the election of the holders, the amount of shares held, or another reasonable basis.

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. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment accommodates the addition of section 529, which clarifies and confirms that the board of directors may enter into an agreement that requires the transaction to be submitted for shareholder approval even if the board no longer recommends the transaction.[111] It is meant merely to clarify that such force-the-vote provisions are permitted, and, therefore, it does not represent a change in the law.

450.1753 Disposition of corporate property and assets not in usual and regular course of business; recommendation and submission of transaction; notice; authorization; abandonment; disposition by second corporation; transaction as distribution.

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, on 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 under 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 a transaction described in subsection (1) to the shareholders unless section 529 applies or the board determines that because of conflict of interest, events occurring after the board

111. MICH. COMP. LAWS ANN. § 450.1529 (West 2013).

adopts the plan, contractual obligations, or other special circumstances it should make no recommendation. If the board does not recommend the transaction described in subsection (1) to the shareholders, or recommends against the transaction, in either case because 1 or more of the exceptions described in this subsection apply, the board must communicate to the shareholders the basis for its decision.

(3) The board may condition its submission of a transaction described in subsection (1) on any basis.

(4) A transaction described in subsection (1) 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 transaction or a copy of any documents containing the principal terms.

(b) A statement informing shareholders that 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 described in subsection (4), the shareholders may authorize the transaction described in subsection (1) 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 transaction.

(6) Notwithstanding authorization by the shareholders, the board may abandon a transaction described in subsection (1), 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.

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;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;-- Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment accommodates the addition of section 529, which clarifies and confirms that the board of directors may enter into an agreement that requires the transaction to be submitted for shareholder approval even if the board no longer recommends the transaction.[112] It is meant merely to clarify that such force-the-vote provisions are permitted, and, therefore, it does not represent a change in the law.

450.1762 Right of shareholder to dissent and obtain payment for shares.

Sec. 762. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of his, her, or its shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party if shareholder approval is required for the merger under section 703a or 736(5) or the articles of incorporation and the shareholder is entitled to vote on the merger, or the corporation is a subsidiary that is merged with its parent under section 711.

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order.

(d) Consummation of a plan of conversion to which the corporation is a party as the corporation that is being converted, if the shareholder is entitled to vote on the plan. However, any rights provided under this section are not available if that corporation is converted into a foreign corporation and the shareholder receives shares that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the conversion.

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112. *Id.*

(e) An amendment of the articles of incorporation giving rise to a right to dissent under section 621.

(f) A transaction giving rise to a right to dissent under section 754.

(g) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) Unless otherwise provided in the articles of incorporation, bylaws, or a resolution of the board, a shareholder may not dissent from any of the following:

(a) Any corporate action set forth in subsection (1)(a) to (f) as to shares that are listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, on the record date fixed to vote on the corporate action or on the date the resolution of the parent corporation's board is adopted in the case of a merger under section 711 that does not require a shareholder vote under section 713.

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

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

(d) A transaction described in subsection (1)(c) that is conducted pursuant to a plan of dissolution providing for distribution of substantially all of the corporation's net assets to shareholders in accordance with their respective interests within 1 year after the date of closing of the transaction, if the transaction is for cash, shares that satisfy the requirements of subdivision (a) on the date of closing, or any combination of cash and those shares.

(e) A transaction described in subsection (1)(d) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the conversion, or any combination of cash and those shares.

(3) A shareholder entitled to dissent and obtain payment for shares under subsection (1)(a) to (f) may not challenge the corporate action creating that entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(4) A shareholder that exercises a right to dissent and seek payment for shares under subsection (1)(g) may not challenge the corporate action

creating that entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

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. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

Compiler's Notes: 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."[113]

COMMENT: This amendment corrects the inadvertent exclusion of section 754 from the "public shares" exception of section 762(2)(a), which was caused when this section was amended by Act 402 of 2008.[114]

450.1776 Definitions; A, B.

Sec. 776. (1) "Affiliate" or "affiliated person" means a person that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(2) "Announcement date" means the first general public announcement or the first communication generally to shareholders of a corporation, whichever is earlier, of the proposal or intention to make a proposal concerning a business combination.

(3) "Associate", when used to indicate a relationship with any person, means any 1 of the following:

(a) Any corporation or organization, other than the corporation or a subsidiary of the corporation, in which the person is an officer, director, or partner, or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities.

(b) Any trust or other estate in which the person has a beneficial interest of 10% or more or as to which the person serves as trustee or in a similar fiduciary capacity in connection with the trust or estate.

(c) Any relative or spouse of the person, or any relative of the spouse, who has the same home as the person or who is a director or officer of the corporation or any of its affiliates.

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113. 1988 Mich. Pub. Act No. 58.

114. 2008 Mich. Pub. Act No. 402.

(4) "Beneficial owner", when used with respect to any voting stock, means a person that meets any of the following:

(a) Individually or with any of its affiliates or associates, beneficially owns voting stock, directly or indirectly.

(b) Individually or with any of its affiliates or associates, has any 1 of the following:

(i) The right to acquire voting shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not considered the beneficial owner of voting shares that are tendered pursuant to a tender or exchange offer made by the person, or an affiliate or associate of the person, until the tendered voting shares are accepted for purchase or exchange.

(ii) The right to vote voting shares pursuant to any agreement, arrangement, or understanding. A person is not considered the beneficial owner of voting shares if the person's right to vote the shares under this subparagraph arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation to 10 or more persons.

(iii) Except as provided in subparagraph (ii), any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of voting shares with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the voting shares.

(5) "Business combination" means any 1 or more of the following:

(a) Any merger, conversion, consolidation, or share exchange of the corporation or any subsidiary that alters the contract rights of the shares as expressly set forth in the articles of incorporation or that changes or converts, in whole or in part, the outstanding shares of the corporation with either:

(i) Any interested shareholder.

(ii) Any other corporation, whether or not itself an interested shareholder, that is, or after the merger, conversion, consolidation, or share exchange would be, an affiliate of an interested shareholder that was an interested shareholder before the transaction.

(b) Any sale, lease, transfer, or other disposition, except in the usual and regular course of business, in 1 transaction or a series of transactions in any 12-month period, to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, of any assets of the corporation or any subsidiary having, measured at the time the transaction or transactions are approved by the board of directors of the corporation, an aggregate book value as of the

end of the corporation's most recently ended fiscal quarter of 10% or more of its net worth.

(c) The issuance or transfer by the corporation, or any subsidiary, in 1 transaction or a series of transactions, of any equity securities of the corporation or any subsidiary that have an aggregate market value of 5% or more of the total market value of the outstanding shares of the corporation to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, except pursuant to the exercise of warrants or rights to purchase securities offered pro rata to all holders of the corporation's voting shares or any other method affording substantially proportionate treatment to the holders of voting shares.

(d) The adoption of any plan or proposal for the liquidation or dissolution of the corporation in which anything other than cash will be received by an interested shareholder or any affiliate of any interested shareholder.

(e) Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger, conversion, consolidation, or share exchange of the corporation with any of its subsidiaries that has the effect, directly or indirectly, in 1 transaction or a series of transactions, of increasing by 5% or more of the total number of outstanding shares, the proportionate amount of the outstanding shares of any class of equity securities of the corporation or any subsidiary that is directly or indirectly owned by any interested shareholder or any affiliate of any interested shareholder.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: These amendments make explicit that a business combination accomplished through conversion (sections 745 and 746)[115] is subject to the requirements of this chapter.

450.1781 Conditions for inapplicability of vote to business combination; inapplicability of certain provisions.

Sec. 781. (1) The vote required by section 780 shall not apply to a business combination if each of the following conditions are met:

(a) The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of common stock in the business combination is at least equal to the highest of the following:

115. MICH. COMP. LAWS ANN. §§ 450.1745-.1746 (West 2013).

(i) The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, and appropriately adjusted to account for any stock dividend, stock split, combination, or similar recapitalization affecting the shares, paid by the interested shareholder for any shares of common stock of the same class or series acquired by the interested shareholder within the 2-year period immediately before the announcement date of the proposal of the business combination, or in the transaction in which the shareholder became an interested shareholder, whichever is higher.

(ii) The market value per share of common stock of the same class or series on the announcement date or on the determination date, whichever is higher.

(b) The aggregate amount of the cash and the market value as of the valuation date for consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock is at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of a particular class or series of stock:

(i) The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, and appropriately adjusted to account for any stock dividend, stock split, combination, or similar recapitalization affecting the shares, paid by the interested shareholder for any shares of the class of stock acquired by it within the 2-year period immediately preceding the announcement date of the proposal of the business combination, or in the transaction in which it became an interested shareholder, whichever is higher.

(ii) The highest preferential amount per share to which the holders of shares of the class of stock are entitled in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the corporation.

(iii) The market value per share of the class of stock on the announcement date or on the determination date, whichever is higher.

(c) The consideration to be received by holders of any class or series of outstanding stock shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series of stock. If the interested shareholder has paid for shares of any class of stock with varying forms of consideration, the form of consideration for the class of stock shall be either cash or the form used to acquire the largest number of shares of the class or series of stock previously acquired by the interested shareholder.

(d) After the interested shareholder has become an interested shareholder and before the consummation of a business combination, all of the following conditions are met:

(i) Any full periodic dividends, whether or not cumulative, on any outstanding preferred stock of the corporation are declared and paid at the regular date for those payments.

(ii) The annual rate of dividends paid on any class or series of stock of the corporation that is not preferred stock, except as necessary to reflect any subdivision of the stock, is not reduced, and the annual rate of dividends is increased as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or any similar transaction which has the effect of reducing the number of outstanding shares of the stock.

(iii) After the interested shareholder becomes an interested shareholder, the interested shareholder does not receive the benefit, directly or indirectly, except proportionately as a shareholder, of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation or any of its subsidiaries, whether in anticipation of or in connection with the business combination or otherwise.

(iv) The interested shareholder does not become the beneficial owner of any additional shares of the corporation except as part of the transaction that resulted in the interested shareholder becoming an interested shareholder or by virtue of proportionate stock splits or stock dividends.

(v) There has been at least 5 years between the date of becoming an interested shareholder and the date the business combination is consummated.

(2) Subparagraphs (i) and (ii) of subsection (1)(d) do not apply if an interested shareholder or an affiliate or associate of the interested shareholder did not vote as a director of the corporation in a manner inconsistent with those subparagraphs and the interested shareholder, within 10 days after any act or failure to act inconsistent with those subparagraphs, notifies the board of directors of the corporation in writing that the interested shareholder disapproves of the act or failure to act and requests in good faith that the board of directors rectify the act or failure to act.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;-- Am. 1989, Act 31, Imd. Eff. May 24, 1989;-- Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: These amendments make explicit the implied understanding that the highest share price paid should be calculated taking into account capitalization changes made by the corporation while the interested shareholder has owned the shares.

450.1784 Certain business corporations excepted from requirements

of MCL 450.1780; shareholders considered as single beneficial owner.

Sec. 784. (1) Unless a corporation's articles of incorporation provide otherwise, the requirements of section 780 do not apply to any business combination of any of the following:

(a) A corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to section 12 of the securities exchange act of 1934, 15 USC 78*l*.

(b) A corporation whose original articles of incorporation contain a provision or whose shareholders adopt an amendment to the articles of the corporation after May 29, 1984 by a vote of not less than 90% of the votes of each class of stock entitled to be cast by the shareholders of the corporation and not less than 2/3 of the votes of each class of stock entitled to be cast by the shareholders of the corporation other than voting shares beneficially owned by interested shareholders of the corporation, that expressly elects not to be governed by this chapter.

(c) An investment company registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64.

(2) For purposes of subsection (1)(a), all shareholders of a corporation that have executed an agreement to which the corporation is an executing party that governs the purchase and sale of shares of the corporation or a voting trust agreement that governs shares of the corporation are considered a single beneficial owner of the shares covered by the agreement.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment causes the provisions of chapter 7A to be applicable only to corporations with stock registered under the Exchange Act.[116] The description of public corporations in subsection 1(a) is consistent with how the BCA has identified public corporations in other sections.

450.1804 Dissolution by action of board and shareholders; certificate of dissolution.

Sec. 804. (1) A corporation may be dissolved by action of its board and shareholders as provided in this section.

(2) A corporation's board may propose dissolution of a corporation for action by the shareholders.

116. 15 U.S.C.A. § 78*l* (West 2014).

(3) If it proposes a dissolution, the board must recommend the dissolution to the shareholders unless section 529 applies or the board determines that because of conflict of interest or other special circumstances it should make no recommendation. If the board does not recommend the dissolution to the shareholders, or recommends against the dissolution, in either case because 1 or more of the exceptions described in this subsection apply, the board must communicate to the shareholders the basis for its decision.

(4) A board may condition its submission of the proposal for dissolution of a corporation to the shareholders on any basis.

(5) A proposed dissolution of a corporation shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record whether or not entitled to vote at the meeting within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the corporation.

(6) At the meeting described in subsection (5), the shareholders shall vote on the proposed dissolution. The dissolution 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 dissolution.

(7) If the dissolution of a corporation is approved, it shall be effected by the execution and filing of a certificate of dissolution on behalf of the corporation that states all of the following:

(a) The name of the corporation.

(b) The date and place of the meeting of shareholders at which the dissolution was approved.

(c) A statement that dissolution was proposed and approved by the requisite vote of the board and shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment accommodates the addition of section 529, which clarifies and confirms that the board of directors may enter into an agreement that requires the transaction to be submitted for shareholder approval even if the board no longer recommends the transaction.[117] It is meant merely to clarify that such force-the-vote provisions are permitted, and, therefore, it does not represent a change in the law.

450.1911 Annual report; filing date; contents; exception; information unchanged.

117. MICH. COMP. LAWS ANN. § 450.1529 (West 2013).

Sec. 911. (1) A domestic corporation and each foreign corporation subject to chapter 10 shall file a report with the administrator no later than May 15 of each year. The report shall be on a form approved by the administrator, signed by an authorized officer or agent of the corporation, and contain all of the following information:

(a) The name of the corporation.

(b) The name of its resident agent and address of its registered office in this state.

(c) The names and addresses of its president, secretary, treasurer, and directors.

(d) General nature and kind of business in which the corporation is engaged.

(e) For each foreign corporation authorized to transact business in this state, the total number of authorized shares and the most recent percentage used in computation of the tax required by the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

(f) For each professional corporation, the names and addresses of its shareholders and a certification that both of the following are met:

(i) Each shareholder is a licensed person in 1 or more of the professional services provided by the professional corporation.

(ii) The corporation meets the other requirements of chapter 2A.

(2) A corporation formed or authorized to do business on or after January 1 and before May 16 of a calendar year is not required to file the report described in subsection (1) for that calendar year.

(3) If there are no changes in the information provided in the last filed report required under subsection (1), the corporation may file a report that certifies to the administrator that no changes in the required information have occurred since the last filed report. A report filed under this subsection shall be on a form approved by the administrator and filed no later than the date required under section 911.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1977, Act 36, Eff. Oct. 1, 1977;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1996, Act 196, Eff. May 17, 1996;—Am. 1996, Act 197, Imd. Eff. May 17, 1996;—Am. 2007, Act 182, Imd. Eff. Dec. 21, 2007;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This amendment is part of the integration of the Professional Service Corporation Act into this act.[118]

118. MICH. COMP. LAWS ANN. §§ 450.221-.235 (West 2012) (repealed 2013).

450.2021 Foreign corporations; amended application; conditions; contents; corporation as survivor of merger; increase in authorized shares.

Sec. 1021. (1) Except as otherwise provided in this section, if a foreign corporation authorized to transact business in this state changes its corporate name, enlarges, limits, or otherwise changes the business that the foreign corporation proposes to do in this state, or otherwise affects the information set forth in its application for certificate of authority to transact business in this state, the corporation shall file an amended application with the administrator not later than 30 days after the time that change becomes effective. A foreign corporation may make a change in the registered office or resident agent under section 242. An amended application under this subsection shall set forth all of the following:

(a) The name of the foreign corporation as it appears on the records of the administrator and the jurisdiction of its incorporation.

(b) The date the foreign corporation was authorized to do business in this state.

(c) If the name of the foreign corporation has been changed, a statement of the name relinquished, a statement of the new name, and a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation and the date the change was effected.

(d) If the business the foreign corporation proposes to do in this state is to be enlarged, limited, or otherwise changed, a statement reflecting the change and a statement that the foreign corporation is authorized to do in the jurisdiction of its incorporation the business that it proposes to do in this state.

(e) Any additional information required by the administrator.

(2) If a foreign corporation that is authorized to transact business in this state is the survivor of a merger permitted under the laws of the jurisdiction in which the foreign corporation is incorporated, not later than 30 days after the merger becomes effective, the foreign corporation shall file a certificate issued by the proper officer of the jurisdiction of its incorporation attesting to the occurrence of the merger. If the merger changed the corporate name of the foreign corporation, enlarged, limited, or changed the business the foreign corporation proposes to do in this state, or affected the information set forth in the application, the foreign corporation shall also comply with subsection (1).

(3) If a foreign corporation that is authorized to transact business in this state is the survivor of a conversion permitted under the laws of the jurisdiction in which the foreign corporation is incorporated, not later than 30 days after the conversion becomes effective, the foreign corporation shall file a certificate issued by the proper officer of the

jurisdiction of its incorporation attesting to the occurrence of the conversion. If the conversion changed the corporate name of the foreign corporation, enlarged, limited, or changed the business the foreign corporation proposes to do in this state, or affected the information set forth in the application, the foreign corporation shall also comply with subsection (1).

(4) A foreign corporation that has been authorized to transact business in this state and that, after its authorization, increases the number of authorized shares attributable to this state shall file an amended application giving a detailed account of the amount of the increase, and shall pay an additional franchise fee on account of the increase attributable to this state as prescribed by law. The amended application shall be filed within 30 days after the end of the corporation's fiscal year. The number of shares attributable to this state shall be determined under section 1062.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: These amendments make explicit that a business combination accomplished through conversion (sections 745 and 746) [119] is subject to the requirements of this section.

450.2035 Information required to be filed on dissolution, termination, merger, or consolidation; assessment of unpaid fees; certificate of withdrawal; "business organization" defined.

Sec. 1035. (1) If a foreign corporation authorized to transact business in this state is dissolved, or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, or it is merged into, converted into, or consolidated with another corporation or business organization, it shall file with the administrator any information the administrator requires to determine and assess any unpaid fees payable by the foreign corporation as required by law and either of the following:

(a) A certificate of the official of the jurisdiction of incorporation of the foreign corporation who has custody of the records pertaining to corporations, evidencing the occurrence of the event.

(b) A certified copy of an order or judgment of a court of competent jurisdiction directing dissolution of the foreign corporation, the termination of its existence, or the cancellation of its authority.

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119. MICH. COMP. LAWS ANN. § 450.1745-.1746 (West 2013).

(2) If a certificate, order, or judgment described in subsection (1) is filed and the filing fee prescribed by law is paid, the administrator shall issue a certificate of withdrawal that has the same effect as provided under section 1032.

(3) As used in this section, "business organization" means that term as defined in section 736(1).

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: These amendments make explicit that a business combination accomplished through conversion (sections 745 and 746)[120] is subject to the requirements of this section.

450.2041 Certificate of authority; grounds for revocation.

Sec. 1041. Subject to section 1042, in addition to any other ground for revocation provided by law, the administrator may revoke the certificate of authority of a foreign corporation to transact business in this state on any of the following grounds:

(a) The corporation fails to maintain a resident agent in this state as required under this act.

(b) The corporation, after changing its registered office or resident agent, fails to file a statement of the change as required under this act.

(c) The corporation fails to file an amended application as required under this act.

(d) The corporation, after becoming the survivor to a merger or conversion, fails to file the certificate attesting to the occurrence of the merger or conversion as required under this act.

(e) The corporation fails to file its annual report within the time required under this act, or fails to pay an annual filing fee required under this act.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 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;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: These amendments make explicit that a business combination accomplished through conversion (sections 745 and 746) is subject to the requirements of this section.[121]

Enacting section 1.

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120. *Id.*
121. *Id.*

The professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235, is repealed.

History: 2012, Act 569, Imd. Eff. Jan. 2, 2013

COMMENT: This enacting section repeals the Professional Service Corporation Act (the "PSCA") because the provisions of the PSCA have been integrated into the Business Corporation Act—chapter 2A.[122]

122. MICH. COMP. LAWS ANN §§ 450.1281-.1289 (West 2013).