

HOUSE BILL No. 5679

February 15, 2006, Introduced by Reps. Gaffney and Lemmons, III and referred to the Committee on Commerce.

A bill to amend 1972 PA 284, entitled "Business corporation act," by amending sections 231, 441, and 505 (MCL 450.1231, 450.1441, and 450.1505), sections 231 and 441 as amended by 1989 PA 121 and section 505 as amended by 1993 PA 91.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 231. The initial bylaws of a corporation shall be adopted
2 by its incorporators, its shareholders, or its board **UNDER SECTION**
3 **223.** ~~The shareholders or the board may amend or repeal the bylaws~~
4 ~~or adopt new bylaws unless the articles of incorporation or bylaws~~
5 ~~provide that the power to~~ **AFTER ADOPTION OF THE INITIAL BYLAWS,**
6 **THE POWER TO AMEND OR REPEAL THE BYLAWS OR** adopt new bylaws is
7 reserved exclusively to the shareholders. ~~or that the bylaws or~~

1 ~~any particular bylaw shall not be altered or repealed by the board.~~
2 The bylaws may contain any provision for the regulation and
3 management of the affairs of the corporation not inconsistent with
4 law or the articles of incorporation.

5 Sec. 441. (1) Except as provided in sections 794 and 798, each
6 outstanding share is entitled to 1 vote on each matter submitted to
7 a vote, unless otherwise provided in the articles of incorporation.
8 A vote may be cast either orally or in writing, unless otherwise
9 provided in the bylaws.

10 (2) ~~If an action, other than the election of directors,~~
11 **EXCEPT AS PROVIDED IN SUBSECTION (3) OR (4), AN ACTION THAT** is to
12 be taken by vote of the shareholders ~~—, it—~~ shall be authorized by
13 a majority of the votes cast by the holders of shares entitled to
14 vote on the action, unless a greater vote is required by the
15 articles or another section of this act.

16 (3) Except as otherwise provided by the articles, directors
17 shall be elected by a plurality of the votes cast at an election.

18 **(4) THE AMENDMENT OR REPEAL OF THE BYLAWS OR THE ADOPTION OF**
19 **NEW BYLAWS SHALL BE AUTHORIZED BY A MAJORITY OF THE VOTES CAST BY**
20 **THE HOLDERS OF SHARES ENTITLED TO VOTE ON THAT ACTION.**

21 Sec. 505. (1) The board shall consist of 1 or more members.
22 The number of directors shall be fixed by, or in the manner
23 provided in, the bylaws, unless the articles of incorporation fix
24 the number.

25 **(2) THE TERM OF OFFICE OF A DIRECTOR IS 3 YEARS. A DIFFERENT**
26 **TERM OF OFFICE SPECIFIED IN THE ARTICLES OF INCORPORATION OR BYLAWS**
27 **IS NOT ENFORCEABLE.** The first board of directors shall hold office

1 until the ~~first~~ **THIRD** annual meeting of shareholders **AFTER THE**
2 **FORMATION OF THE CORPORATION**. At the ~~first~~ **THIRD** annual meeting
3 of shareholders **AFTER THE FORMATION OF THE CORPORATION** and at each
4 **THIRD SUCCEEDING** annual meeting thereafter, the shareholders shall
5 elect directors to hold office ~~until the succeeding annual~~
6 ~~meeting, except in case of the classification of directors as~~
7 ~~permitted by this act~~ **FOR 3-YEAR TERMS**.

8 (3) A director shall hold office for the **3-YEAR** term for which
9 he or she is elected and until his or her successor is elected and
10 qualified ~~—~~ or until his or her resignation or removal. A
11 director may resign by written notice to the corporation. The
12 resignation is effective upon its receipt by the corporation or a
13 later time as set forth in the notice of resignation.

14 (4) ~~(3)~~ The shareholders or board may designate 1 or more
15 directors as an independent director. Any director ~~so~~ designated
16 ~~shall be~~ **AS AN INDEPENDENT DIRECTOR IS** entitled to reasonable
17 compensation in addition to compensation paid to directors
18 generally, as determined by the board or shareholders, and
19 reimbursement for expenses reasonably related to service as an
20 independent director. An independent director may communicate with
21 shareholders at the corporation's expense, as part of a
22 communication or report sent by the corporation to shareholders. An
23 independent director shall not have any greater duties or
24 liabilities than any other director.