PART TWO

A PROPOSAL
PROPOSED NONPROFIT CORPORATION ACT

Draftsman’s Introductory Note

These provisions are designed to fulfill completely and succinctly the requirements of corporations not generally falling into the category of the usual business corporation or organization motivated for the pecuniary profit of its shareholders. They are not offered as an integral or complete act in themselves but are designed as supplementary sections to the general business corporation act. In the interests of uniformity of procedures and consistency of substance, the general corporate law of the jurisdiction is applicable unless otherwise specified.

These sections are specifically formulated in reference to the Michigan Act but are believed to be adaptable to any state’s general corporation act with very slight additions or changes.

The section numberings arbitrarily start with 200 and run consecutively to 319. This is done to allow ample additional sections for the general provisions and to avoid confusion between the proposed and existing sections. Changes and additions have been made only where they were thought necessary to clarify possible ambiguities, eliminate duplications, or make the statutes conform to routine practices of the type organization. Generally, existing sections taken from the Michigan Act were not changed just for purposes of reclassification, changes in style, or methods of expression.

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SEC. 200. SPECIAL TYPES OF CORPORATIONS; APPLICABILITY OF ACT. Special types of corporations hereinafter provided for in sections 202 to 313 shall be governed by the provisions of this Act relating to corporations generally except as specifically otherwise provided.

Note. This section is added to prevent needless repetition existing in the current Michigan statutes. At present a similar provision is inserted for each special type of corporation, e.g., sections 98, 117, and 170 of the Michigan Act.

SEC. 201. LIABILITY FOR TORTS. The special types of corporations hereinafter provided for in sections 202 to 313 shall be responsible for the torts of their agents and employees committed within the scope of employment to the same extent as natural persons and general business corporations.

Note. This is a new provision changing the existing law applicable to many of these nonprofit corporations. Michigan law now generally provides that charitable corporations are not liable for the torts of their agents, Nonprofit Corporations Generally, supra, p. 78, and one case at least has inferred that cooperatives likewise would be immune from liability, Flueling v. Goeringer, 240 Mich. 372, 215 N.W. 294 (1927), discussed supra Cooperatives, p. 48. The immunity principle is now generally discredited.

SEC. 202. COOPERATIVE CORPORATIONS. Corporations organized to conduct any lawful business which limit the
dividends payable upon stock investment in the case of corporations with capital stock and membership investment in the case of membership corporations without capital stock to not in excess of 7 per cent per annum and/or which limit the voting rights of stockholders and/or members to 1 vote regardless of the number of shares of stock and/or membership held, and in any case do not conduct more that 50 per cent in annual value of their business or services with nonstockholders and/or nonmembers, shall be termed cooperative corporations.

Classification of cooperative corporations. Corporations organized under and operated in accordance with the provisions of sections 202 to 216, inclusive, of this Act, which pay limited dividends upon the stock and/or membership investment or which do not make distribution of earnings to nonstockholders or nonmembers upon the same basis as to stockholders and/or members shall, for purposes of making reports and payment of privilege fees or other taxes to the state, be classified as profit corporations. Corporations which do not pay dividends or interest upon stock and/or membership investment and which distribute all earnings to stockholders and/or members and other persons doing business with the corporation or provide for the allocation of such earnings to stockholders and/or members and other persons doing business with the corporation for future distribution shall, for the purposes of making reports and payments of privilege fees or other taxes to the state of Michigan, be classified as nonprofit corporations.

Note. The first paragraph providing for limited dividends, per capita voting, and restriction on business activities with
nonmembers is characteristic of cooperatives, supra Cooperatives, pp. 10–19.

Seven per cent is a fair return on investment capital. Massachusetts limits the return to 5%. [Mass. Ann. Laws c. 157, sec. 6(2) (1948).] California limits the return to 5% under the general cooperative act but permits an 8% return for agricultural cooperatives. [Cal. Corp. Code sec. 12201 (1953), and Cal. Agricultural Code sec. 1200(1) (1950)]. The following states limit the return on investment capital to 8%: New York (N. Y. Cooperative Corp. Law secs. 72 and 111); Utah (Utah Code Ann. sec. 3-1-11 (1953)); Ohio (Revised Code sec. 1729.10 (f) (Baldwin (1953)); Iowa (Ia. Code Ann. secs. 499.23 and 499.24 (1949)); Florida (Fla. Stat. sec. 618.15 (1953)).

Restriction on business activity with nonmembers is justified since the basic concept of a cooperative is the performance of service for members. Statutory restrictions are common but not universal. The Massachusetts Act, Mass. Ann. Laws c. 157, sec. 1 et seq. (1948) and the California Act for agricultural cooperatives, Cal. Ag. Code, sec. 1190 et seq. (1950), contain no such restrictions. The California Act for general cooperatives simply authorizes “any lawful business primarily for the mutual benefit of its shareholders.” [Cal. Corp. Code, sec. 12201 et seq. (1953)]. A New York statute provides that “nonmember products handled in any year must not exceed the total of similar products handled for its own members.” [N. Y. Cooperative Corp. Law sec. 14(b).] Another New York Statute provides restriction against an agricultural cooperative dealing in farm products “in an amount greater in value than the total amount of such business transacted by it with or for members.” [N. Y. Coop. Corp. Law sec. 116.]

An Ohio statute provides that if the cooperative handles the products of nonmembers, “the total of such nonmembers’ products handled by it in any fiscal year must not exceed the total of similar products handled by the association for its own members during the same period.” [Ohio Revised Code sec. 1729.03 (A) (Baldwin 1953).] Similar restrictions can be found in the statutes of Utah (Utah Code Ann. sec. 3-1-9 (IIb) (1953)), Florida (Fla. Stat. sec. 618.91(3) (1953)), and Iowa (Ia. Code Ann. sec. 499.3 (1949)). The Iowa statute forbids the handling of any nonmember’s livestock in the case of a livestock ship-
ping association. [Ia. Code Ann. sec. 499.3 (1949).] It is believed that the present Michigan Act expresses the desired limitation as succinctly as possible. However, the existing limitation is expressed as 50% of the business or service without specifying either the time or commodity unit of measurement. The insertion of the words in annual value after 50 per cent eliminates any ambiguity.

The provision in the first paragraph of section 98 of the present Michigan Act stating that cooperatives are subject to the General Corporation Act unless otherwise provided has been deleted from section 202 and made a separate provision under section 200 applicable to all special types of corporations provided for in sections 202 to 313. The differentiation between profit and nonprofit cooperatives for purposes of state taxation is sufficiently clear. This is simply a policy matter to be decided by the legislature. In view of the fact that this Act covers all cooperatives and permits considerable flexibility in their organization, such a classification is reasonable. The treatment in other states is not uniform. Assertions to the effect that such "associations shall be deemed nonprofit inasmuch as they are not organized to make profit for themselves as such," [Ohio Rev. Code sec. 1729.01 (Baldwin 1953); Cal. Ag. Code sec. 1192 (1950); Fla. Stat. secs 618.01, 619.03 (1953); N. Y. Coop. Corp. Law sec. 3 (d)] are common but are not necessarily determinative of what fees or taxes they pay. The Ohio Act, for example, provides that for the filing of the articles or amendments, and with respect to the issuance of shares of stock, the cooperative must pay the same fees as a profit corporation [Ohio Rev. Code sec. 1729.08 (Baldwin 1953)], whereas Iowa provides a separate filing fee schedule for cooperatives [Ia. Code Ann. sec. 499.45 (1949)]. The present Michigan Act clearly and adequately covers the matter.

Sec. 203. Cooperative plan. Corporations may engage in any lawful business within this state upon any cooperative plan adopted by the incorporators, or by the shareholders at any annual or special meeting. For the purpose of this act, the term "cooperative plan" shall be deemed to mean a mode of operation whereby the earnings of the
corporation are distributed on the basis of, or in proportion to, the value of property bought from or sold to shareholders and/or members or other persons, or labor performed for, or services rendered to, or by the corporation: \textit{Provided}, That the foregoing definition shall not be construed as prohibiting any such corporation from paying limited dividends to stockholders and/or members upon stock and/or membership investment, or from reserving a certain proportion of earnings for future operations or for future distribution. Earnings so reserved shall be allocated on the books of the corporation or a means provided for such allocation to the stockholders and/or members or other persons entitled to such earnings, before general distribution of earnings shall have been authorized and made. Corporations organized under a cooperative plan and governed by sections 202 to 216, inclusive, of this Act are hereinafter in this Act called cooperative corporations and they only shall use the term "cooperative" in their name.

\textit{Note.} Authorization to engage in any lawful business is desirable, see \textit{supra}, Cooperatives, p. 23 \textit{et seq.} Some states expressly authorize only agricultural cooperatives: e.g., Utah Code Ann. sec. 3-1-4 (1953); some states have two or more acts, one providing for agricultural cooperatives and the other for more general cooperatives: Ohio Rev. Code secs. 1729.02, 1729.28 (Baldwin 1953), California Ag. Code sec. 1190, Cal. Corp. Code sec. 12201 (1953), Fla. Stat. secs. 618.06 and 619.01 (1953), Mass. Ann. Laws c. 157, secs. 1, 3 and 10 (1948); others simply list the purposes or objects for which a cooperative may be formed, e.g., Ia. Code Ann. sec. 499.6 (1949).

The definition of cooperative plan is precise and definite, sufficiently regulatory to compel the return of earnings to the patrons and sufficiently flexible to be adapted to the needs of a particular organization. See \textit{supra}, Cooperatives, p. 26. \textit{Cf.} the definitions in the following statutes: Cal. Corp. Code sec.
SEC. 204. ARTICLES OF INCORPORATION; CONTENTS. 1. Articles of incorporation shall be signed in triplicate and shall be acknowledged by at least one of the incorporators if there are more than one, or by the sole incorporator if there are no more than one. The acknowledgment shall be executed before an officer authorized to take acknowledgments by the laws of this state and shall express, in the English language:

   a. the name of the corporation which must include the word "cooperative";
   
   b. the purpose or purposes for which the corporation is formed;
   
   c. the location and post-office address of its registered office in this state;
   
   d. the name of the corporation's first resident agent;
   
   e. if the association is organized without capital stock, whether the property rights and interests of all members are to be equal or unequal; if unequal, the general rules applicable to all members by which the property rights and interests of each member are to be determined; and provision for the admission of new members entitled to share in the property of the association with the old members in accordance with such general rules;
   
   f. if the corporation is organized with capital stock, the stock structure as prescribed in section 4(1)(e) of this Act relating to corporations generally;
   
   g. the amount of capital with which the corporation will commence business, which shall not be less than $1000;
   
   h. the names and places of residence or business of each
of the incorporators and the number and class of shares subscribed for by each;

i. the names and addresses of the first board of directors;

j. the term of the corporation existence.

2. The articles may also contain optional provisions as authorized in section 4, paragraphs 2 and 3, of this Act relating to corporations generally.

*Note.* This is essentially the same as section 4 of the Michigan Act relating to corporations generally except that a provision requiring the word "cooperative" to appear in the corporation's name has been added in paragraph 1(a), and a section has been added (par. 1(e)), for the cooperative without capital stock. Although the addition of this section makes for some repetition, it is believed that the interests of clarity justify such duplication.


Par. 1(e) providing for a statement of the property rights of members in case the cooperative is organized without capital stock is new. This provision is prompted by par. 1(e) of sec. 4 of the Michigan Act which obviously has reference primarily, if not only, to stock corporations. Although shares of stock and membership are equated in sec. 2(g), it is believed the application or sec. 4(1)(e) to non-stock cooperatives may be a little awkward. This new provision is substantially the same as the Ohio provision (Ohio Rev. Code sec. 1729.06(E) (Baldwin 1953)). Other statutes have similar provisions: Fla. Stat. sec. 618.04(6) (1953); Utah Code Ann. sec. 3-1-5(h) (1953); Ia. Code Ann. sec. 499.40(6)(b) (1949). The additional provision
in the Ohio statute that such provision in the articles concerning property rights "shall not be altered, amended or repealed except by the written consent or vote of two thirds of the members" [Ohio Rev. Code sec. 1729.06(F) (Baldwin 1953)], is not included. It is believed that the application of section 43 of the Michigan Act (providing generally for amendments), to nonstock cooperatives adequately covers this situation. In accord with this section, and construing shares of stock as synonymous with membership in accord with section 2(g), an amendment which changes the rights, privileges, or preferences of members must be approved by a majority of the members of the class affected. No further provision is needed.

A requirement stated in sec. 4(1)(f) of the present Michigan Act, that the articles contain in addition to the names and addresses of the incorporators the number and class of shares subscribed for by each, has been retained in the original language. The provision obviously applies to both stock and membership cooperatives as a result of the definition in sec. 2(g). Although this requirement does not seem to be common in other cooperative statutes [Ohio Rev. Code sec. 1729.06 (Baldwin 1953), Fla. Stat. sec. 618.04 (1953), N. Y. Coop. Corp. Law sec. 11, Ia. Code Ann. sec. 499.40 (1949), but see Utah Code Ann. sec. 3-1-5 (1953), requiring this information only if the cooperative is organized on a stock basis], it is believed desirable to make such a provision applicable to cooperatives. Although the earnings are distributed on the basis of patronage and not financial interest, the act permits unequal voting rights. Thus, requiring a statement of the incorporators' interest enables prospective members to determine the degree of control that may be acquired by the incorporators. Control may be more significant than the right to a portion of the distributable funds.

A separate provision is retained in par. 1(g) requiring a minimum of $1000 with which the corporation shall begin business. It is noted that sec. 5 of the Act, Mich. Comp. Laws sec. 450.5 (Mason's Supp. 1954), requires all profit corporations to have $1000 before commencing business. Since some cooperatives are classified as nonprofit corporations, this provision is included in this section to make the requirement apply to all cooperative corporations.

Paragraph 2 of this section incorporates by reference op-
tional provisions authorized in paragraphs 2 and 3 of section 4 of the Michigan Act relating to corporations generally.

Since no reference to the number of incorporators is made in these sections, the requirement of one or more as provided in sec. 3 is applicable. This is a reasonable approach; see Non-profit Corporations Generally, Authorization, *supra*, p. 57.

No separate provision for filing the articles is included, as this is governed by section 5 of the General Act.

**Sec. 205. Contents of certificates of stock.** There shall be printed upon each share of stock issued by cooperative corporations a concise statement of every article or by-law which in anywise limits the shareholders' right to assign or transfer such shares or to vote the total number of shares held at meetings of the corporation, or which forbids voting by proxy.

The provisions of the Uniform Stock Transfer Act of this state shall not be held to apply to the shares of stock of such cooperative corporations in any manner or to any extent inconsistent with the provisions of sections 202 to 216, both inclusive, of this Act.

*Note.* See *supra*, Cooperatives, Membership, p. 33. Authority to place limitations on the transfer of cooperative stock and even rather rigid limitations on membership are common in other states. [Ia. Code Ann. sec. 499.17 (1949); N. Y. Cooperative Corp. Law sec. 40; Utah Code Ann. sec. 3-1-11 (1953); Mass. Ann. Laws c. 157, sec. 13 (Supp. 1954); Cal. Ag. Code, sec. 1206 (1950); Ohio Rev. Code, sec. 1729.09 (Baldwin 1953); Fla. Stat. sec. 618.15 (1953).] It is believed the present Michigan practice affords the greatest flexibility and is desirable in that it places no arbitrary rule on assignability of memberships but allows the interested parties to determine the question of transferability for themselves.

Similarly, the present Michigan Act permits the members to determine voting rights rather than arbitrarily asserting that there shall be per capita voting or otherwise rigidifying the mode of operations. Hence, each cooperative can determine the mode of operations best suited to its peculiar
requirements. Sec. 206 *infra.* Provisions in other states are not uniform. [Fla. Stat. sec. 618.15 (1953); Ohio Rev. Code sec. 1729.10 (G) (Baldwin 1953); Cal. Ag. Code sec. 1196 (e) (1950); Cal. Corp. Code sec. 12403 (1953); N. Y. Cooperative Corp. Law secs. 44 and 46 (1951).]

**Sec. 206. By-laws.** The shareholders of any cooperative corporation shall have power: to adopt by-laws for the government and regulation of its business management, and to amend such by-laws; to determine the manner of distributing the earnings of the corporation upon a cooperative plan; to limit and define the powers and duties and the number of directors and officers; to delegate to the directors any particular power or authority which the shareholders themselves possess, excepting the right to elect or dismiss directors and to amend the articles; to fix the time for holding the elections of its directors, which shall be annual unless a longer term is prescribed in the articles or by-laws: Provided, That in the event directors are elected for a term of more than 1 year, the by-laws shall prescribe the length of term and the number of directors to be elected each year; to determine whether or not voting by proxy shall be allowed, and if so allowed, when and how; to provide the manner in which directors and officers may be removed and their successors elected at any time by vote of the shareholders; to determine whether or not shareholders shall be limited to 1 vote each, regardless of the number of shares held; to determine the number of shareholders attending any meeting, or the number of shares represented at any meeting of shareholders which shall constitute a quorum, which may be less than a majority; to determine the manner in which shareholders may vote by mail, if the articles or by-laws provide for such voting; and to provide a limitation upon the amount of
capital stock which may be owned by any 1 shareholder therein; all of which shall be included in the by-laws or in the articles.

Note. This section provides for the maximum flexibility in organization. See supra, Cooperatives, Membership, p. 33, and Organization, p. 36. This flexibility is desirable and should be retained. Unless abuses are evident, there is no need for more rigid requirements.

Sec. 207. Membership. The shareholders of every cooperative corporation may also provide in their articles or by-laws, the necessary qualifications of shareholders or members, together with provisions limiting, prescribing or regulating the transfer of such shares or memberships, and the terms and conditions under which, if at all, memberships or certificates of stock may be transferred. No sale, transfer or assignment of membership rights or of any stock in any cooperative corporation shall be valid unless made in accordance with its articles or by-laws; nor shall any purchase and sale of any such shareholder's stock or privileges in such corporation made under execution, or in the course of bankruptcy proceedings, or by any legal process or by operation of law, give any person any shareholder's or membership right, title or interest in and to such corporation, unless in accordance with its articles or by-laws.

Note. The desirability of these flexible provisions is discussed supra, Cooperatives, Membership, p. 33 et seq.

Sec. 208. Amendments. Any corporation formed or existing under this Act may at a meeting of the shareholders duly called and held amend its articles or by-laws in accord with sections 42, 43 and 16 of this Act: Provided, however, That only the shareholders shall have power to
amend the by-laws. In addition to the above procedure for amendments one tenth of the entire number of shareholders of any cooperative corporation may propose any desired amendment to the articles or to the by-laws of such corporation, and any amendment so proposed shall be voted upon by the shareholders at any meeting duly called and held but not later than the next annual meeting. Approval shall be by a majority of the shareholders either in interest or per capita as the case may be.

Note. This section includes section 103 of the present Michigan Act but adds additional provisions for clarity. The method of proposing amendments prescribed in sec. 103 is made optional and in addition to other procedures that may be prescribed in the articles or by-laws under authority of secs. 42, 43 and 16. The mandatory provision requiring the proposed amendment to be voted on at the next annual meeting is changed to permit such voting at any meeting duly called and held but not later than the next annual meeting. Majority approval of all the members is clearly indicated. That the statutory method of proposing amendments as prescribed in sec. 103 is not at present exclusive is suggested by an analysis of the whole Act. See supra, Cooperatives, Amendment, p. 38. The proposed Act makes this clear. Permitting voting on such an amendment at any meeting duly called and held but not later than the next annual meeting is a change from the present Act which requires the voting to be at the next annual meeting. It is not apparent why the members should be compelled to wait until the next annual meeting to pass on fundamental changes. A prohibition against delaying a vote beyond the next annual meeting guarantees a seasonable opportunity to pass on the proposition.

The provision requiring approval of a majority either in interest or per capita as the case may be should cause no difficulty, the result depending upon whether stock or per capita voting is practiced in the particular cooperative. Sec. 43 of the General Act will also be applicable, so that if property rights of any class of members are changed, an approval by a majority of the class so affected will be required, see supra, sec. 204. Under the proposed Act only the members or shareholders shall have power to amend the by-laws.

Sec. 16 of the present Act, applying to corporations gener-
ally, gives both the directors and shareholders authority to amend the by-laws. It is believed that the change is more in accord with the other provisions of the cooperative Act conferring wide powers on the members, e.g., secs. 206 and 207, and may prevent prolonged disputes between the directors and shareholders.

Provisions in statutes of other states are not uniform. Idaho provides that the articles may be amended at any meeting by a 2/3 vote of the directors and a 2/3 vote of the members constituting a quorum present. By-laws can be amended by a 2/3 vote of the members at any meeting if a quorum is present. [Idaho Code Ann. sec. 22-2609 and 22-2610 (1948).] Iowa permits an amendment to the articles at any meeting called for that purpose and requires approval of 3/4 of all the votes cast providing at least 25% of the members vote thereon. By-laws may be amended by a majority vote of the members. [Ia. Code Ann. secs. 499.41 and 499.46.] The same state may have different provisions for different cooperatives. A Florida statute provides for amendments to the articles at any regular or special meeting called for that purpose and requires that it be approved by 2/3 of the directors and a majority of a quorum of the members attending. By-laws can be amended by a majority vote of a quorum of the members attending a meeting. [ Fla. Stat. secs. 618.05 and 618.09 (1953).] Other Florida Statutes authorize an amendment to the charter by a 2/3 vote of all the members at any regular or special meeting called for that purpose. No specific provision is made for the amendment of the by-laws under these sections. [ Fla. Stat. secs. 619.05 and 619.06 (1953).] California also has dual and different provisions. [Cal. Ag. Code secs. 1199 and 1200; Cal. Corp. Code sec. 12900 (1953).]

Such lack of uniformity suggests that the best procedure is the one that most nearly conforms to the particular state's prescribed procedure for corporations generally. It is believed that the proposed statute accomplishes this, and that the requirement of a majority approval of all the shareholders or members is not unduly burdensome.

**Sec. 209. Investment of Reserve Fund.** At any regular meeting, or any duly called special meeting, at which the quorum fixed by the by-laws shall be present, the shareholders of any cooperative corporation may by a majority vote of such shareholders present in person, subscribe for
shares and invest a portion of the reserve fund of such corporation, not to exceed at any time 20 per cent in the aggregate of its net worth, in the capital or membership capital of any other cooperative corporation or corporations with which it desires to cooperate or affiliate: Provided, however, That this provision shall not be construed to prevent such corporation from accepting patronage dividends in the form of stock or otherwise from such other corporation in any amount. In determining the amount available for such investment in other corporations, net worth shall be defined as the difference between total assets and liabilities exclusive of the members' and patrons' interest, members' and patrons' interest being defined as including any rights to deferred patronage dividends but not including any sums owing currently as a result of business transactions with the cooperative.

Note. This section is the same as the present Michigan section 104 except that the words "net worth" are substituted for the word "capital." Net worth is then defined to avoid any ambiguity and to clarify just what sums are available for investment in any other corporation. It is believed that the added definition does not change the existing law. see supra, Cooperatives, Investment of Reserves, p. 40. Owing to the fact that methods of financing cooperatives differ widely, it is wise to indicate specifically what sums are available for such investment. This section clearly limits such investments to 20 per cent of the net worth of the corporation. Note that investments are authorized only out of the reserve fund but that all of the members' contributions, including deferred patronage dividends as authorized in sec. 212, are taken into account in determining the 20% limitation. It is believed that this provides a direct and forthright yet flexible procedure discouraging circuity and concealment.

There is no statutory limitation on such investments in Ohio, New York, Utah, Florida, and California so far as agricultural cooperatives are concerned. [Ohio Rev. Code sec. 1729.03 (D&G) (Baldwin 1953); N. Y. Coop. Corp. Law sec. 14(f); Utah Code Ann. sec. 3-1-9 (IIe) (1953); Fla. Stat. sec. 618.20 (1953); Cal. Ag. Code sec. 1215 (1950).]
The general California cooperative statute limits such investments to 25% of the corporation’s capital [Cal. Corp Code sec. 12804 (1953)], while Massachusetts makes no limitation on the amount of investments but places rigid restrictions on the type of investments [Mass. Ann. Laws c. 157, sec. 5 (1948)]. The Iowa statute makes no specific reference to investments. [Ia. Code Ann. secs. 499.1 et seq. (1949).]

**SEC. 210. PURCHASE OF BUSINESS OF ANOTHER CORPORATION.** Whenever any cooperative corporation shall purchase the business of another corporation, firm, or person or persons, it may pay for the same in whole or in part by issuing to the selling corporation, firm, person, or persons, shares of its capital stock to an amount which, at par value, would equal the fair market value of the business so purchased, and in such case the transfer to the purchasing corporation of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued.

*Note.* This section is the present Michigan section 105 and remains unchanged. It is sufficiently definite so as to cause no difficulty. It authorizes the purchase of another business and payment for it by the issuance of par stock. Under sec. 57 a business corporation can purchase other businesses and assets and pay for them by issuing stock and other securities and is not limited to the issuance of par value stock for such assets. If the requirement of payment in par value stock is thought too rigid, the provision can readily be changed by eliminating the phrase “at par value.” Remarkably similar provisions exist in the statutes of New York, California and Ohio. [N. Y. Coop. Corp. Law sec. 71; Cal. Corp. Code sec. 12802 (1953); Cal. Ag. Code sec. 1212 (1950); and Ohio Rev. Code sec. 1729.21 (Baldwin 1953).] The Iowa statute permits the payment to be made by issuing preferred stock and designates the procedure for appraisal. [Ia. Code Ann. sec. 499.25 (1949).] Florida, Utah, and Massachusetts have no specific provisions. [Fla. Stat. secs. 618.01 et seq. (1953), Utah Code Ann. secs. 3-1-1 et seq. (1953), Mass. Ann. Laws c. 157 (1948).]

**SEC. 211. DISTRIBUTION OF EARNINGS.** The shareholders
of every cooperative corporation shall provide in the by-laws what per cent upon the paid-up capital stock of such corporation, not exceeding 7 per cent per annum, shall be first paid and distributed to the holders of such paid-up capital stock as dividends before dividing the surplus earnings or profits, as herein provided, and whether or not such dividends shall be cumulative. Said by-laws shall further provide what amount or percentage of the annual profit and earnings of the business, over and above such dividends to shareholders, shall be retained and kept in the treasury of such corporation as a reserve, and in what manner, method and proportion the surplus annual earnings and profits of the business of such corporation, in excess of such dividends and reserves, shall be divided up and distributed as a cooperative dividend, under the cooperative plan or principle adopted by such corporation among shareholders or members doing business with the corporation; and may also provide for cooperative dividends to nonstockholders or nonmembers: Provided, That for the purposes of determining the amount owing by such cooperative corporation as annual privilege fee, deferred patronage dividends and the balance of such reserve in excess of 30 per cent of the paid-up capital of such corporation, as the term capital is used in section 20, shall be considered as surplus.

*Note.* This section is substantially the same as the present Michigan section 106. In the last sentence, the word "for" following "annual privilege" has been changed to "fee" which is the word obviously intended. Other changes in this section also occur in the last sentence and consist of adding the words "deferred patronage dividends and" immediately preceding the words "the balance of such reserves," and the addition of the words "as the term capital is used in section 20" following the words "paid-up capital of such corporation."

This provision for the distribution of the earnings is sufficiently clear and flexible. Shareholders are authorized to de-
termine in the by-laws a fixed dividend on the stock not to exceed 7%, and to determine whether or not the dividend shall be cumulative. The by-laws shall then determine what percentage shall be distributed as a cooperative dividend, the by-laws to determine the procedure for such distribution, and whether or not nonmembers shall share in this distribution. This provision enables a great deal of flexibility rather than rigidly specifying the procedure for distribution of earnings, and at the same time preserves cooperative principles. The provision in the subsequent section authorizing a revolving fund authorizes the retention for a period of time of all or a part of the cooperative dividend as deferred patronage dividends.

The alteration of the last sentence concerning the annual privilege fee does not change the existing law but only clarifies it. Since the present Act only specifies a reserve in addition to the cooperative dividend which presumably will be paid in cash, the present section takes account of all retained earnings in computing the annual tax. Since the new provision (sec. 212) permits the retention of deferred patronage dividends in a revolving fund, obviously such dividends should be considered in determining the tax. The proposed amendment takes these sums into consideration. The addition of the phrase defining paid-up capital “as the term is used in sec. 20” is prompted in the interest of clarity. Unfortunately, the present Act does not definitely define the term in sec. 2. The term as used in sec. 20 obviously has reference to the balance sheet item, and obviously too, any other connotation here would make the computation of the tax more difficult. Unfortunately, however, in the interest of uniformity of definitions, paid-up capital here is used in a much more limited sense than capital is used in sec. 104 of the present Michigan Act. The proposed Act eliminates any conflict in definitions by substituting the words “net worth” for “capital” in sec. 209.

SEC. 212. REVOLVING FUND. The shareholders of any cooperative corporation existing under this Act may provide in the by-laws that the board of directors may allocate all or a portion of the cooperative dividends as ascertained in accordance with section 211 to a revolving fund, provided that such sums shall be credited to the account of each member or patron ratably in proportion to the busi-
ness he has done with the association during such year. Such credits are herein referred to as deferred patronage dividends and may be represented by transferable or nontransferable certificates in accordance with articles or by-law provisions.

The directors may use the revolving fund for all authorized corporate purposes. Deferred patronage dividends credited to members shall constitute a charge on the revolving fund and future additions thereto, and on the corporate assets, subordinate to creditors and preferred stockholders then or thereafter existing. Deferred patronage dividends for any year shall have priority over those for any subsequent year. Deferred patronage dividends may be made payable at a fixed or indefinite maturity date with option on behalf of the board to pay them whenever in its discretion the best interest of the corporation would be served by such payment, provided that the deferred patronage dividends shall always be retired or paid according to their seniority based on the length of time outstanding, and provided that such claims for dividends shall always be subordinate to claims of creditors and preferred stockholders. A revolving fund wherein the stock itself is rotated is not authorized.

*Note.* This section is prompted by the cooperative practice of financing the enterprise at least in part by means of a revolving fund (see *supra*, Cooperatives, Revolving fund, p. 27), and is patterned after the Iowa statutes (Ia. Code Ann. secs. 499.30, 499.33, 499.34, 499.35 (1949)). It authorizes the retention of patronage dividends for corporate purposes but requires that allocation of credits to the various patrons be seasonably ascertained. The sums retained thus assume the character of loans to the cooperative but are subordinate to claims of creditors and preferred stockholders.

As is the case with other sections, this one is designed to provide the utmost flexibility in organization. Most of the provisions are permissive: the stockholders may provide for a revolving fund; the board may allocate all or a portion of the
surplus earnings to this fund; certificates representing these credits may be issued and may be either transferable or non-transferable; and the funds may be used for all authorized corporate purposes.

The requirements are only that these funds shall be subordinate to claims of creditors and preferred shareholders, and that they be retired on the basis of seniority. Note also that they may be made payable at either a definite or indefinite future time, and that the board may elect to pay them sooner.

This flexibility permits adaptation to the needs of any cooperative and at the same time sacrifices no traditional corporate concepts or rights of individuals. See supra, Cooperatives, Revolving fund, p. 27. The statute prohibits a revolving fund based on stock rotation. This prohibition is based on the belief that there is no need for a stock rotation plan, since this revolving fund is so readily set up, easily administered, and creates no unnecessary problems as to redemptions of stock, change in corporate capitalization, accounting procedures, or other difficulties (see supra, Cooperatives, Revolving fund, p. 28).

**Sec. 213. Surplus Earnings.** The surplus earnings and profits of every cooperative corporation shall be distributed to those entitled thereto at such times as the by-laws may provide, which shall be at least as often as once in each year.

*Note.* This section is the same as the first part of sec. 107 of the present Michigan Act. The provision authorizing a chancery dissolution if the corporation fails to pay the dividend upon its paid-up capital stock is eliminated.

The retained provision requiring an annual but permitting a more frequent distribution of the surplus earnings is certainly justified. It is believed that the provisions concerning the dissolution of corporations generally (secs. 65 *et seq.*), are adequate for cooperative corporations. Although it is not too likely, it is possible that a cooperative corporation might be solvent and still unable to pay the limited authorized dividend on its stock. The creation of a new procedure for dissolution in this event seems unnecessary. That provision is eliminated in the interests of uniformity and consistency with provisions relating to other corporations. An examination of the statutes for cooperatives in Ohio, Utah, Iowa, California,
Massachusetts, New York, and Florida reveals no similar provision.

Sec. 214. Contracts and Agreements. Every cooperative corporation, in addition to the powers enumerated in section 10, may enter into any and all necessary contracts with stockholders, members or other persons in regard to the usual business activity of the corporation, and may conduct such business activity upon a commission or brokerage basis, purchase and sale relationship, agency agreement, or warehouse storage plan.

Note. This section is based on sec. 108 of the present Michigan Act but is enlarged to make it clear that the cooperative corporation has all the powers of corporations generally enumerated in sec. 10 of the Act, and to authorize specifically all cooperatives (not just agricultural associations as the present Act), to enter into contracts with the members and to conduct its business upon a commission or brokerage basis, purchase and sale relationship, agency agreement, or warehouse storage plan.

This statute concisely confers on the cooperative all the powers necessary and incidental to the conduct of business by referring to sec. 10 of the Act and expressly authorizes any cooperative to select the legal basis on which it will engage in business activity on behalf of its members. Similar statutes of other states seem more cumbersome or less complete. [See Mass. Ann. Laws c. 157, sec. 11 (1948); Idaho Code Ann. secs. 22-2606 and 22-2622 (1948); Ia. Code Ann. sec. 499.7 (1949); Fla. Stat. sec. 619.07 (1953); Cal. Ag. Code sec. 1194 (1950); N. Y. Coop. Corp. Law sec. 15; Utah Code Ann. sec. 3-1-9 (1953).]

Sec. 215. Persons liable for damage for encouraging breach of contracts and agreements. Any person, firm, association, or corporation who solicits or persuades or permits or aids or abets any stockholder and/or member or other person to breach a contract with a cooperative corporation, by accepting or receiving from such stockholder and/or member or other person, products for sale, marketing, manufacturing, or processing for sale, contrary
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to the terms of any marketing agreement of which said per-
son or any member, officer, or manager of said firm, asso-
ciation, or corporation has knowledge or notice, shall be
liable to the cooperative corporation aggrieved in a civil
suit in the penal sum of $500 for such contract; and
such cooperative corporation shall be entitled to an in-
junction against such person, firm, association or corpora-
tion to prevent further breaches and a multiplicity of ac-
tions thereon. In addition, said person, firm, association,
or corporation shall pay to the cooperative a reasonable
attorney's fee and all costs involved in any litigation or
proceedings at law or chancery.

Note. This section is the same as sec. 109 of the present
Michigan Act. Provisions similar to this section giving the
cooperative a cause of action for inducing the breach of con-
tact with the corporation are common in other jurisdictions.
Some of the statutes also prescribe damages for a breach of
contract with the cooperative. Neither the present Act nor
the proposed Act contain such provisions, as the ordinary
rules applicable to breach of contract actions should be ade-
quate. Similar statutes in other states are: Idaho Code Ann.
499.8 and 499.9 (1949); Cal. Ag. Code secs. 1208–1210 (1950);
Utah Code Ann. sec. 3-1-17 (1953); N. Y. Coop. Corp. Law
sec. 70.

Sec. 216. Ultra Vires. Membership or stock ownership
in a cooperative corporation shall not be a sufficient basis
for raising the plea of ultra vires, and nothing in this sec-
tion shall prevent the shareholders or members from en-
joining unauthorized acts.

Note. The doctrine of ultra vires should be adequately and
completely covered in the general corporation statutes and not
repeated or modified as to special types of corporations. The
Michigan Act, however, has a very short provision (sec. 11),
and in terms allows the plea to be raised in any action between
the corporation and a member. As pointed out in the general
discussion of these statutes, *supra*, Cooperatives, p. 46, the desirability of allowing the defense simply on the basis of membership is to be questioned. The above statute, obviously inadequately dealing with the problem as a whole, does preclude the corporation from raising the plea of ultra vires simply on the basis that the other party was a member of the corporation. The above section also expressly allows a member to enjoin the corporation from the commission of unauthorized acts. This latter provision is also consonant with sound principles.

Modern practice suggests a comprehensive statutory treatment of the doctrine of ultra vires by dividing the concept into its component parts. In this regard the Oklahoma statute merits special attention, Okla. Stat. Ann. tit. 18, secs. 1.18 and 1.29 (1953). In the absence of such comprehensive treatment in the general act and in view of the possibility that a member-patron could be denied relief in an action against the corporation simply on the basis of membership, the above statute is deemed justified.

*Additional Notes*

There are no express provisions in the cooperative sections concerning dissolution, as the general provisions of secs. 65 *et seq.* apply.

There is no provision explicitly stating the number of incorporators required, as the general provision of 1 or more in sec. 3 applies. In other states the required number of incorporators varies. Three incorporators are required under Fla. Stat. sec. 618.02 (1953), and under Cal. Ag. Code sec. 1193 (1950), while five are required under Utah Code Ann. sec. 3-1-3 (1953), N. Y. Coop. Corp. Law sec. 11, Ia. Code Ann. sec. 499.5 (1949), and under Ohio Rev. Code sec. 1629.05 (Baldwin 1953). Seven incorporators are required under Mass. Ann. Laws c. 157, sec. 3 (Supp. 1954), and ten required under Okla. Stat. Ann. tit. 18, sec. 421 (1953).

Statutes of other states regarding marketing contracts vary materially and include such items as the permissible duration of these contracts, the effect of such contracts on the title to the products, remedies for the breach of marketing contracts, and actions for inducing their breach. [Cal. Ag. Code sec. 1208 (1950), Fla. Stat. secs. 618.17 *et seq.* (1953), Ia. Code Ann. sec. 499.8 (1949), Ohio Rev. Code 1729.18 (Baldwin 1953), and Utah Code Ann. sec. 3-1-17 (1953).] The Utah statute also contains a provision for recording the marketing con-
tract. [Utah Code Ann. sec. 3-1-17(VI) (1953).] Express statutory provisions on many of these items are deemed unnecessary in the absence of a clear showing that the general law is inadequate. The present Act gives the members maximum discretion in determining the terms of their contracts and relationship with the cooperative. Provision for recording the marketing contract is not recommended as a part of the general corporation statutes. If such a statute is desirable it would be preferable to include it as a part of the general recording statutes. It would also seem preferable to enlarge the scope of the provisions so as to include all sales, mortgages, and agreements to sell future crops, rather than limit it to agreements with cooperatives.

No provision is recommended for withdrawal of members, as this can very readily be regulated by the articles or by-laws.

SEC. 217. CORPORATIONS NOT FOR PECUNIARY PROFIT. One or more persons, natural or corporate, may incorporate for the purpose of carrying out any lawful purpose or object not involving pecuniary gain or profit for its members or associates. Such corporations shall be known as "nonprofit corporations."

Note. This provision is a portion of section 117 of the present Michigan Act. The requirement of a minimum of three incorporators has been omitted since it serves no useful purpose. See supra, Nonprofit Corporations Generally, p. 58.


SEC. 218. PURPOSES, APPLICABILITY. Corporations may be organized under the provisions of section 217 to 255, inclusive, of this Act for any lawful purpose or purposes, including, without being limited to, any one or more of the
following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, trade or labor association.

Burial associations, funeral benefit societies, and other organizations subject to the insurance laws of this state shall not be organized as nonprofit corporations: Provided, however, That any association or society, heretofore incorporated and now existing whose purpose is to provide for the relief of distressed members, visitation of the sick, and the payment of a voluntary sick benefit to or for members not exceeding in all the sum of $150 on account of any 1 member, or the buying and selling of products for its members without direct pecuniary profit to the association or its members may operate as a nonprofit corporation.

Note. This section replaces section 132 of the present Michigan Act but is moved from near the end of the nonprofit provisions to near the beginning. This is the more logical location as the researcher naturally looks to the beginning of corporation statutes to determine the type of corporations therein covered. The phraseology and style is altered considerably but it is believed that no fundamental change is involved. The specific provisions of the present section 132, Mich. Comp. Laws 450.132 (Mason's Supp. 1954), authorizing the Ladies Lutheran Benevolent Federation of Michigan, the Metropolitan Club of America, Inc. (National Spirit), and the Ladies Auxiliary of the Metropolitan Clubs of America National Spirit, all organized as nonprofit corporations, to pay death benefits in excess of $150 have been eliminated. These provisions are obviously examples of special legislation, and as general legislation does not repeal special legislation, there is no need to re-enact those provisions as part of a general act. Furthermore, no special legislation should appear in model acts as the legislature can attach any special provisions it wishes prior to enactment.
The style of the statement of purposes is patterned after section 4 of the Model Nonprofit Corporation Act (1951), but its scope is thought to be neither less nor more than that of sec. 132 of the present Michigan Act. The scope under either Act is very broad, and the enumerated purposes are illustrative rather than exclusive. This is made clear by the above provisions taken from the Model Act "... for any lawful purpose or purposes, including without being limited to, any one or more of the following ...." The phrase "whether enumerated herein or not" in section 132 of the Michigan Act undoubtedly achieves the same result, but it is possible that the word "such" in the preceding phrase "and to any other such society" may result in a restrictive interpretation. Furthermore, the Michigan statute is awkward, difficult, wordy, and obscure.

The exceptions from the coverage of the nonprofit provisions are patterned after both the Michigan and the Model Acts. The Model Act excepts labor unions, cooperative organizations, and organizations subject to the insurance laws from the coverage of the nonprofit provisions, Model Nonprofit Corporation Act, sec. 4 (1951), whereas sec. 132 of the Michigan Corporation Act excepts "burial associations and funeral benefit societies not otherwise provided for by statute." Such burial associations and funeral benefit societies are subject to the Michigan Insurance Code [Mich. Comp. Laws sec. 501.1 et seq. (1948).] Since cooperative corporations are provided for in sections 202 to 216, they would not come within the scope of these provisions. Although there are some particular acts for the incorporation of labor associations in Michigan [Mich. Comp. Laws c. 454 (1948)], there seems to be no particular reason why they cannot organize under these provisions. The general provisions of sec. 132 of the present Michigan Corp. Act permit it, and no compelling necessity is seen for specific provisions. Public policy, however, requires that corporations engaging in any insurance activities conform to the insurance laws.

Other Jurisdictions


Sec. 219. Articles of incorporation. 1. Articles of incorporation shall be signed in triplicate and shall be acknowledged by at least one of the incorporators if there are more than one, or by the sole incorporator if there are no more than one. The acknowledgment shall be executed before an officer authorized to take acknowledgments by the laws of this state and shall express, in the English language:

a. the name of the corporation;
b. the purpose or purposes for which the corporation is formed;
c. the location and post-office address of its registered office in this state;
d. the name of the corporation's first resident agent;
e. if the association is organized without capital stock, whether the property rights and interests of all members are to be equal or unequal; if unequal, the general rules applicable to all members by which the property rights and interests of each member or class of members are to be determined; and provision for the admission of new members entitled to share in
the property of the association with the old members in accordance with such general rules;
f. if the corporation is organized with capital stock, the stock structure as prescribed in section 4(1)(e) of this Act relating to corporations generally;
g. the amount of assets classified as to real and personal property which such corporation possesses at the time of making the articles of incorporation, and the terms of any general scheme of financing such corporation;
h. the name and address of each incorporator;
i. the names and addresses of the first board of directors;
j. the term of the corporation existence.

2. The articles may also contain optional provisions as authorized in section 4, paragraphs 2 and 3 of this Act relating to corporations generally.

Note. This section is basically the same as section 4 of the present Michigan Act and section 204 of the proposed Act except for slight changes necessitated by the character of the corporations to be formed hereunder. It differs from section 4 in that paragraph 1(e) has been added requiring information concerning membership rights in non-stock corporations. The provision of former section 4 (now sec. 5(3) as a result of Mich. Pub. Acts 1953, No. 155), requiring a statement of the minimum amount of capital, has been replaced by section 1(g) calling for a statement of the corporation's property and its general method of financing. Since these corporations do not contemplate doing business, the requirement for a minimum amount of capital is inapplicable.

This section differs also from section 204 in that the word "cooperative" required in the names of those corporations obviously is inappropriate here. This section concerning the contents of articles is new insofar as it is inserted specifically for nonprofit corporations, but the inclusion, although somewhat repetitious, is desirable in the interest of clarity. No separate provision for the filing of the articles is included, as section 5 of the general Act is adequate.

The provision of section 117 of the present Michigan Act
authorizing three of the incorporators to sign and acknowledge the articles has been eliminated in favor of the general provision of section 4 empowering just one of the incorporators to sign and acknowledge the articles. This makes for more uniformity and contravenes no public policy, as there seems to be no special significance to the requirement of three signatures. See supra, Nonprofit Corporations Generally, p. 58.

Nonprofit corporations formed on both a stock and non-stock basis are authorized in accordance with existing sections 117, 118 and 119 of the Michigan Act. Section 26 of the Model Non-Profit Corporation Act (1951) forbids the issuance of stock by these corporations, and the Committee of the A.B.A. which prepared the Act recommends that nonprofit stock corporations be no longer recognized, Model Non-Profit Corporation Act, ii (1951).


Requirements as to the content of the articles vary considerably among the states. See the appropriate sections of the statutes cited supra this note. The provisions included in section 218 follow closely the present Michigan provisions and, except for authorizing the issuance of stock, are substantially similar to sec. 29 of the Model Non-Profit Corporation Act prepared by the A.B.A.

Sec. 220. Denomination of shares; dividends; dissolution. If organized upon a stock share plan the shares of nonprofit corporations shall be of such denominations not exceeding $100 per share as the articles shall provide. No dividends shall be directly paid on any such shares nor shall the shareholders be entitled to any por-
tion of the earnings of such corporation derived from increment of value upon its property or derived from any other means: *Provided*, That upon dissolution of any such corporation, the shareholders, subject to the provisions of section 253, may be entitled to a pro rata distribution of the assets thereof after the payment of all debts and the liquidation of all liabilities of such corporation, based upon their several holdings therein as represented by the shares of stock standing in the name of such shareholders at the time of dissolution. Such shares of stock shall not be transferable by assignment or sale, nor be transferred to legal heirs or devisees, upon the death of the owner thereof, unless the by-laws of such corporation make express provision therefor. Such nonprofit corporations shall have the power to exclude from further membership any shareholder who fails to comply with the reasonable and lawful requirements of the laws, rules and regulations duly made by such corporation for the government of its members, and may cancel the stock of any such offending member without liability for an accounting, excepting as may be provided for in the articles or by-laws. The provisions of the Uniform Stock Transfer Act of this state shall not be held to apply to the shares of stock of nonprofit corporations in any manner or to any extent inconsistent with the provisions of sections 217 to 255, both inclusive, of this Act.

*Note.* This section is substantially the same as the present section 119 of the Michigan Act. As long as nonprofit stock corporations are recognized, the present section is justified. Clearly, no member should expect any dividends to be paid on his stock, and clearly, also, any increment in value of the corporate property should be distributed to the members on dissolution unless the property is held for specified purposes, or the articles or by-laws otherwise provide. The provisions concerning the admission of new members on the basis of stock acquisition are certainly justified and consistent with the accept-
able policy of permitting these types of corporations to restrict membership in accordance with the desires of the members.


This inclusion in this section of provisions making nonprofit corporate stock nontransferable by sale or assignment or inheritable or devisable unless permitted by the by-laws of the corporation is justified. This clearly places nonprofit corporate stock in a different category than profit corporate stock and is consistent with the generally recognized policy of permitting such organizations to restrict membership as they desire. The cautionary provision exempting this stock from the provisions of the Uniform Stock Transfer Act in case of conflicting provisions, although perhaps not absolutely necessary, is desirable from the standpoint of clearly manifesting the legislative policy of authorizing membership restrictions. See supra, Cooperatives, p. 33, for a discussion of similar provisions in relation to those corporations. More material concerning restriction of membership provisions is included in section 221.

Sec. 221. Membership. Membership in all nonprofit corporations shall be governed by such rules of admission, retention and dismissal, as the articles or by-laws shall prescribe: Provided, That all such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members.

Note. This section is exactly the same as sec. 120 of the present Michigan Act. It is consistent with the general laissez-faire policy of permitting these nonprofit corporations to regulate membership as they desire. The proviso requiring that membership rules be reasonable, germane, and equally enforced

Sec. 222. Membership fees; assessments. Nonprofit corporations may levy dues or assessments, or both, upon their members, if authority to do so is conferred either by the articles or by-laws, and subject to any limitations therein contained. Such dues or assessments, or both, may be imposed upon all classes of members alike or in different amounts or proportions, or upon a different basis upon different classes of members. Members of one or more classes may be made exempt from either dues or assessments, or both, in the manner and to the extent provided either in the articles or by-laws. The amount of the levy and method of collection of such dues or assessments, or both, may be fixed in the articles or by-laws, or the articles or by-laws may authorize the board of directors to fix the amount thereof from time to time, and make them payable at such time and by such methods of collection as the directors may prescribe. Such corporations may make by-laws necessary to enforce the collection of such dues or assessments, including provisions for the cancellation of membership, upon reasonable notice, for nonpayment of such dues or assessments, and for reinstatement in such corporation.

Note. This section is similar to Pa. Stat. Ann. tit. 15, sec. 2851-602 (1938). It replaces sec. 121 of the present Michigan
Act because it is more complete. In substance the 1951 Minnesota statute provides the same thing. [Minn. Stat. Ann. sec. 317-25 Subdiv. 3 (West Supp. 1953).] The present Michigan Act, sec. 121, does not specifically authorize dissimilar dues or assessments based on membership classification. Although this would probably be inferred, it is thought desirable to make an explicit provision. The desirability of classifying membership according to contributions is pointed out supra, Nonprofit Corporations Generally, Voting, p. 64.

Many nonprofit corporation statutes are deficient in failing to provide specifically for such unequal contributions. [Fla. Stat. sec. 617.01 et seq. (1953); N. J. Stat. Ann. sec. 15:1-1 et seq. (1939); Model Non-Profit Corp. Act. sec. 11 (1951).]

Sec. 223. Meeting of members. Meetings of the members or shareholders shall be governed by the provisions of sections 38 and 39 of this Act except that if the by-laws so provide no notice of regular meetings other than those for the election of directors need be given. If the by-laws of any nonprofit corporation shall fail to provide a method for calling a special meeting of its members or shareholders the same may be called by the president, any vice-president, the secretary, treasurer, or by any 2 or more directors thereof by appropriate notice published in the manner provided in section 68 of this Act.

Note. This section is new as a section, but there is little change in substance. the present Michigan statutes contain no specific provision for the calling of regular meetings, and therefore the provisions of the general Act apply. This section makes that clear by providing specifically that sections 38 and 39 are controlling. One change is made, however, and that is that the notice requirement is eliminated as to regular meetings other than those for the election of directors. This is done because many nonprofit corporations have regular meetings recurring frequently, whereas profit corporations probably would have only one such meeting a year. Hence, to require formal notice of all such regular meetings of nonprofit corporations would be unduly burdensome. This section adheres to the main purpose of having the nonprofit corporation statutes conform as nearly as possible to the business corporation statutes.
Sec. 224. Voting. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the by-laws. In nonprofit stock corporations formed hereunder each shareholder may, if so provided in the articles or by-laws, be entitled to a number of votes equal to the number of shares of stock held by him and any nonprofit corporation may in its articles or by-laws provide that only certain specified classes of its members or shareholders shall have the right to vote. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members; and unless otherwise so provided, there shall be no preferences as between members or shareholders based upon obligations of the corporation to the members or shareholders therein.

The articles of incorporation or the by-laws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

A member may vote in person, or, unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the by-laws may provide that such elections may be conducted by mail.

Note. This section replaces section 122 of the present Michigan Act. It is changed in both form and substance. Formally, it is changed thus: section 122 first states that all members have equal voice and vote, and then adds that the articles or by-laws
may provide for unequal voting, stock voting, and even a denial of voting to certain classes; this new section forthrightly states in the beginning that the articles or by-laws may provide for such unequal voting, and then adds that unless such provisions are made every member shall have equal voting rights. It is believed that this new form is more straightforward and honest. It is patterned after the 1951 Minnesota Act and the Model Act. [Minn. Stat. Ann. sec. 317.22 Subdiv. 7 (West Supp. 1953); Model Non-Profit Corp. Act. sec. 15 (1951).]

Substantively, the new section changes existing Michigan law by authorizing cumulative voting in nonprofit corporations. This section, if adopted in the above form, will necessitate an amendment to section 32 of the General Corporation Act, as section 32 prohibits cumulative voting in these types of corporations. This change is recommended for the following reasons: (1) the desire to amalgamate as much as possible the profit and nonprofit corporation law; (2) the belief that such corporations should have as much freedom as possible in setting up their internal organization; (3) the advantages to be derived from permitting unequal voting as discussed supra, Non-Profit Corporations Generally, Voting, p. 64; and (4) the newer and more complete nonprofit corporation statutes so provide. [Minn. Stat. Ann. 317.22 Subdiv. 7 (West 1953); Pa. Stat. Ann. tit. 15, sec. 2851-606 (Purdon Supp. 1953); N. J. Stat. Ann. sec. 15:1-10 (1939); Model Non-Profit Corp. Act. sec. 15 (1951); Cal. Corp. Code sec. 9402 (1953); Ind. Ann. Stat. sec. 25-515(e) (Burns Supp. 1953).] Of course, this is simply a policy matter on which views differ sharply.

The third paragraph of section 224 authorizing proxy and mail voting is also new so far as Michigan law is concerned. The existing Michigan statute, section 122, is silent on the matter, and section 32 prohibiting cumulative voting could possibly be interpreted as prohibiting proxy voting also, as that is the only statute mentioning proxy voting. The new section is deemed justified in the interests of unifying all corporate law to the greatest extent possible, in giving these organizations maximum flexibility, and in conforming statutes to practices. Paragraph 3 of section 224 is taken from the Model Non-Profit Corporation Act sec. 15 (1951). Similar provisions exist in Minn. Stat. Ann. sec. 317.22 Subdiv. 7 (West Supp. 1953); Pa. Stat. Ann. tit. 15, sec. 2851-606 (Purdon Supp. 1953); Cal. Corp. Code secs. 9402 and 9601 (1953).

The provision of sec. 122 of the present Michigan Act rela-
tive to calling special meetings has been incorporated into section 223.

Sec. 225. Limitations on membership. If the membership in any such corporation be limited to persons who are members in good standing in other associations, lodges, churches, clubs, or societies, the articles shall in each case define such limitations, and in such case it may further be provided that failure on the part of any such member to keep himself or herself in such good standing in such other corporation shall be sufficient cause for expelling or dismissing such member from the corporation requiring such eligibility, subject to such regulations as may be enacted in the by-laws as to the nature and formalities of evidence that shall be prima facie sufficient to justify such dismissal or expulsion.

Note. This section is the same as section 123 of the present Michigan Act except that the word "incorporated" preceding "associations, lodges, churches, clubs, or societies" has been deleted. Thus, membership may be limited to members of other associations whether incorporated or not. See supra, Non-Profit Corporations Generally, Membership, p. 62. Similar provisions exist in the statutes of Minnesota and New Jersey. [Minn. Stat. Ann. sec. 317.25 Subdiv. 4 (West Supp. 1953); N. J. Stat. Ann. sec. 15:1–2 (1953 Supp.).] This section could probably be eliminated without changing the substantive law, as the provisions authorizing membership qualifications and restrictions in section 120 of the present Michigan Act (section 221 of the Proposed Act), should be adequate to accomplish this purpose.


Sec. 226. Board of Trustees or Directors. The property and lawful business of a nonprofit corporation shall be held and managed by a board of not less than 3 trustees or directors, each of whom shall hold office for the term for which he was named or elected and until his successor is elected and qualified. The board of directors shall possess such powers and authority, in addition to the powers and authority herein specifically prescribed, as may be necessary to the complete execution of the purposes of each such corporation, as limited by the articles, or by-laws duly made.


Sec. 227. Qualifications and Term of Office of Directors. Each trustee or director named in the articles shall hold office until the first annual meeting of the members or shareholders, and until his successor is elected and qualified.

The number, qualifications, classifications, terms of office, manner of election or removal, time and place of meeting, and the powers and duties of the trustees or directors may, subject to the provisions of this Act, be prescribed by the articles or by-laws. Trustees or directors need not be residents of this state or members of the corporation unless the articles of incorporation or the by-laws so require.

**Sec. 228. Directors, term of office.** Except as otherwise prescribed in the articles or by-laws, a trustee or director shall be elected for a term of 1 year: Provided, That, if a term of more than 1 year shall be so prescribed, at least one third of the members of the board shall be elected each year.

Note. This is substantially the same as sec. 124(3)(a) of the present Michigan Act.

**Sec. 229. Vacancies in board.** Vacancies in the board of trustees or directors and directorships to be filled by reason of an increase in the number of directors may be filled by the remaining members of the board, although less than a quorum, unless the articles or by-laws provide that vacancies or directorships so created shall be filled in some other manner, in which case such provision shall control. A person so selected shall hold office until his successor is selected and qualified.

Note. This section is substantially the same as sec. 124(3)(b) of the present Michigan Act, but the phraseology is varied. The scope is extended to include vacancies created by an increase in the number of trustees as well as those created by death, incapacity, or resignation. The phraseology is patterned in part after Ill. Ann. Stat. c. 32, sec. 163a18 (1954) and in part after Minn. Stat. Ann. sec. 317.20 Subdiv. 9 (West Supp. 1953).

**Sec. 230. Meetings of the board.** Unless the articles or by-laws otherwise provide, the meetings of the board of
trustees or directors may be held at such place, whether in this state or elsewhere, as a majority of the board may from time to time determine.


Sec. 231. Quorum of the board. A majority of the board of trustees or directors shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the trustees or directors present at a meeting at which a quorum is present shall be the acts of such board; Provided, That, if the trustees or directors shall severally or collectively consent in writing to any action to be taken by the corporation, such action shall be as valid a corporate action as though it had been authorized at a meeting of the board: And Provided further, That in any such corporation where the number of trustees or directors shall be more than 7 members, the articles or by-laws may provide that less than a majority but in no event less than one third of the members, shall constitute a quorum of such board.


Sec. 232. Board of directors; executive committee. The board of trustees or directors may, by resolution passed by a majority of the whole board, designate 2 or more of their number to constitute an executive or other committee, who to the extent provided in such resolution, shall possess and exercise the authority of the board in the management of the business of the corporation between the meetings of the board.


Sec. 233. Self-perpetuating board of directors. A nonprofit corporation organized under the provisions of this Act may provide for a self-perpetuating board of trustees or directors. Such a nonprofit corporation may have members as the articles or by-laws may prescribe, or it may have no members.

Note. This section is new. It does not change the law, as the legality of a self-perpetuating board was upheld in Detroit Osteopathic Hospital v. Johnson, 290 Mich. 283, 287 N. W. 466 (1939). The desirability of such operation has been pointed out, Nonprofit Corporations Generally, Trustees or Directors, supra p. 67. The soundness of statutory authorization of such a board is obvious. Missouri has a similar statute. [Mo. Ann. Stat. sec. 355.105 (Vernon Supp. 1954).] The added provision permitting such corporations to function without members is sound and practical. Illinois and Missouri have such provisions. [Ill. Ann. Stat. c. 32, sec. 163a7 (1954); Mo. Ann. Stat. sec. 355.105 (Vernon Supp. 1954).] As a practical
matter many foundations and other nonprofit corporations promoting eleemosynary purposes operate either without membership or with membership conferring no privileges granted in return for contributions. It is sound to give statutory recognition to such practices.

Sec. 234. Rights and powers; power corporations, regulation. Any nonprofit corporation the purposes of which permit the transaction of business, the receipt and payment of money, the care and custody of property, and other incidental business matters, shall have the right and power to transact such business, and to receive, collect and disburse monies, and to acquire, hold, protect and convey such properties as are naturally or properly within the scope of its articles: Provided, however, That no corporation shall hold any real estate for a longer period that 10 years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises.

Any nonprofit power corporation which is authorized to furnish electric service shall have the right and power to construct, maintain and operate its lines along, over, across or under any public places, streets and highways, and across or under any of the waters in this state, with all necessary erections and fixtures therefor, and to exercise the power of eminent domain, in the manner provided by the laws of this state for the exercise of such powers by other power corporations constructing or operating electric facilities: Provided, That as a condition to the exercise of any of the powers herein granted, such nonprofit corporations shall be subject to the same rules, regulations and requirements issued by the Michigan Public Service Commission as shall be applicable to other corporations engaged in furnishing and distributing electric power and energy.
Note. This is similar to section 125 of the present Michigan Act. Its scope is broadened by authorizing commercial transactions not only where the purposes require such business matters but also where the purposes permit them. The powers granted are ample and no further changes need be made. The limitation on holding unused real estate for a period longer than ten years is taken from section 5, Article XII, of the Michigan Constitution. It is included in this general statute applicable to all nonprofit corporations and not repeated as to each type. Perhaps it should also be repeated in section 10 applying to corporations for profit.

The second paragraph, added to the Michigan statute in 1951, Mich. Comp. Laws sec. 450.125 (Mason's Supp. 1954), granting public easements and the right of eminent domain to nonprofit power corporations, although not usually found in general corporation statutes, is retained in these provisions because it probably arose from a genuine need.

SEC. 235. POWERS IN RELATION TO PROPERTY; LIABILITY OF DIRECTORS. The funds and property of all nonprofit corporations shall be acquired, held and disposed of only for their lawful purposes, and the trustees or directors shall be individually liable for the misapplication or misuse of any such money or property caused through the neglect of such trustee or trustees or director or directors to exercise reasonable care and prudence in the administration of the affairs of such corporation or through willful violation of the laws governing the same.

Note. This section is identical with sec. 126 of the present Michigan Act. The degree of care required of directors is substantially the same as that required of directors of profit corporations under sec. 47, Mich. Comp. Laws sec. 450.47 (1948). It is sound practice to designate the degree of care required of the directors, although the statutes of many states do not do so. [Ala. Code tit. 10, secs. 139 et seq. (1940); Fla. Stat. secs. 617.01 et seq. (1953); Ore. Rev. Stat. secs. 61.010 et seq. (1953); N. J. Stat. Ann. secs. 15:1-1 et seq. (1939).] Compare the Pennsylvania statute which specifies that the directors shall discharge their duties "with that diligence, care and skill which ordinary prudent men would exercise under similar circumstances in

SEC. 236. CENTRAL AND LOCAL UNITS. Subject to the provisions in the next succeeding sections, any nonprofit corporation may provide in its articles or by-laws that it is to be a central or parent organization having subordinate or local branches, and similarly, any nonprofit corporation may provide in its articles or by-laws that it is to function as a subordinate body instituted or created under the authority of any central or parent organization for the purposes of furthering locally the interests of such parent organization.

Note. This section replaces sections 128 and 129 of the present Michigan Act. Its scope is broadened to permit parent and local units of both stock and non-stock corporations and similar organizations both inter and intra state. The scope is also broadened in that there is no minimum membership requirement before such divisional organization is permitted, and the manner of organization, territorial or otherwise, is left completely to the discretion of the corporation.

Express authorization for such a vertical type of organization is frequently omitted from the general nonprofit statutes of other states. See, for example, the statutes of Florida, Illinois, Minnesota and Missouri. Statutes somewhat less comprehensive than the above are: Cal. Corp. Code sec. 9203 (1953); N. J. Stat. Ann. sec. 15:16-1 to 16-6 (1939); Pa. Stat. Ann. tit. 15, sec. 2851-304 (1938).

SEC. 237. NAME. A nonprofit corporation shall not assume a name already in use by any other corporation, lodge, or society incorporated under the laws of this or any other state of the United States and admitted to do business in this state, nor any name which is so similar to that adopted by any other such corporation or society as to lead to confusion or deception: Provided, That local or other subordinate jurisdictions shall in all cases use the name of the parent corporation in addition to some suitable local designation.
**Note.** This section is similar to sec. 138 of the present Michigan Act, but its scope is broadened to include all nonprofit corporations and not just the state parent corporation of a lodge or fraternal society. Its location in the statutes is accordingly moved to near the beginning of the sections authorizing suborganization. Normally, section 6 of the general Act, Mich. Comp. Laws sec. 450.6 (Mason’s Supp. 1954), would be ample to prohibit similar names, but it is probably desirable to authorize the subordinate units to use the name of the parent coupled with an appropriate local designation. Other provisions of sec. 6 not in conflict are still applicable. Protection afforded by this statute is adequate and its coverage sufficiently broad.

**Sec. 238. State parent unit of foreign association.**

If such corporation shall be intended to operate as a state jurisdiction of a nonprofit association having a parent organization without this state, then such persons so incorporating shall exhibit with their articles the charter or permit from such foreign parent association permitting such incorporation within this state. The persons so incorporating shall execute and file articles in the form prescribed in section 219 of this Act, as prescribed for nonprofit corporations generally, and in addition to the other requirements of said section 219, the incorporators shall state in such articles:

a. that such society or corporation shall have a secret ritual if such is the case;

b. that, in the case of a lodge, fraternal or similar society, it shall have a representative form of government whose purposes are not unlawful;

c. the executive officers within such society by such peculiar name as they shall be respectively known;

d. the principal features of organization, the distinguishing purposes and the name of the society by which all subordinate groups thereof shall also be known when organized; and,
e. a statement that the parent association has applied for and received permission to do business within this state as a foreign corporation.

Note. The sections 237 to 248 inclusive are taken from the provisions of the present Michigan Act relating to the incorporation of fraternal societies, secs. 133 to 147, and broadened in scope to include all types of nonprofit corporations. Only secs. 140 and 141 are retained as specifically applying only to lodge or fraternal type of organizations.

This change is prompted by the fact that many types of societies other than the secret lodge or fraternal association may find it convenient to be organized at different levels and in different communities. Charity drives, foundations, church organizations, university alumni associations, political parties, labor organizations, and civic societies are but a few that might find it convenient to have local, state, and even national units. Thus, it is more logical to have these provisions under the general nonprofit sections where all types of nonprofit groups can take advantage of them.

Sec. 238 is confined to a state headquarters unit of a foreign association. The two additional mandatory requirements for the incorporation of such a unit are simply: (1) that the incorporators have a permit from the foreign association; and (2) that the parent association has applied for and received permission to do business within the state. These provisions are certainly justified as they result in the proper amount of control by both the foreign parent association and the local state of incorporation. Note that maximum flexibility is attained. The foreign parent association need not be incorporated. The other provisions concerning a secret ritual, representative government, peculiar names of the officers, and the principal features of organization, are specifically aimed at the fraternal or lodge type of organization. Restrictions are reduced to a minimum, and any type of nonprofit corporation can take advantage of multi-unit organization.

Sec. 239. Ritual and rules; chartering of subordinate units. Every such parent corporation shall have the right to prescribe the ritual, if any, to be used in all the functions, secret or otherwise, of such organization, the
oath or other obligations to be taken by members or officers, and to enact by-laws, rules and regulations having uniform application throughout the organization. Such parent corporation shall have the right to organize and charter subordinate units thereof, and to enact a system of discipline to which all such subordinate groups and individual members may be compelled to conform under pain of expulsion therefrom; and to prescribe the terms and conditions under which such subordinate groups and members may be admitted, retained in good standing, or suspended or expelled from such membership. Such parent corporation may delegate to its officers, committees and to subordinate jurisdictions, such functions and powers as the articles or by-laws of such corporation may from time to time prescribe, not inconsistent with the laws of this state.

Note. This section is formerly section 135 of the Michigan Act, but it is enlarged in scope to permit a state parent corporation to charter subordinate lodge units. Maximum flexibility is attained and restrictions are practically non-existent.

SEC. 240. SUPERVISION OF SUBORDINATE UNITS. Every such parent corporation shall have the right to superintend, visit, instruct and guide its subordinate units and jurisdictions, through its duly appointed officers, agents and committees; may appoint its courts or judicial functionaries for the enforcement of its system of discipline within such organization; may prescribe the initiation fees, if any, and annual or other periodic dues or contributions upon which membership may be conditioned, and may prescribe the proportion of such funds that shall belong to such parent corporation for the work of organizing, maintaining and carrying out the purposes of the society as a whole.
Note. This is the same as sec. 136 of the present Michigan Act but is broadened to include all types of nonprofit corporations.

Sec. 241. Parent organization; management, secretary. The fiscal and business affairs of every such parent corporation shall be managed by such executive officers, committees, directors or trustees as the articles shall prescribe, who shall severally have such powers and liabilities as may be prescribed in the articles or in by-laws made pursuant thereto. The articles shall in all cases state the name of the committee having authority to enact the original by-laws of the parent corporation, and when and how the members thereof shall be elected or appointed and for how long such committee shall hold office. Every such parent society shall designate an officer who shall be its secretary whose powers and duties shall conform to those prescribed in this Act for secretaries of corporations generally.

Note. This is the same as sec. 137 of the present Michigan Act.

Sec. 242. Representative form of government; first annual meeting. Every such parent corporation of a lodge or fraternal type society shall adopt a representative form of government, under which form the subordinate lodges shall elect or appoint representatives to attend the annual or other convention, conclave or meeting of the parent corporation, by whatsoever name such meeting shall be known, and at which annual meeting the officers and committees of such parent or state society shall be elected by a majority vote of such representatives. The first annual meeting shall be held at a time and place to be fixed by the executive committee of the parent corporation; and thereafter such time and place shall be fixed by the convention itself.
Note. This section is substantively the same as section 140 of the present Michigan Act. Its scope is still limited to lodge or fraternal type of organizations. Fraternal organizations will normally be organized on a representative basis, and, therefore, the above statute works no hardship and at the same time serves as a modicum of protection against dictatorial control. There are, however, other organizations of a nonprofit nature which may not be organized on such a basis and membership in which consists largely of honorary listing in return for contributions. Obviously, such organizations should not be required to have representative forms of government. The above statute wisely makes the distinction.

Sec. 243. Powers at annual meeting. The annual convention, conclave or meeting of every such parent lodge or fraternal corporation when duly called to order, shall have power and authority to elect the officers and the executive committee or trustees thereof; to elect delegates to any higher jurisdiction within said lodge or society; to alter or amend the articles or by-laws of the parent corporation not inconsistent with the state charter of such lodge or society; to determine questions of discipline or policy; and to act upon such other matters as the articles or by-laws may require or permit to be presented to such convention for action.

Note. This section is formerly sec. 141 of the Michigan Act and is specifically and peculiarly applicable only to lodge or fraternal type of corporations. The scope is limited to fraternal organizations for the same reason that sec. 242 is so limited. See note sec. 242, supra.

Sec. 244. Local units; purpose. Any number of persons who are members in good standing in any nonprofit parent association, society or lodge, within or without this state, and having a charter or permit from such parent organization, may incorporate as a local unit or branch thereof, upon complying with the provisions of this Act appropriate to such corporations. The purpose of all such local
corporations shall be to further the interest of the parent corporation in such community, to hold the property of such local unit and to become integral members of the parent association, lodge or society.

*Note.* This section is based on sec. 142 of the present Michigan Act but its scope is enlarged to permit: (1) the incorporation of local units of both state and foreign parent corporations; and (2) to include all types of nonprofit corporations and not just lodge or fraternal societies.

**Sec. 245. Articles of Incorporation.** The articles of such local unit or society shall follow the form prescribed for nonprofit corporations in this Act and shall contain such further statements as the incorporators may wish to insert therein as to purposes and government. Such articles shall state that such local unit has been granted a charter by the parent corporation.

The articles shall also state in case the parent association is without this state that it has applied for and received permission to do business within the state as a foreign corporation.

*Note.* This section is based on sec. 143 of the present Michigan Act but is enlarged to include all nonprofit corporations. As is the case under sec. 238, proper control by both the parent corporation and the state is assured by requiring the incorporators to obtain a charter from the parent corporation and by requiring a foreign parent corporation to domesticate.

**Sec. 246. Supervision of Local Unit.** Every such local unit shall be subject to the discipline, visitation and guidance of the parent corporation, or other higher jurisdictions as the plan of higher organization may prescribe.

*Note.* This section is based on sec. 144 of the present Michigan Act. It confirms the supervisory jurisdiction of the parent over the local unit. Again, the scope is enlarged to cover all types of nonprofit corporations. The provision relating to the powers of local units has been deleted as being superfluous. Sec. 248 confers similar powers to parent and local units.
SEC. 247. Officers and representatives. Every such local unit shall have such officers, committees, trustees and agents as their articles may prescribe, who shall be elected or appointed and who shall have such duties, responsibilities and powers, as the articles or by-laws may prescribe.

Note. This section is based on sec. 145 of the present Michigan Act but is broadened to include all types of nonprofit corporations. Utmost flexibility is authorized.

SEC. 248. Powers; membership in other nonprofit corporations; voting. Every nonprofit corporation, whether parent or local, shall have all the rights, powers, immunities and privileges granted by this Act to corporations generally. Every nonprofit corporation, subject to the limitations of the laws of this state and of the United States with respect to monopolies and illegal restraints of trade, shall have power in furtherance of the purposes of its existence to purchase and hold shares of stock or memberships of its own or of any other nonprofit corporation whose purposes are not unlawful. When any nonprofit corporation shall be a shareholder or member in any other nonprofit corporation, its president and other officers or any of its directors shall be eligible to the office of the director of such corporation the same as if they were individually shareholders therein, and the corporation being such shareholder shall possess and exercise all the rights, powers, privileges and liabilities of individual shareholders or members.

Note. This section replaces sections 127, 131, 132a, 139 and 146 of the present Michigan Corporation Act relating with various degrees of completeness to corporate powers and intercorporate relationships. This section succinctly and forthrightly states that nonprofit corporations shall have all the powers of corporations generally. These powers are enumerated in section 10 of the Act, Mich. Comp. Laws sec. 450.10 (Mason’s Supp. 1954), and need not be repeated. The next sen-
tence permits inter-corporate relationships to any extent, provided no monopoly or unlawful restraint of trade results. This is a broadening of the scope of section 132a of the present Act, which in terms limits such relationships to real estate holding corporations of fraternal organizations. The necessity of such limitation is not apparent. This is particularly evident in view of sec. 131 which empowers nonprofit corporations to vote the shares held in other corporations. Sec. 248 of the proposed Act retains this provision but achieves, by including all of these provisions in one section and removing inconsistent restrictions, a coherent statement of corporate powers with maximum flexibility.

Sec. 249. Amendment of articles. The articles of any nonprofit corporation may be amended in accordance with the procedures established in section 42 and the sections immediately following thereafter, except, however, that in nonprofit corporations having no members, or having no members with voting rights, the articles may be amended at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Note. In jurisdictions having completely separate statutes for the incorporation of nonprofit organizations, it is customary, of course, to have complete provisions governing amendments, dissolution, consolidation, and merger. Under the existing Michigan Act and the scheme of the proposed Act whereby the corporation law is unified to the greatest extent possible, such duplication is unnecessary. It is believed, however, that the application of sections 42 and 43 to certain nonprofit corporations, in particular those corporations having no members or having members with no voting rights, may be difficult. Until the general sections on amendments are enlarged to recognize these types of nonprofit corporations, it is believed wise to add the above statute dealing specifically with them. Statutes of other states dealing completely with the amendment procedure of nonprofit corporations are: Ill. Ann. Stat. c. 32, secs. 163a33 et seq. (1954); Ind. Ann. Stat. sec. 25-529 (Burns 1948); Minn. Stat. Ann. sec. 317.27 (West Supp. 1953); Mo. Ann. Stat. secs. 355.070 et seq. (Vernon Supp. 1954); N. J. Stat. Ann. sec. 15:1-14 (1939).

In applying sections 42 and 43 to nonprofit corporations, it
is to be noted that stockholders and members and membership and stock shares are equated in sec. 2, Mich. Comp. Laws sec. 450.2 (Mason's Supp. 1954).

Sec. 250. By-laws; enactment or amendment. The shareholders or the board of directors of a nonprofit corporation may make and alter any by-laws including the fixing and altering the number of its directors.

Note. This section is not included in the present provisions of the nonprofit sections of the Michigan Corporation Act. Normally, section 16 of the Act, Mich. Comp. Laws sec. 450.16 (1948), would apply and render an additional section unnecessary. This section is identical with the first part of sec. 16. However, sec. 16 also provides that the board shall not make or alter any by-laws fixing directors' qualifications, classifications, or terms of office. This would be obviously unworkable in nonprofit corporations having no members with voting rights, and it is therefore eliminated from the above section.

Sec. 251. Consolidation or merger. Nonprofit corporations may consolidate or merge in accordance with the provisions of section 52 of this Act and the sections immediately following: Provided, however, That in case a merging or consolidating corporation does not have members, or does not have members with voting rights, then the plan of consolidation or merger shall be adopted at a meeting of the board of directors, upon receiving the vote of a majority of the directors in office.

Note. This section is not included in the present Michigan Act. It is added in the interests of clarity because the merger and consolidation provisions of the general Act, Mich. Comp. Laws secs. 450.52 et seq. (1948), make no provision for the corporation without shareholders or members or for the corporation with members who have no voting rights. The requirement for approval of a majority of directors in office is similar to the provisions of Illinois and Missouri. [Ill. Ann. Stat. c. 32, sec. 163a38 (1954); Mo. Ann. Stat. sec. 355.200 (Vernon Supp. 1954).]

Sec. 252. Dissolution; chancery jurisdiction. Any
nonprofit corporation may be dissolved in accordance with the provisions of this Act set forth in section 65 and the sections immediately following: Provided, however, That in nonprofit corporations having no members, or having no members with voting rights, dissolution shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Any nonprofit corporation founded for charitable, eleemosynary or public benefaction purposes of any kind, and any similar trustee corporation or foundation as hereinafter provided, may be dissolved by the circuit court in chancery in accordance with the provisions of this section. When any such corporation shall cease to operate, or its funds be diverted from the lawful purposes of its organization, or it becomes unable usefully to serve such purposes, any of the trustees or directors, any member, the attorney general, or the prosecuting attorney of the county in which the registered office of the corporation is located, may petition the circuit court for the winding up of its affairs and for the conservation and disposition of its property in such way as may best promote and perpetuate the purposes for which the corporation was originally organized.

Note. The first part of this section is added to provide for the dissolution of nonprofit corporations having no members with voting rights. The application of the existing dissolution sections of the Michigan Act requiring approval of the membership, e.g., sec. 67, to this type of corporation, could result in confusion and ambiguity.

The second paragraph is added to provide for dissolution of charitable types of corporations which may no longer be functioning. Lethargy of trustees and the absence of specific beneficiaries might result in dormancy with neither the public nor anyone else receiving benefits from the trust estate. This provision is suggested by sec. 167 of the present Michigan Act.
which relates specifically and only to foundations. The scope of the provision is thus enlarged under sec. 252 to include similar trustee and other nonprofit charitable corporations.

The proposed provision also differs from sec. 167 of the present Michigan Act in that judicial rather than legislative dissolution is provided. The legislature is not well equipped for and should not be burdened with such specific issues as the dissolution of particular corporations and the distribution of their specific assets. Furthermore, such practice results in the useless cluttering of corporation statutes. See Mich. Comp. Laws sec. 450.167a (Mason’s Supp. 1954), providing for the dissolution of the Henry Ford Trade School.

SEC. 253. UNAUTHORIZED PRACTICES; DISSOLUTION. Nonprofit corporations, whether of a religious, educational, eleemosynary, social, fraternal, or other nature, shall not by their articles or by-laws or system of discipline authorize, teach, permit or condone any of the following: immoral practices or conduct; anything that is contrary to public policy, that violates the sanctity of the marital relations, or that prohibits any member of such society from appealing to the courts of the United States or the courts of this state for the enforcement of personal or property rights; any provision that the by-laws or rules of discipline shall not be subject to civil law or decree; or anything that encourages the violation or disregard of any law of the United States or of this state. No provision shall be made in such by-laws or articles permitting such corporation to receive, accept, acquire or endeavor to secure property through fraud, misrepresentation or undue influence under the guise of religious teaching or discipline; and no provision shall be made which will permit any individual as such and not as an official of said society to acquire and hold property thereof in his own name, or which permits any official to dictate and construe the rules of discipline or by-laws of such society without the approval of the di-
recting board thereof, or require that such by-laws and rules be approved by him before becoming effective.

Whenever proceedings in the nature of quo warranto have been or may hereafter be brought against any non-profit association or corporation and it shall appear in the information that such association or corporation has been guilty of any of the aforementioned types of misconduct, the attorney general may, in such proceedings, or in separate proceedings, apply to the circuit court for a decree of dissolution in accordance with the provisions of section 252. The circuit court shall have discretion either to enjoin the unauthorized practices and permit the delinquent corporation to amend its articles or by-laws to conform to law, or it may decree a dissolution and winding up of said corporation in accordance with the provisions of this Act.

Note. This section is taken from sec. 180 of the present Michigan Act relating to ecclesiastical corporations only. The type of conduct proscribed herein obviously would not be condoned even in the absence of such express prohibition. The statute is justified, however, in that it also provides for the eradication of the practices. The court may, if it thinks proper, simply enjoin the obnoxious conduct and require the recalcitrant corporation to make the necessary amendments and conform. This differs from sec. 180 of the Michigan Act. If, however, the corporation is so fundamentally bad in this respect that reform is deemed impractical, it is to be dissolved. Instead of the property escheating to the state as provided in sec. 180 of the present Michigan Act, sections 254 and 255, providing a statutory cy pres doctrine, control.

The location of this section in the general nonprofit provisions is logical and justified. Religious corporations are not the only ones that might attempt antisocial practices. By making the section applicable to all nonprofit corporations, uniformity is achieved without sacrificing any safeguards.

Sec. 254. Distribution of Assets. The assets of a nonprofit corporation in the process of dissolution shall be applied and distributed as follows:
1. All liabilities and obligations of the corporation shall be paid, satisfied, discharged, or adequate provision made for them according to their respective priorities;

2. Property and assets held by the corporation upon condition or subject to an executory or special limitation, if the condition or limitation occurs by reason of the dissolution of the corporation, shall revert, be returned, transferred, or conveyed in accordance with the condition or limitation;

3. Subject to subparagraph 4, property and assets held for or devoted to a charitable, religious, eleemosynary, benevolent, educational, literary, or other similar use or purpose, but not held upon a condition or subject to an executory or special limitation, shall not be diverted from the use or purpose for which it was granted, donated, de­vised, or bequeathed, and shall be transferred or conveyed to one or more persons, societies, organizations, or domestic or foreign corporations engaged in activities which will, as nearly as possible, accomplish the general purpose of the dissolving corporation;

4. Subject to prior compliance with subparagraphs 1 and 2, where the articles or by-laws of the dissolving corporation, or the rules or canons of a superior body or entity by which the dissolving corporation is bound, provide for a particular distribution of the property and assets of the dissolving corporation, the property and assets shall be distributed accordingly;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this Act.

Note. This section is new insofar as Michigan is concerned. It is desirable because the usual distribution provisions rela-
tive to business corporations (Mich. Comp. Laws secs. 450.70 and 450.73 (1948 and Mason's Supp. 1954)), are obviously inadequate for many types of nonprofit corporations. In many types of nonprofit corporations the assets will not be returned to the members at dissolution. Sound practice requires that the statutes recognize such conditions.


This section is comprehensive to cover all types of nonprofit corporations. Par. 1 provides for the payment of debts, and par. 2 recognizes the validity of transfers on condition. Perhaps these two provisions are not absolutely necessary, as the law would probably be the same in any event. The statute avoids ambiguity and is more complete by their inclusion, however. Par. 3 is a statutory enactment of the cy pres doctrine. This is the only practical method of distributing such property, and the statute should provide for it. Par. 4 is especially desirable in that it permits the corporations, either local or of higher jurisdiction, to provide in advance for the distribution of property of dissolved corporations. Hence, the property of a local church or lodge on dissolution might inure to the higher jurisdiction of the organization. Distribution to the corporate members or any other dispositions authorized in the articles or by-laws is permitted. In addition to the above four alternatives, it is conceivable that there may be some corporations on dissolution with undisposed assets to be distributed. Par. 5 provides for this contingency by authorizing a plan of distribution. The mechanics of this plan are set forth in sec. 255.

Sec. 255. Plan of Distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

a. Where there are members having voting rights, the
board of directors shall adopt a resolution recommend­
ing a plan of distribution and directing the submission
to a vote at a meeting of members having voting
rights, which may be either an annual or a special meet-
ing. Written or printed notice setting forth the proposed
plan of distribution or a summary thereof shall be given
to each member entitled to vote at such meeting within the
time and in the manner provided in this Act for the giving
of notice of meetings of members. Such plan of distribu-
tion shall be adopted upon receiving at least a majority of
the votes entitled to be cast by members present or repre-
sented by proxy at such meeting.

b. Where there are no members, or no members having
voting rights, a plan of distribution shall be adopted at a
meeting of the board of directors upon receiving the vote
of a majority of the directors in office.

Note. This section is added to provide for any distribution
contingency that might arise which is not provided for under
section 254. It is modeled after the Illinois statute. [Ill. Ann.
non Supp.1954) is quite similar. This section requires ap-
proval of only a majority of the voting members and not two
thirds as in the Illinois and Missouri acts. Majority approval
will facilitate action.

Deviations in the procedure of adopting a plan of dissolu-
tion are not authorized. Such deviations are not necessary, be-
cause utmost flexibility for distribution is given the corpora-
tions in sec. 254. This section applies only to deficiencies in the
articles, by-laws, or other provisions. Note also that provision
is made for a plan of dissolution for corporations having no
members or having no members with voting rights. In that
case approval must be by a majority of the directors in office
and not just by a majority of the directors at a duly held meet-
ing.

Additional Notes

Section 118 of the present Michigan Act prohibiting excess
capitalization of nonprofit corporations has been omitted as
it serves no useful purpose. See supra, Nonprofit Corporations, p. 60.

Sec. 127 of the present Michigan Act (Mich. Comp. Laws 450.127 (1948)), authorizing the nonprofit corporation to borrow money and mortgage its assets, and regulating the procedure therefor, has been eliminated as being unnecessary. Sec. 10 of the Act, Mich. Comp. Laws sec. 450.10 (Mason's Supp. 1954), conferring broad powers on corporations, specifically includes the power to borrow money and issue mortgages. It also states that the powers, unless otherwise provided, shall be exercised by the directors. This is believed preferable to the limitations added in sec. 127 requiring authorization by the members unless there is a by-law expressly authorizing such action. In view of the fact that the proposed Act specifically authorizes nonprofit corporations without members and also similar corporations without any voting members, such limitations could prove embarrassing. On the other hand, corporations with members can impose restrictions and safeguards in their by-laws as authorized under the broad provisions of section 10. Hence, the elimination of sec. 127 results in greater flexibility without sacrificing any safeguards where they are desired.


Sec. 139 of the present Michigan Act authorizing parent corporations to hold property and conduct incidental business transactions has been eliminated as being unnecessary. Sec. 234 of the proposed Act confers such powers on all nonprofit corporations.


Sec. 256. Incorporation of fraternal societies. One or more persons, natural or corporate, may become incorporated for the purpose of forming a secret society or
lodge for benevolent, charitable, social, educational or mutual aid purposes or for any other similar purpose or purposes not prohibited by law. All societies, fraternal or otherwise, having for their principal purposes the teaching, practice, and extending of benevolence, charity and fraternity under the form of government as commonly understood, desiring to be incorporated to carry out more effectually such purposes, shall hereafter incorporate under the provisions of this Act. No such society or lodge whose parent organization is organized or incorporated under the laws of any other country or state shall be incorporated within this state without the parent organization first applying for and receiving permission to do business within this state as a foreign corporation.

Nota. This section is based on sec. 133 of the present Michigan Act, authorizing the incorporation of lodge or fraternal societies. Changes are rather minor. The statement as to "what law governs" has been deleted as unnecessary in view of secs. 200 and 218. The requirement of three incorporators has been eliminated. The requirement that the foreign parent organization domesticate before local units are incorporated has been retained, but the scope is broadened. The new section makes it clear that the domestication requirement applies to foreign unincorporated as well as incorporated societies. The new section also applies to every instance of a local unit incorporation and not only to instances of such incorporations by the foreign parent corporation as expressed in the present statute.

Sec. 257. Relief Funds. Every lodge whether parent or local shall have authority to make provision for the visitation of the sick and afflicted members; to provide funds for the relief of distressed members and their families; to provide funds for the burial of indigent or other worthy members: Provided, That no such funds shall be raised or maintained in the way of dues, assessments or levies based upon an insurance rate, table or contract, express
or implied: *And provided further*, That no such money shall be paid out of the treasury of any such lodge without the express order of the lodge itself or a committee duly authorized to consider and act upon such cases; *And provided further*, That nothing contained in this Act shall be construed as prohibiting any such lodge from establishing and maintaining charitable homes or other institutions for its aged, afflicted or infirm members under the provisions of this Act applying to trustee corporations.

*Note.* This is the same as section 147 of the present Michigan Act authorizing fraternal societies to establish relief funds. As the section applies specifically only to fraternal organizations, its location in the statutes is proper. Adequate safeguards for the protection of the funds are provided.

The prohibition against dues based on insurance tables is a necessary precaution against circumvention of insurance laws.

No additional provisions for fraternal organizations are needed, since the general nonprofit provisions have been expanded to provide for all the peculiar requirements of these organizations.

**Sec. 258. Trustee corporations.** Corporations may be formed to carry out the terms of any written declaration, deed or testament making donations, grants, gifts or devises in trust for specific lawful purposes. Such corporations shall be known as "trustee corporations." Trustee corporations shall include, without being limited to, the following:

1. Incorporation of trustees and others lawfully associating with them for the purpose of carrying out the provisions of an express trust, testamentary or otherwise, appointing such trustees to have the title, care, custody, disposition of property or income in trust for the benefit of designated religious, charitable, benevolent or educational institutions, or for any public benefaction of whatsoever name or nature;
2. Incorporation of trustees of other corporations who hold in their name separate corporation property either (a) for specific purposes defined or limited by any written instrument donating, setting aside or devoting such separate property for charitable, religious, benevolent, educational or other beneficial purpose, or (b) for compliance with the terms of written instructions as to the use thereof from the governing body of any ecclesiastical, fraternal or charitable society, association or corporation;

3. Incorporation of trustees and others lawfully associating with them for the purpose of founding, endowing, maintaining or operating a hospital, asylum, home for the care of indigent, aged or infirm persons, institution for the care of minor orphans, crippled children or unfortunate women, or for any other charitable institution in this state;

4. Incorporation of any number of persons for any such charitable purpose where the hospital, home, asylum, or other institution to be founded by such corporation is to be constructed, equipped and maintained principally by donations not made under any trust deed or other instrument in writing declaring the uses and purposes to which such property shall be devoted; and

5. Incorporation of trustees appointed or provided for under the terms of any deed, will or other written instrument to have the title or management of any property, whether real or personal, for the benefit of the donor or grantor therein or the heirs, dependents or other beneficiaries of such donor or grantor, and not for charitable, religious, educational or benevolent purposes, if such incorporation be permitted, directed or contemplated in such instrument, and the business of such corporation, when organized, is one which a corporation might otherwise carry on under this Act.

Note. Provisions for the incorporation of "trustee corpora-
tions” are not common. See *supra*, Trustee Corporations, p. 91. The statutes of Alabama, Florida, Indiana, Illinois, Minnesota, Oregon, Pennsylvania, New Jersey and Tennessee contain no such provisions. Missouri has a single provision which authorizes incorporation for the execution of any trust for religious, charitable, and other nonprofit purposes. [Mo. Ann. Stat. sec. 352.030 (Vernon 1952).] This section and the others of which it is a part remain in effect for those corporations which do not accept the provisions of the new Missouri Non-Profit Corporation Act. [Mo. Ann. Stat. sec. 355.500 (Vernon Supp. 1954).] Ohio has provisions for the incorporation of charitable trusts. [Ohio Rev. Code secs. 1719.01 *et seq.* (Baldwin 1954).]

Section 258 is based on sec. 148 of the present Michigan Act, but it is restyled and changed in scope. Sec. 258 is limited to a statement for the purposes for which trustee corporations may be formed. As is the case with the present Michigan law, there is practically no limitation, but the phraseology of the new section makes this clear. The first sentence broadly authorizes incorporation for the purpose of carrying out the terms of any express trust. This is the same as the first sentence of sec. 148 of the present Act (Mich. Comp. Laws sec. 450.148 (1948)). The next 5 sub-paragraphs list specifically 5 types of trustee corporations, but it is stated that these are not the only types authorized. The types of corporations specified in paragraphs 1, 2 and 5 are taken from sec. 148 of the present Michigan Act. The phraseology is changed to make them more intelligible. The types specified in paragraphs 3 and 4 are taken from secs. 157 and 158 of the present Michigan Act. The retention of duplicate provisions for hospitals and asylums as at present is both illogical and confusing. Furthermore, different requirements are set forth in secs. 148, 157 and 158. The new Act, by making sec. 258 all inclusive, eliminates conflicting requirements and simplifies the provisions.

Although many of these corporations could be formed under the general nonprofit provisions, retention of these sections in as simplified a form as possible is desirable. It is to be noted that incorporation of trustees of a strictly private trust is also authorized.

**SEC. 259. CONTRIBUTIONS; MEMBERSHIP.** Unless restricted by the trust instrument, trustees of corporations formed for charitable, eleemosynary, educational, and
other purposes of public benefaction of any nature whatsoever, may unite in such incorporation with other persons contributing to the support of such corporation. As with nonprofit corporations generally, trustee corporations may prescribe in their articles or by-laws the terms and conditions of membership or they may provide that there shall be no members irrespective of contributions.

*Note.* This section is suggested by provisions in secs. 148, 152, and 157 of the present Michigan Act. Under those provisions it is apparently contemplated that others than the original settlors may contribute to and join in the incorporation of the particular charitable enterprise. Sec. 258 forthrightly authorizes such cooperation in the formation of all charitable trustee corporations unless the trust instrument otherwise prohibits it. This is wise in that many worthwhile projects may otherwise fail because of insufficient funds. The added provision makes it clear that the corporation may or may not award membership in return for contributions. Also, by reference to the general nonprofit sections, it is evident that any membership so conferred may have such privileges or no privileges as may be determined. The scope of this section is specifically restricted to nonprofit corporations.

**Sec. 260. Trustee corporations; how organized; law governing.** Declarations of trust shall not be sufficient in themselves to authorize the trustees named therein to assume corporate powers, but all such trustees referred to in this Act shall be incorporated only in the manner prescribed in and by complying with the provisions of this Act. Trustee corporations shall be organized either for profit or not for profit as the case may be and governed accordingly by the applicable provisions of this Act.

*Note.* This section was formerly included in sec. 148 of the present Michigan Act. It wisely requires formal incorporation before the assumption of corporate powers is authorized. As both profit and nonprofit corporations are permitted, it is obvious that a particular corporation shall be governed by such law as is consistent with its nature.
SEC. 261. TRUSTEE CORPORATIONS; COMPENSATION OF TRUSTEES. Trustees of trustee corporations shall in no case have any personal interest in or title to any part or portion of such trust property, nor derive any personal benefit from the principal or income thereof, excepting in the way of just compensation for their labor and skill in executing such trust or by way of reimbursement for necessary and actual expenses incurred in the management of such property or in the performance of their duties as such trustees, or except upon authority expressed in the original deed or instrument of trust.

Note. This provision was formerly included in sec. 148 of the present Michigan Act. It is certainly warranted and consistent with general law.

SEC. 262. WHEN INCORPORATION AUTHORIZED; TRUST INSTRUMENT DEFINED. In any case mentioned in the foregoing sections where property, whether real, personal or mixed, amounting in value to $1000 or more, has been or hereafter shall be so given, granted, devised, or bequeathed to one or more trustees, or in any case where the income from any property or fund has been or hereafter shall be so given, or bequeathed to such trustees for any such purpose, where the annual amount of such income is $1000 or more, and where it shall, for the more effective and perfect administration of any such trust, be deemed expedient to organize as a corporation, then it shall be lawful for such trustees to become incorporated under this Act. The term “trust instrument” or “instrument of trust” as used in this Act shall be construed to mean and refer to any lawful deed of gift, grant, agreement, or any last will and testament by which the donor, grantor, or testator shall give, grant, devise, or bequeath any property, real, personal or mixed, in trust for general or specific
uses; and any and all conditions, terms or directions contained therein, and any act, declaration or instructions of a legal nature made by any corporation or body directing or authorizing trustees thereunder to take, receive, hold, manage or dispose of any of the property of such corporation for general or specific purposes for the benefit of such persons or objects as may be therein designated. Such terms shall not include constructive or resulting trusts.

Note. This section is taken from sec. 149 of the Michigan Act. The requirement of a minimum number of trustees has been eliminated and changed to one or more for all corporations. The Ohio and Missouri statutes do not specify any minimum number of trustees. [Ohio Rev. Code sec. 1719.01 (Baldwin 1954); Mo. Ann. Stat. sec. 352.030 (Vernon 1952).]

The pecuniary limitation of $1000 either in property or income is retained, although similar restrictions are not contained in either the Ohio or Missouri statutes. Supra this note. This amount is certainly small enough to cause no inconvenience. Anything less would probably be so little as to prevent the accomplishment of the trust purpose anyway.

SEC. 263. ARTICLES OF INCORPORATION. The articles shall, in addition to other requirements made in this Act, state:

1. The nature of the business, if any, in which such trustee corporation will be engaged and the nature and value of the trust property; and to all such articles, wherever filed, there shall be attached verified copies of every trust instrument or other written directions upon which such trust is founded;

2. The number of persons who shall constitute the permanent board of trustees of such corporation; the length of time for which the trustees are authorized to act after election or appointment as the case may be; and the mode in which their successors shall be elected or appointed;

3. Whether or not other persons than the incorporators are, or may become, members or stockholders thereof.
Note. This is formerly sec. 150 of the present Michigan Act. No substantive changes need be made. It can be compared with Ohio Rev. Code sec. 1719.07 (Baldwin 1954).

Sec. 264. Officers. Every trustee corporation shall have officers corresponding to those prescribed for corporations generally in this Act, appointed or elected as such trustees may agree upon by a majority vote, or as may otherwise be provided for in the trust instrument. Such corporation shall have all the rights, powers, privileges, and immunities conferred by law upon corporations generally, excepting as limited in the trust instrument or by the provisions of this Act.

Note. This is formerly sec. 151 of the Michigan Act. No substantive changes need be made. Compare Ohio Rev. Code sec. 1719.10 (Baldwin 1954).

Sec. 265. Powers in relation to property. Unless otherwise prohibited or not contemplated in the trust instrument, such trustee corporation may by gift, grant, devise or bequest, take, receive and hold any property, real or personal, so given, granted, devised or bequeathed from other persons than the person or persons by whose deed, will or other instrument the trust was originally founded. Any 2 or more persons may by the same instrument or by separate instruments, give, grant, devise or bequeath property in trust, for any lawful purposes to the same trustees upon such terms and conditions as may in such instrument or instruments be agreed on, and such trustees, if authorized to incorporate, shall attach to the articles of incorporation each and every one of such agreements, and shall be governed by the conditions therein imposed upon them, if not incompatible one with the other. After incorporation to carry out the express directions or conditions of any such trust instrument, no such trustees shall thereafter accept any gift, grant, devise, or bequest upon any condi-
tion or conditions incompatible with the articles or with any instrument required to be attached thereto.

*Note.* This is formerly sec. 152 of the Michigan Act, the only change being that "any lawful purpose" is substituted for "any of the purposes mentioned in section 148 of this Act." In view of the fact that sec. 148, in addition to specified purposes, authorizes incorporation to carry out the terms of any express trust, it is believed that no substantive change is made. Creation of such trusts by two or more persons is authorized. Acceptance of donations by others than the donor or donors is also authorized as long as such donations are not coupled with conditions incompatible with the original trust. These provisions are certainly warranted.

**Sec. 266. Use of property and funds; investments.**

The property and funds of every trustee corporation shall be faithfully and exclusively used for the purposes thereof as set forth in its articles or as required by the terms of the trust instrument; and such trustees shall be held to the same degree of responsibility and accountability with respect thereto as if not incorporated, excepting where a less degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or where such trustees remain under the control of shareholders in such corporation other than themselves who retain the right to direct and do direct the action of the trustees as to the use of such trust property from time to time. Nothing herein contained shall be construed as prohibiting any such board of trustees, having more than five members, from appointing an executive committee or such other committees as they may desire, with such powers and division of work and responsibility as such board may agree upon, not inconsistent with the trust instrument or with the general provisions of this Act governing the management and powers of corporations generally. Such corporation may, unless otherwise specifically directed in the trust instrument, invest its funds in accordance with the
laws of this state governing authorized investments for trustees: Provided, That no loan of such funds shall be made to any trustee, officer or servant of such corporation.

Note. Sec. 266 is substantially the same as sec. 153 of the present Michigan Act. It provides that the degree of care owed by the trustees shall, except in certain cases, be governed by trust law rather than corporation law. The effect of this provision is discussed supra, Trustee Corporations, p. 91. A lesser degree of accountability is authorized if the trust instrument so provides or if the trustees are under the control of the corporation members. An executive committee is authorized where there are five or more trustees, and loans to officers and trustees are prohibited.

Sec. 267. Vacancy, among trustees, filling. In any case where the trust instrument fails to provide for the filling of vacancies among the trustees due to death, disability, resignation or other cause, and such vacancy occurs, the remaining trustees may apply to the circuit court in chancery of the county where the registered office of such corporation is located, for the appointment of some suitable and competent person to fill such vacancy, the circuit judge thereof may, upon such ex parte or other showing as he may require, make such appointment by an appropriate order, and the person so appointed shall, upon filing his written acceptance as such trustee, be and become a trustee of such corporation with the same powers as those originally appointed. A certified copy of every such order shall be forthwith filed in the same manner as provided for original articles.

Note. This section, the same as sec. 154 of the present Michigan Act, codifies and perhaps amplifies the general equitable doctrine that equity will not let a trust fail for the want of a trustee. 1 Scott, Trusts, secs. 565 and 108 (1939). Its retention is justified in the interest of clarity.

Sec. 268. Construction of trust instrument; juris-
DICTION OF COURT. In any case where the trustees of any such trustee corporation are in honest doubt and unable to agree as to the construction of any of the terms or conditions of any such trust instrument or their powers or duties thereunder, any or all of such trustees may file his or their petition in the circuit court in chancery for the county in which the registered office of such corporation is located, asking for the construction of the said court upon the whole or any part of such instrument, under and by the same procedure as is provided by law for the construction of wills. In case any public interest is involved, the prosecuting attorney of such county shall enter his appearance therein, and shall do so in all cases involving hospitals or charitable homes or similar institutions to which the general public may be admitted on application. If less than the entire board of trustees joins in such petition, the remaining members shall become defendants and shall be served with such notice or other process as the rules of the court may require. Such court shall have jurisdiction to determine every doubtful, or disputed question raised by such petition, and the opinion and directions of such court, when filed, shall be binding upon such corporation and the trustees thereof.

Note. Section 268 is the same as sec. 155 of the present Michigan Act.

Sec. 269. Amendment of trust agreement. If the donor or grantor in any such trust instrument has reserved the right to do so, he may alter, amend, enlarge or restrict the gift or grant or any of the terms or conditions thereof. In the event that the donor or grantor makes any such change or changes, it shall be the duty of such trustees to forthwith file a verified copy of such amended trust instrument in the same manner as provided for original ar-
articles, and any amendments to such articles occasioned by such amended trust instrument shall likewise be forthwith made and so filed by such trustees, and no such amendments to the articles shall be valid that change the original purposes of the corporation in their entirety.

*Note.* This section is similar to sec. 156 of the present Michigan Act, but it is changed to make it clear that the donor or grantor may amend the trust instrument only if he had reserved the right to do so.

*Additional Notes*


Such state control, if enacted, should be based on policy determined after a thorough investigation. It should extend to both incorporated and unincorporated associations, and should also include foundations as well as any other similar type of organization. Inclusion of such provisions in statutes on general corporation law would appear awkward. If such
regulation were enacted, perhaps a reference to it should be included in the corporation statutes.

A portion of sec. 157 of the present Michigan Act authorizing certain trustee corporations to apprentice or indenture foundling children has been eliminated. Apprenticing and indenturing sounds somewhat archaic and inhumane in this enlightened age. Furthermore, such provisions should be a part of child welfare and adoption legislation and should not be included in general corporation statutes.

SEC. 270. FOUNDATIONS; INCORPORATORS; EXPENDITURE OF FUNDS. One or more persons, natural or corporate, may become incorporated as a foundation for the purpose of receiving and administering funds for the perpetuation of the memory of persons, preservation of objects of historical or natural interest, or for educational, charitable or religious purposes or for providing scholarships and fellowships in any university, college or school, or for public welfare. Such corporations are hereinafter called foundations.

Note. This section is similar to sec. 163 of the present Michigan Act except that the requirement of three incorporators has been eliminated. Included in the statement of authorized purposes is the furnishing of scholarships and fellowships in any university, college or school. This inclusion is prompted by sections 168 and 169 of the present Michigan Act specifically authorizing foundations to furnish such aid to the publicly supported educational institutions within the state. The proposed provision includes the word fellowships as well as scholarships, and does not limit the schools either to those publicly supported or those located within the state. It is submitted, however, that there is no change in the substantive law since the term "public welfare" obviously includes such purposes. Statement of purposes should necessarily be very broad to conform to standard foundation practices. See supra, Foundations, p. 94. Accordingly, sections 168 and 169 of the present Michigan Act are eliminated.

SEC. 271. GIFTS AND BEQUESTS; POWERS. Such foundations shall have power to take and hold by bequest, devise,
gift, purchase or lease, either absolutely or in trust, for any of its purposes, any property, real, personal or mixed, without limitation as to the amount or value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and re-invest the principal thereof in accordance with the laws of this state governing authorized investments for trustees and deal with and expend the income of the foundation in such manner as in the judgment of the trustees will best promote its purposes.

Note. This is substantially the same as sec. 164 of the present Michigan Act. Note also that the general powers conferred on profit and nonprofit corporations also apply. Hence, no more detailed provisions need be added.

Sec. 272. Foundations to be nonprofit. Every such foundation shall be a nonprofit corporation and subject to the provisions of this Act relating to nonprofit corporations except as specifically otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the people: Provided, That this Act shall not prevent such foundations from charging an admission fee, or similar charge, to museums, forest reserves, parks and other institutions organized here-under for the sole purpose of paying the expense of maintenance.

Note. This section is the same as sec. 165 of the present Michigan Act.

Sec. 273. Membership; board of trustees. The articles of such foundation may provide for membership and the manner in which members may be admitted. The articles may also provide that there shall be no members irrespective of contributions. The affairs of such foundations shall
be managed by a board of trustees or directors to be selected as provided by the by-laws, but in no case shall the number of trustees or directors be less than three. A self-perpetuating board of trustees is authorized.

Note. This section replaces sec. 166 of the present Michigan Act. Whereas sec. 166 provides that the articles "shall" provide regulations concerning membership, sec. 271 states that the articles "may" provide for membership. As with nonprofit corporations generally, sec. 233, and with trustee corporations, sec. 258, foundations may be organized without members. Inferentially also, membership without voting rights is authorized.

Instead of requiring the trustees to be "elected" as in section 166 of the Michigan Act, sec. 271 provides that they shall be "selected" as provided in the by-laws. Further, a self-perpetuating board of trustees is authorized. More detailed regulations, of course, are contained in the general nonprofit provisions which also govern these types of corporations. Hence, uniformity is achieved and maximum flexibility permitted.

Additional Notes

Sec. 167 of the present Michigan Act providing for legislative dissolution has been omitted. A somewhat similar provision providing for chancery dissolution under the same circumstances has been included in the general nonprofit provisions, sec. 252. Reasons for the change can be found in the note to sec. 252, supra.

Sections 168 and 169 of the present Michigan Act, applying specifically to corporations offering scholarships and student aid for the University of Michigan and other publicly supported schools, has been eliminated. Sec. 268 specifically lists student aid and grants as included within the authorized purposes of foundations.

As with trustee corporations, and for the same reason, no provision for state regulation is herein recommended. See supra, "additional notes" following Trustee Corporations, p. 198. An inkling of the magnitude of the policy considerations involved may be gleaned from the reports derived from two congressional investigations concerning subversive influences of foundations. H. R. Rep. No. 2514, 82nd Cong., 2nd Sess. (1953); H. R. Rep. No. 2681, 83rd Cong., 2nd Sess.
SEC. 274. Educational corporations. One or more persons, natural or corporate, may incorporate for the purpose of conducting a school, academy, seminary, college or other institution of learning where preparatory subjects or the arts, sciences, professions, special occupations and higher learning may be taught. Such corporations are hereinafter called educational corporations.

Note. This section is similar to the first half of sec. 170 of the present Michigan Act. The requirement of three incorporators has been eliminated as is the case with all of these special types of corporations. Special provisions for the incorporation of educational institutions are common in other states. [Ind. Ann. Stat. secs. 25-3201 et seq. (Burns 1948); Ohio Rev. Code secs. 1713.01 et seq. (Baldwin 1954); N. J. Stat. Ann. secs. 15: 11-1 et seq. (1939); Neb. Rev. Stat. secs. 21-701 et seq. (1943, reissue 1954).] Such statutes are not universal, however. In many states the educational provisions are included within the general nonprofit provisions or combined with religious or other particular types of corporations. The statutes of Florida, Illinois, New York, Minnesota and Pennsylvania have very few, if any, statutes relating specifically to educational corporations.

The inclusion of some statutes relating specifically to educational corporations is justified in the interest of clarity. Such special provisions, however, should be kept to a minimum and should be concerned with the peculiar requirements of such corporations. Both the Michigan provisions and those herein proposed substantially fulfill these requirements.

SEC. 275. Law governing. Educational corporations may be organized either for profit or not for profit, and they may but need not be organized as trustee corporations. Except as otherwise hereinafter specifically provided, they shall be governed by the appropriate profit or nonprofit provisions of this Act and, if applicable, the trustee provisions also.

Note. This section is substantially the same as the second half of sec. 170 of the present Michigan Act.
SEC. 276. EDUCATIONAL CORPORATIONS; CLASSIFICATION. For the purposes of this Act, educational corporations shall be classified as follows:

A. Those having a capital of $1,000,000 or more;
B. Those having a capital of no more than $1,000,000 and not less than $500,000;
C. Those having a capital of no more than $500,000 and not less than $100,000;
D. Those instituted and maintained by any ecclesiastical or religious order, society, corporation or corporations, retaining control of such institution for denominational purposes.

Note. This provision retains the classification provided in the first paragraph of sec. 171 of the present Michigan Act. The grouping is rearranged and the phraseology is changed to provide a clearer and more logical presentation.


The classification is retained because of its obvious reasonableness.

SEC. 277. CONDITIONS PRECEDENT TO INCORPORATION. Every educational corporation, before being authorized to file its articles, shall be required to present a statement to the Michigan Corporation and Securities Commission in writing from the State Board of Education that:

1. The housing space and administration facilities
which it possesses or proposes to provide for its declared field or fields of education are adequate;

2. Its proposed educational program leading to the diplomas or degrees which it proposes to offer is adequate;

3. Its laboratory, library, and other teaching facilities which it possesses or proposes to provide are adequate;

4. It has or proposes to employ an adequate staff, fully trained, for the instruction proposed; and

5. At least 50 per cent of its capital, whether of stock or in gifts, devises, legacies, bequests or other contributions of money or property, has been paid in or reduced to possession.

In determining whether any educational corporation satisfies conditions specified in classes (A), (B), (C), and (D) of sec. 276, the State Board of Education may treat as a credit to the capital of such corporations the guaranteed annual income of that corporation to the extent that it deems such guaranteed income the equivalent of all or any part of the required endowment.

Note. These provisions, taken from the second paragraph of sec. 171 of the present Michigan Act, are retained because of the wise policy involved. The public and prospective students are protected by the control of the State Board of Education, and the incorporators are immediately put on notice that they must satisfy the requirements of the State Board. Thus, the incorporators and donors are also protected in that the financial feasibility of the proposed institution is weighed by experts at the very outset.

such control is indeed warranted. Further, it is wise to mention the provisions in the corporation statutes so that the interested parties will be put on notice at the outset. This control by the State Board of Education serves as a guarantee against under-capitalization and improvident ventures which otherwise might result if the monetary limitations provided in sec. 276 were the sole restriction on these corporations.

SEC. 278. COLLEGE AND UNIVERSITY DEFINED. The use of the word "college" or "university" in the name of any group, organization or association hereafter formed in this state is limited to those educational corporations complying with the requirements for class (A) or class (B) educational corporations as provided in sec. 276 or to such educational corporations of class (D) as shall satisfy the requirements set up for classes (A) or (B); Provided, however, That the words "junior college" may be used by educational corporations of class (C). Whenever this provision is violated it shall be the duty of the prosecuting attorney, in the county where the organization is located, to bring proceedings to enjoin the further use of such name in violation of this Act.

No educational corporation shall be permitted to expand its program beyond that specified in its articles of incorporation until it has presented to the Michigan Corporation and Securities Commission a statement in writing from the State Board of Education approving the facilities, equipment and staff or the proposed facilities, equipment and staff as adequate for the offering of the additional educational program.

Note. The definitions and provisions of paragraph 3 of sec. 171 of the present Michigan Act are retained in substance in sec. 278. These provisions are obviously reasonable and yet flexible. Separate provisions for nonsectarian and religious educational corporations as well as educational corporations of

SEC. 279. ESTABLISHMENT OF COLLEGES AND UNIVERSITIES. Educational corporations, according to their classification as defined in section 276, shall have authority to establish and conduct colleges and other institutions of higher learning as follows:

1. Educational corporations of class (A) shall have authority to establish and conduct colleges or universities of a graduate rank with programs of studies of 5 years or more;

2. Educational corporations of class (B) shall have authority to establish and conduct general colleges for furnishing higher learning and to confer such degrees and honors as shall be approved by the State Board of Education prior to the filing of articles of incorporation; and the term "college" as herein used shall be construed to include any college, university or other institution where the arts, sciences, professions and higher learning are taught and degrees and honors therein conferred.

3. Educational corporations of class (C) shall have authority to establish and conduct junior colleges, seminaries, academies or preparatory schools, as determined and approved by the State Board of Education, but not general colleges or universities as defined in subsections (A) and (B) hereof;

4. Educational corporations of class (D) shall embrace
such schools, academies, or colleges as have been heretofore founded under Act 135, Public Acts 1899, known thereunder as "Ursuline academies;" those founded under Act 121, Public Acts 1915, and known thereunder as "ecclesiastical seminaries;" those founded under Act 28, Public Acts 1901, and known thereunder as "Evangelical Lutheran deaf mute institutions;" those founded under Act 135, Public Acts 1867, known as "industrial and charitable schools;" those organized under paragraph c, subdivision 1, chapter 2, part 4, of Act 84, Public Acts 1921, and such other schools, colleges and institutions of like character and purpose as may be formed under any law of this state for educational purposes. All such educational corporations shall have all the rights, powers, privileges and immunities enjoyed under its act of incorporation and without regard to the classification made in this Act, and upon complying with the provisions hereof shall have such additional rights, powers, privileges and immunities as are conferred hereunder according to the classifications prescribed in this Act. Any corporation of class (D) may enjoy the privileges provided under classes (A), (B), and (C) on condition that it satisfies the requirements set up for corporations of these respective classes.

Any corporation heretofore formed under Act 359, Public Acts 1913, and known thereunder as "kindergarten institutions" shall hereafter be classified under class (C) of section 276 of this Act.

Educational corporations of class (A) shall have the powers and privileges conferred on corporations of classes (B) and (C), and corporations of class (B) shall have the powers and privileges conferred on corporations of class (C). Conversely, however, corporations of classes (B) and (C) shall not have the powers and privileges conferred on corpora-
tions of a higher classification until they conform to the requirements specified for corporations of such higher classification.

Note. This section is substantially the same as sec. 172 of the present Michigan Act. The paragraphs have been rearranged to conform to the more logical grouping of sec. 276. Slight changes in phraseology and a few additions or deletions have been made in the interests of completeness and avoidance of redundancy. The last paragraph of this section, for example, makes it clear that any institution of a higher classification may conduct programs commensurate with those conferred on institutions of a lower classification. On the other hand, institutions of a lower classification are authorized to conduct programs of the higher level only when they conform to the higher requirements. This provision made it possible to delete from paragraph (B) the express provision that general colleges could also conduct preparatory schools. See Mich. Comp. Laws sec. 450.172 (a) (1948).

The provisions of sec. 172, par. (c) of the present Michigan Act classifying certain pre-existing corporations as religious educational institutions have been retained in paragraph 4 of sec. 279. Thus, all the educational corporations are brought within the coverage of the act in a concise and logical manner.

Sec. 280. Articles of incorporation. In addition to the other requirements of this Act, the articles of every educational corporation shall clearly set forth the educational system of the institution to be founded and the character of the degrees, honors, diplomas, or certificates which it proposes to grant; and such educational system and other aforementioned items shall be approved by the State Board of Education prior to the filing of the articles of incorporation. If a college or university, the articles shall state the number and name of the faculties to be established; and if a denominational religious school or college, the name of such denomination and the body supporting or controlling the same. Such articles shall be filed as provided in section 5 of this Act. Any such corporation
may, by increasing its capital to a higher class and amending its articles, assume the powers and privileges of such higher classification as it may thereby be entitled to as defined in this Act.

Note. This is similar to sec. 173 of the present Michigan Act except that the whole provision is prefaced with "in addition to the other requirements of this act." Thus, the incorporators are advised at the outset to consult also the appropriate profit, nonprofit, or trustee provisions of this Act to determine the complete requirements of the articles.

SEC. 281. ACCEPTANCE OF PROPERTY. The directors or trustees of any such educational corporation may accept gifts, devises, legacies or bequests, of personal or real property, or the principal or interest of any money or other fund, either absolutely or in trust, for the benefit of such institution or particular faculties, departments or other special purposes thereof; and such trustees or directors shall hold and dispose of such trust funds in accordance with the directions and wishes of any of the donors in each case; and shall account for all such funds and property in such manner and at such times as may be appointed in the instrument, deed or will accompanying the donation or as provided by law or the articles or by-laws of such corporation, made pursuant thereto. Where no other provision is made with respect thereto, the directors or trustees of every such corporation shall be governed as to their duties, powers and responsibilities, by the general provisions of this Act respecting such boards; and as to their trusteeship of property they shall be governed by the provisions of this Act governing trustee corporations.

Note. The provisions of sec. 174 of the present Michigan Act authorizing acceptance of donations are retained but broadened to include donations not in trust. This is accomplished by the insertion of the words "either absolutely or" immediately
preceding the words "in trust" in the present Act. The justification of this provision is apparent.

Sec. 282. Powers of Board of Directors or Trustees. The control of the business and secular affairs of every such educational corporation shall be vested in a board of directors or trustees. Such board, in addition to general corporate powers conferred by the appropriate provisions of this Act, shall also have exclusive control over the educational affairs and policy of such institution, and as such may:

First, Appoint, employ and pay the salary of a president, or principal, and such professors, tutors, assistants, and employees, as the board shall determine necessary;

Second, Direct and prescribe the course or courses of study and the rules of discipline for such institution, and enforce the same; and prescribe the tuition and other fees to be paid by students attending such institution;

Third, Grant such diplomas, certificates of graduation, or honors and degrees, as the nature of the institution may warrant, or as contemplated in the articles;

Fourth, Delegate to the president or principal, and the various professors and tutors, such authority over the educational affairs of the institution as the board may deem advisable;

Fifth, Co-operate with other schools, colleges and educational institutions in promoting the best interests of education.

Note. Sec. 282 is substantially the same as section 175 of the present Michigan Act. The first paragraph has been modified to make it clear that the enumerated powers are in addition to the general corporate powers conferred in other sections of the Act applicable to either profit, nonprofit or trustee corporations. Hence, those general powers need not be repeated. The enumeration of specific powers concerning a faculty, courses
of study, and conferring of degrees, are obviously unique to educational corporations and should be expressed. The fifth power enumerated in the Michigan Act authorizes these corporations to cooperate with other institutions "within this country" in promoting the best interests of education. In sec. 280 the phrase "within this country" has been eliminated as such restriction seems unnecessary. Arkansas, Idaho, Nebraska, Oklahoma and Texas have somewhat comparable statutes. [Ark. Stat. Ann. sec. 64-1405 (1947); Neb. Rev. Stat. sec. 21-703 (1943, Reissue 1954); Okla. Stat. Ann. tit. 18, sec. 573 (1953); Tex. Rev. Civ. Stat. Ann. art. 1411 (Vernon 1945).]

SEC. 283. PRIVILEGES OF HOLDERS OF DIPLOMAS OR CERTIFICATES. Every diploma, certificate of graduation, or other evidence of attendance at such institution, shall entitle the lawful recipient thereof to all the privileges and immunities which by custom or usage are allowed to holders of similar diplomas or certificates granted by similar institutions in this country: Provided, That as to any occupation or profession regulated by statute as to the requirements and qualifications necessary to the practice thereof, no such diploma or certificate of graduation shall entitle the recipient to any such privilege or immunity where such statutory requirements or qualifications have not been met.

Note. This section is substantially the same as sec. 176 of the present Michigan Act. Apparently many states, such as Arkansas, Idaho, Minnesota, Missouri, Nebraska, Oklahoma, Ohio, Pennsylvania, Tennessee and Texas, do not have similar provisions in their corporation statutes. The deletion of this section would seem to cause no harm because obviously nothing except the reputation of the issuing institution is or can be conferred on the recipients of degrees. Further, the prohibition against engaging in statutorily controlled occupations and professions prior to the satisfaction of such requirements hardly seems essential since such would be implied anyway. On the other hand, inclusion of the section works no hardship and it may be justified in the interests of completeness and clarity.
SEC. 284. Inspection by State Board of Education; annual report. Every such educational corporation shall be visited and inspected by the State Board of Education, in person or through visitors or inspectors appointed by them, at least once every 2 years. Said State Board of Education shall at the time of visitation ascertain and publish information upon all matters pertaining to the condition, management, instruction and practices of such corporations, and shall file a copy of their report with the Michigan Corporation and Securities Commission. Upon evidence that the property is at any time less than required by law, or that any such educational corporation is not otherwise complying with the provisions of this Act, they shall serve notice on such corporation to remedy the defects within a reasonable time to be fixed in such notice, and in case the deficiency is not corrected within the time fixed by them, they may institute proceedings at law for the dissolution of such corporation. Such trustees shall be required, on or before the first day of December, annually, to report to the State Board of Education, a statement of the name of each trustee, officer, teacher and the number of students of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations.

Note. This section is the same as section 177 of the present Michigan Act. Supervision by the State Board of Education is certainly warranted and expected. The degree and frequency of such supervision should and naturally will conform to the set policy of the particular state. Hence, either a reference to other statutes providing such control or else a condensed repetition should be included in these corporation statutes. The present Michigan provisions seem reasonable and are therefore retained.
SEC. 285. RELIGIOUS CORPORATIONS; CLASSIFICATION. Religious corporations may be incorporated by one or more persons, natural or corporate, for the purpose of teaching and spreading religious beliefs and principles. Such corporations shall be classified as regional church corporations, ecclesiastical corporations, or religious societies according to their level of operation as hereinafter defined:

A. A regional church corporation shall consist of any incorporated presbytery, diocesan convention, diocese, synod, conference, district, court or other body which exercises jurisdiction over any two or more local churches, temples, parishes or congregations, or any incorporated conference of a station, mission, class, circuit or other organization of a religious denomination, or an association of congregations or societies, or any regional cooperative agency of affiliated religious associations.

B. An ecclesiastical corporation shall consist of any incorporated single church, denominational unit, parish, temple, or any church society as the term is generally used.

C. A religious society shall consist of any incorporated Sunday school, Young People’s Fellowship, Young People’s Union, Bible Class or similar society organized and affiliated with a parent church.

Note. This section is new insofar as Michigan law is concerned, although the present Michigan statutes do contain provisions for the incorporation of these particular types of religious corporations. [Mich. Comp. Laws secs. 450.159, 450.178 and 450.186 (1948).] The grouping of all the religious corporation statutes in one place results in a more logical arrangement and less duplication. This classification is analogous to the classification of educational corporations in section 276. The nomenclature adopted is somewhat different and is designed to be descriptive of the association’s scope of operations rather than the manner of organization. Thus, the designation “regional church corporation” is substituted for “church trustee corporation,” and it is later provided that such a corporation
may be organized either as a trustee or as a general nonprofit corporation. The appellation "ecclesiastical corporation" is retained for the single church unit, and the designation "religious society" is used for the subordinate unit instead of "Sunday school or religious society."

The definition of each class is expressed in broad terms so as to be all inclusive and non-restrictive. In general, the definitions follow the pattern of the present statutes except that efforts were made to broaden the coverage, reduce ambiguity and duplication, and present the material in a more emphatic manner. Definitions in the present statutes can be found in Mich. Comp. Laws secs. 450.159, 450.178 and 450.186 (1948).

The Epworth League was omitted as an example of a religious society under class (C) corporations because that organization has been disbanded by the Methodist Church. The coverage of the section, however, is neither more nor less because of the change. The Epworth League is mentioned in section 178 of the present Michigan Act as a subordinate group and not constituting an ecclesiastical corporation.


**Sec. 286. Regional church corporations; purpose; how incorporated.** A regional church corporation as defined in section 285 may be incorporated to effectuate the purposes of such organization or to create a corporate board to manage any endowment or other property of the denomination represented by such body. Such incorporation shall be first authorized and approved at a meeting duly called and conducted according to the rules and regulations of such organization, conference or association of congregations. The incorporators shall submit and file with the articles of incorporation a certificate certified by the presiding officer authorizing such incorporation and specifying the name thereof.

*Note.* Many of the detailed provisions concerning the incorporation of this type organization found in sec. 159 of the present Michigan Act have been eliminated in preference to the general requirements provided for nonprofit corporations. The restrictions requiring authorization conferred at a duly held meeting of the organization and a certificate of presiding officer are retained as reasonable and not unduly burdensome or diverse. Such flexible uniform provisions applicable to almost all of the diverse nonprofit corporations are preferable to detailed and diverse requirements for as many different types of organizations as can be imagined. See, for example, the specific and diverse requirements contained in the following statutes: Ind. Ann. Stat. secs. 25-2214 to 25-2216, 25-2703 and 25-2801 (Burns 1948); Minn. Stat. Ann. secs. 315.16, 315.20 and 315.23 (West 1945); Neb. Rev. Stat. secs. 21-816 and 21-848 (1943, Reissue 1954); Ohio Rev. Code secs. 1715.11, 1715.12, 1715.18 and 1715.21 (Baldwin 1954).

**Sec. 287. Law governing.** Regional church organizations may incorporate either under the general non-profit or trustee provisions of this Act, but in no case may they be organized for profit purposes. They accordingly shall
be governed by the provisions and possess all the powers, rights, privileges and immunities of corporations formed as nonprofit trustee or general nonprofit corporations as the case may be.

Note. No substantive change in the present Michigan law is accomplished by this section. [Mich. Comp. Laws sec. 450.159 (1948).]

SEC. 288. ECCLESIASTICAL CORPORATIONS; HOW INCORPORATED; LAW GOVERNING; POWERS. An ecclesiastical corporation as defined in section 285 may be incorporated in accordance with the procedures established for nonprofit corporations generally and shall be governed by the provisions of those sections except as specifically hereinafter otherwise provided. An ecclesiastical corporation shall have all the rights, powers, privileges and immunities of such nonprofit corporations generally, and in particular the right to acquire real estate for its own use and occupancy, including a pastor's residence, a church cemetery, church and Sunday school buildings and grounds, school buildings and grounds, and church society buildings and grounds, and it may sell, lease or mortgage such real estate. An ecclesiastical corporation shall have in relation to cemeteries all the rights, powers, privileges and immunities afforded cemetery corporations.

Every ecclesiastical corporation insofar as it holds any property in trust for religious, charitable, benevolent, educational or social purposes, shall be deemed to be a trustee corporation within the meaning of this Act and governed by the provisions relating to trustee corporations. All investments made by such corporation shall be in accordance with the laws of this state governing authorized investments for trustees.

Note. This section incorporates in substance essential provisions not otherwise reenacted of sections 178 to 183 and 184 of
the present Michigan Act. The provision relating to cemeteries is broadened by providing that ecclesiastical corporations shall have all the powers accorded cemetery corporations. Some repetition and duplication is eliminated by simply permitting the general nonprofit provisions to control the manner of the exercise of the powers instead of enacting specific provisions. The requirement that unused real estate be sold within 10 years [Mich. Comp. Laws sec. 450.184 (1948)], has been eliminated as being unnecessary since section 5 of Article XII of the Michigan Constitution, imposing such a restriction on all corporations, necessarily applies. Further, the restriction is included in section 234, thereby making it applicable to all nonprofit corporations.

Sec. 289. By-laws. Every such ecclesiastical corporation shall have authority to adopt by-laws prescribing the qualifications of members; the manner in which they shall be admitted, suspended or expelled; the number and official titles of the person or persons who control the temporal affairs of such corporation; their terms of office; the manner of their selection and removal from office; their respective official duties; the time and manner of calling and holding church business meetings and the number of members constituting a quorum, how far such corporation shall be subject to the approval or control of any other corporation or higher church body which corporation or body shall be named; the manner and condition under which property, both real and personal, may be acquired, held and disposed of; and such other by-laws as may be deemed necessary for the management of the affairs of such corporation. The by-laws may also prescribe how the same may be altered, amended or repealed.

Note. This section is the same as section 181 of the present Michigan Act. Although the section may not be absolutely necessary since it provides in substance for the utmost flexibility in the internal organization of these corporations, as is the case with nonprofit corporations generally, its retention may be justified in the interest of clarity. This section makes it clear
that the by-laws may provide for supervision and control by higher church authority and may require conformity to the discipline of such authority.

SEC. 290. Amendment of articles. The articles of an ecclesiastical corporation may be amended in accordance with the provisions of this Act relating to nonprofit corporations generally except that where the system of discipline or polity in any particular denomination or church requires the action, consent or vote of a conference, conclave or synod, presbytery or other body, or the approval of certain officers of such conference or other body or of a bishop or other hierarchical officer, to such amendments, then all such amendments shall be made in conformity to such practice and requirements and shall in all other respects conform to the customs, usages, beliefs, and discipline of the particular church body concerned.

Note. This section, in as concise a form as possible, re-enacts the essential provisions of section 182 of the present Michigan Act. The only limitation on the amendment power is that local units under the control of a higher church authority must get approval from such authority if required by the prescribed order of discipline and must otherwise conform to the established practices of such authority. To permit otherwise would be to sabotage established church organizations. In other respects the flexible amendment procedure of nonprofit corporations generally controls. Little would be gained by delineating the detailed requirements in effect in Michigan and other states for particular types of nonprofit corporations. The aim is uniformity, consistency and simplification.

SEC. 291. Powers of churches not restricted. Nothing in this Act shall be construed as limiting or restricting the rights, powers, privileges, immunities or the practices of any church heretofore established or incorporated under any law of this state; nor as requiring any such church to alter or change any rule of discipline, custom or usage in respect of its church policy or government; nor as interfer-
ing with the lawful acquisition, use or disposition of any property now owned or held by any such church corporation. The provisions of this Act relating to ecclesiastical corporations shall be liberally construed in the interests of religion and morality.

Note. This is essentially the same as section 185 of the present Michigan Act. [Mich. Comp. Laws sec. 450.185 (1948).]

Sec. 292. Religious societies. One or more persons, natural or corporate, may incorporate a Sunday school or other religious society as defined in section 285, not being a church, but having for its purpose the teaching of religious principles, or the associating together for religious work. The incorporators shall subscribe articles similar to those prescribed for nonprofit corporations generally, which articles shall also contain any special conditions or distinguishing principles upon which such corporation is founded, and, if connected with some organized church, the name of the church and a statement of the extent to which such church may exercise superintendence over the affairs of, or discipline of, the members of such Sunday school or other corporation. The corporations referred to in this section as religious societies shall have all the rights, privileges, immunities and powers granted by this Act to nonprofit corporations generally in their secular affairs; and in their religious affairs they shall be governed solely by their articles and by-laws, and the system of discipline therein adopted.

Note. This section is substantially the same as sec. 186 of the present Michigan Act but is slightly altered in phraseology to conform to the classificatory scheme of section 285.

Additional Notes

Section 160 of the present Michigan Act relating to vacancies in the board of trustees of church trustee corporations has
been omitted completely in favor of the general provisions governing this matter in the nonprofit sections of this Act. The limitation on the authority of such corporations to sell real estate contained in sec. 162 of the present Michigan Act has also been omitted. The general corporate provisions relating to sale of real estate and general conveyancing and recording acts should be adequate regulations for this matter. Diverse regulations for the sale of real estate enacted for every conceivable type of corporation would tend to have a disquieting effect on the marketability of titles.

Section 161 of the present Michigan Act relating to the powers of church trustee corporations over property held in trust has been omitted as unnecessary. The general trustee provisions contain the same material and control in this instance.

Section 179 of the present Michigan Act containing a form for the articles of incorporation of an ecclesiastical corporation has been omitted. This is done in the interest of uniformity as such forms are not included in the statutes for other corporations. The statutes prescribing the contents of the articles are believed adequate.

SEC. 293. PUBLIC BUILDING CORPORATIONS. One or more persons, natural or corporate, may become incorporated as a public building corporation for the purpose of constructing, operating and maintaining office buildings for the use of the State of Michigan: Provided, That no contract or contracts between the State Administrative Board and any such public building corporation shall become effective until approved by the legislature by concurrent resolution. Such corporations are hereinafter called public building corporations.

Note. This section is the same as sec. 186a of the present Michigan Act except that the requirement of three incorporators has been eliminated. Public building corporations as authorized in sections 293 to 296 were first expressly authorized in 1947. [Mich. Pub. Acts 1947, No. 316.] The wisdom of permitting such real estate corporations to be organized as nonprofit corporations might be doubted, and is discussed supra, Public Building Corporations, p. 110. The sections are retained, however, because of the fact that such a policy deter-
mination authorizing such corporations has already been made in Michigan. Thus, the task is limited to one of incorporating the provisions into the general law in a concise and logical manner.

Sec. 294. Powers; contracts and leases with the state; bonds; by-laws. In addition to the powers granted to nonprofit corporations generally and consistent with the provisions of the articles and by-laws of such corporation, every such public building corporation shall have power to take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for its object and purpose, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and reinvest the principal thereof and deal with and expend the income of the corporation in such manner as in the judgment of the trustees or board of directors will best promote its purposes; to enter into contracts and leases with the State of Michigan; to borrow money and issue revenue bonds for the repayment thereof with interest, and may in like case mortgage its property as security for its debts.

Note. This section is substantially the same as sec. 186b of the present Michigan Act. Changes are in form only and not in substance. The express authorization herein granted is necessary for the accomplishment of the purposes of these corporations.

Sec. 295. Law governing. Every such corporation shall be a nonprofit corporation and subject to the provisions of this Act relating to nonprofit corporations except as specifically otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the state: Provided, That this Act shall not prevent such corporation from charging rent to
the state for the purpose of paying the cost of construction and maintenance of the office buildings constructed hereunder.

Note. This section is the same as sec. 186c of the present Michigan Act.

Sec. 296. Dissolution. Should any such corporation cease to operate or become unable to serve usefully the purpose of its organization, it may be dissolved in accordance with the provisions of section 252.

Note. The provision for legislative dissolution provided in sec. 186e of the present Michigan Act, Mich. Comp. Laws sec. 450.186e (1948), has been changed to chancery dissolution in accordance with the provisions of sec. 252 relating to nonprofit corporations generally. A strong case might be made for legislative dissolution of these corporations in that the state has a much more direct interest in them than it has in other nonprofit corporations. However, the legislature is still ill-equipped to deal with the intricacies of such specific problems and the chancery court can be expected to be just as conscientious in looking out for the welfare of the state.

Sec. 297. Cemetery, vault, cremation and similar corporations. Corporations may be formed under the provisions of this Act for any or all of the following purposes: acquiring land for a cemetery or burial ground for the dead; providing facilities for preserving and protecting bodies of deceased persons before burial; erecting mausoleums and providing crypts for the interment of deceased persons; building and maintaining crematoriums or columbariums; disposing of burial rights in such cemetery, vault, mausoleum or columbarium; providing the necessary appliances for the disposal by cremation of the bodies of the dead; and fencing, improving, laying out, ornamenting, and maintaining all such land in a suitable condition.
Note. Sections 297 to 312, providing for the incorporation of cemetery, vault, crematorium and columbarium corporations are included as part of the general corporation statutes instead of continued as separate acts as is the present Michigan practice. [Mich. Comp. Laws secs. 456.1 et seq., 456.101 et seq., 456.201 et seq., and 456.251 et seq. (1948).] Thus, much duplication is eliminated and more uniformity achieved. See, for example, Act 167 of Michigan Public Acts of 1953, amending Act 12 of the Public Acts of 1869. The general requirements as to the procedure of organization, meetings of members and directors, notices, and other matters can be governed by the general provisions. Only the unique aspects of these corporations need be covered in these separate sections.

The practice in other states is not uniform. Some states, such as Arkansas, Georgia, New Mexico and South Carolina, have no general statute authorizing the incorporation of cemetery companies. Statutes specifically authorizing nonprofit cemetery corporations are common. [Ia. Code Ann. secs. 504.1 and 504.8 (1946); Me. Rev. Stat. c. 54, sec. 1 (1954); Minn. Stat. Ann. secs. 306.01 et seq. (West 1945); N. D. Rev. Code secs. 10-1001 to 10-1011 (1943).] In other states it is expressly provided that cemetery corporations may be organized under either the profit or nonprofit statutes. [Fla. Stat. secs. 608.60 and 617.01 (1953); Mont. Rev. Codes Ann. secs. 9-101 et seq. and 15-104(7) (1949). See also, Jackson, Law of Cadavers, 296–304 (2nd ed. 1950).]

These statutes apply only to private corporations and in no way supersede or affect public cemeteries. [Mich. Comp. Laws sec. 95.1 et seq., 128.1 et seq., 128.31 et seq., 128.61 et seq., 128.151 et seq., (1948).]

Sec. 298. Cemetery corporations; law governing. Cemetery, cremation and other corporations authorized under section 297 may be organized under either the profit or nonprofit provisions of this Act, and, except as otherwise hereinafter specifically provided, shall be governed by the appropriate profit or nonprofit provisions as the case may be.

Note. This section makes it clear that cemetery and related corporations may be organized either for profit or not for profit. As indicated in note 297, supra, the practice in other
Present Michigan statutes recognize both types of cemetery corporations. [Mich. Comp. Laws sec. 456.1 et seq. and 456.101 (1948).] This latter Act was amended in 1953 to provide specifically that corporations organized thereunder may operate as nonprofit corporations [Mich. Pub. Acts 1953, No. 167, sec. 16.]

The existence of cemetery and related corporations for profit is quite common and hence should be given direct statutory recognition unless some evil exists which would warrant the prohibition of such corporations. The enactment of this section would necessitate a change in section 3 of the General Corporation Act which provides that cemetery, burial and cremation associations are excepted from the provisions of that Act. [Mich. Comp. Laws sec. 450.3 (Mason's Supp. 1954).]

SEC. 299. ACQUISITION OF LAND. Every such corporation shall have power to acquire and hold in fee so much land as may be necessary and appropriate for the purposes mentioned in section 297. All land used for cemetery, columbarium and other such purposes, once it has been so appropriated for those uses, shall remain so restricted to such uses unless and until it shall be vacated in accordance with the provisions of section 313 of this Act.

Note. This provision replaces Mich. Comp. Laws secs. 456.2, 456.106, 456.204 and 456.253 (1948). The replaced sections are similar in purpose but differ somewhat in substance from each other and from the proposed section. Also, they are integral parts of different acts. Under section 299 cemetery and similar corporations are allowed to acquire land only in fee for burial and related purposes. This differs from Mich. Comp. Laws sec. 456.2 (1948), which authorizes also the acquisition of such land by lease. In view of the fact that cemetery land after it is so appropriated is useless for anything else, it seems unwise to permit such activity on leased land. The added provision limiting the use of such land to burial purposes unless vacated in accordance with law conforms to existing practices and general morality.

Express authorization enabling these corporations to receive gifts, bequests, devises, and donations of lands or funds has been eliminated as unnecessary. Since these corporations have
the powers of corporations formed under either the general profit or nonprofit provisions, repetition of such general powers is not necessary. Hence, sec. 299 is in reality a restriction on their powers in that it permits land to be used for burial and related purposes only if it is owned in fee.

Sec. 300. Laying out of burial ground; maps and certificate; filing. Before any cemetery corporation organized under the provisions of this Act shall issue certificates of rights of burial, the directors shall cause the burial ground to be laid out in such form as they may choose, and cause 2 maps thereof to be made, which maps shall accurately describe the land belonging to such burying ground, its boundaries and location, with the lots or subdivisions named or numbered thereon, and also their size, situation and extent, with the width extent, and location of all the streets, alleys or walks in such burying ground, which maps shall be prepared under the supervision and direction of the president and secretary of such corporation, and certified by them to be a correct map of the corporation's burying ground. One of the above maps shall be filed with the secretary of the corporation, and the other with the county clerk of the county in which such burying ground is situated, whereupon said clerk shall give said corporation a certificate under his hand and seal of office, showing that such map has been received and duly filed by him, which certificate shall be filed with the secretary of said corporation.

Every corporation operating a mausoleum, crematorium, vault or similar structure for receiving the remains of the dead shall likewise provide a plan or plat in reference to which the crypts, niches, vaults or tombs can be designated and located. Every such corporation shall conform to the aforesaid provisions of this section in reference to such plan or plat.
Note. This section is similar to Mich. Comp. Laws sec. 456.17 (1948), but is broadened to include not only cemetery but all related corporations. A similar provision is included in sec. 456.106 of the present Michigan statutes. Although the present Michigan statutes on columbarium and vault corporations [Mich. Comp. Laws secs. 456.201 et seq. and 456.251 et seq. (1948)], do not specifically contain such provisions, it is not apparent why such requirements should not be applicable to them. The statute requires no more than that which they would have to do anyway in order to operate efficiently. The filing and recording of the plan in the county court is an added protection for the preservation of the plat.

Sec. 301. Tax exemption; assessments. All the lands of said corporation enclosed and set apart for cemetery, vault, crematorium or columbarium purposes, and all the buildings erected thereon, used for such purposes, as well as all rights of burial or inurnment therein, shall be wholly exempt from taxation of any kind whatsoever except special assessments for public improvements: Provided, That all stock owned by stockholders shall be taxed in the manner provided by law.

Note. This section granting real estate tax exemption to all lands used for burial and related purposes does not change existing Michigan law. [Mich. Comp. Laws sec. 456.36, 456.108 and 456.205 (1948).] It is to be noted that the lands of both profit and nonprofit corporations are granted the exemption. The stock of profit corporations is taxed, however. The exemption is based on the theory that the land is used for public or charitable purposes. Jackson, Law of Cadavers 273 (2nd ed. 1950).

Sec. 302. Additional land; taxation. Corporations organized or to be organized under this Act may own and hold land heretofore or hereafter acquired in anticipation of its future needs. Any land so acquired by any such corporation and held in reserve for future use in accordance with the corporation's purposes, such land not presently being used as a part of the burial ground or for crematory,
vault or columbarium purposes, shall not be exempt from taxation.

Note. This section is based on Mich. Comp. Laws sec. 456.36 (1948), but is broadened to include all cemetery and related types of corporations. The provision is sound in that there is no need or justification for granting tax exemption to land held in reserve and not incorporated into the burial ground or other land actually used for the repose of the dead.

SEC. 303. RIGHT OF BURIAL; DEFINITION. A right of burial is defined as including the right to bury the dead in and upon a parcel of land, the right to deposit the body of a deceased person in a vault, tomb or crypt of a mausoleum or similar structure, and the right to bury in the ground or store the ashes of a cremated deceased person in a niche of a columbarium in accordance with the regulations established in the by-laws of any such corporation organized under the provisions of this Act.

Note. Right of burial is broadly defined to include not only burial in the ground but also entombment, storage of cremated remains and any similar type of interment. The statute recognizes that the corporation may make appropriate regulations concerning such burial rights. These regulations might pertain to visitorial rights, erection of monuments, plaques and similar memorials, maintenance of the grounds, payment and related matters.

SEC. 304. BURIAL RIGHTS IN ENCUMBERED LAND; TAX DELINQUENCIES. No mortgage, or other lien or encumbrance, shall be executed upon any of the lands or structures of such corporation actually used for burial purposes, and no rights of burial upon any mortgaged lands of such corporation or lands which are delinquent for taxes or special assessment shall at any time be granted or sold.

Note. This provision is similar to Mich. Comp. Laws sec. 456.109 (1948). It is consistent with the policy of section 299 which requires land used for burial purposes to be held in fee.
The provisions are designed to insure the continued noninterference with the peaceful repose of the dead.

Sec. 305. Price of burial right; certificate. The board of directors or trustees of corporations organized under this Act shall from time to time determine the price of burial rights. Upon payment to the treasurer of the corporation of the full price of any such right of burial, the corporation shall issue a certificate of right of burial signed by the secretary and countersigned by the president. Such certificate shall specify the location of such burial right in reference to the map of the burial ground prescribed in section 300 or by designation by number or otherwise of the crypt or niche according to a plan of the mausoleum or columbarium.

Note. This section is a combination of Mich. Comp. Laws secs. 456.31, 456.32 and 456.33 (1948), but is broadened to include all types of corporations engaged in burial activities. It recognizes that the board of directors may from time to time fix the price of burial rights.

Sec. 306. Record of rights of burial. Corporations organized under this Act and operating a cemetery, vault, mausoleum or columbarium shall keep a record of the rights of burial granted by such corporation, setting forth the names and addresses of the owners or grantees of such burial rights as well as a description of the location of such rights in reference to the map of the burial ground, or designation by number or otherwise of the crypt or niche according to a plan of the mausoleum or columbarium. It shall be the duty of every such corporation to maintain an index in which shall be entered alphabetically the names of the purchasers of rights of burial in the grounds or structures of such corporation.

Note. Similar provisions are contained in the present Michigan acts. [Mich. Comp. Laws secs. 456.29 and 456.211 (1948).]
The exact form of such record as prescribed in Comp. Laws sec. 456.29 has been eliminated. The corporation may use whatever form it desires as long as the record contains the necessary information.

**Sec. 307. Burial rights, transfer.** All grants of rights of burial shall be transferable only upon compliance with such conditions in reference thereto as shall be prescribed in the by-laws of such corporations.

*Note.* This section is similar to Mich. Comp. Laws sec. 456.112 (1948). It differs from sec. 456.4 and is made applicable to all corporations engaged in burial activities. The provision is sound in that it recognizes that such rights should be transferable but it also authorizes the corporation to regulate such transfer. This method is preferable and more flexible than that provided by sec. 456.4, which requires a relinquishment to the corporation and a new grant by the corporation to the transferee.

**Sec. 308. Record of burials; disinterment.** Every corporation operating under this Act and maintaining a final resting place for the remains of a deceased person shall keep a record showing the name, age, and last place of residence of every person interred by such corporation, as well as a sufficient description of the location of said remains. In the event of disinterment or removal of said remains, the corporation shall keep a record of the disposition thereof.


**Sec. 309. Cremations; records.** It shall be the duty of any company or association incorporated under this Act
and operating a crematorium to keep a record showing the name, age, and last place of residence of every person incinerated in the crematorium maintained by said corporation, as well as the number of the cremation permit and the name of the officiating undertaker.

Note. This is the same as Mich. Comp. Laws sec. 456.210 (1948).

Sec. 310. Sale of burial rights; perpetual care fund; application to existing corporations. One-half of the funds received from the sale of burial rights as defined in section 303 shall be transferred to an improvement or memorial fund, the income or proceeds from which shall be perpetually devoted:

First, To the care and maintenance of the burial ground, including the individual lots of the contributors thereto, and any monuments or shrubbery placed thereon, and the care, repair and maintenance of any vault, mausoleum or columbarium operated by such corporation, and the maintenance and repair of any other building used in connection with the authorized purposes of such corporation; and

Second, To the improvement and beautification of any portion of the grounds of such corporation reserved from sale and set apart for ornamental purposes.

After a sufficient amount has been accumulated in the perpetual care fund to insure the accomplishment of the aforementioned purposes, additional funds received from the sale of burial rights may be diverted to the treasury of the corporation. All funds received for the trust fund shall be invested only in such securities as are considered legal investments for banks and trust companies in this state. All interest received from such investments shall be payable to the treasurer of the corporation and be used
for any of the purposes mentioned in the preceding paragraphs of this section.

Corporations heretofore existing under other acts of this state for any of the purposes specified in section 297 shall not be required to conform to the provisions of this section unless such a perpetual care fund was mandatory under the act under which they were incorporated. Similar corporations heretofore existing under other acts of this state not requiring such a perpetual care fund may provide for such a fund if they so desire.

**Note.** This section makes a perpetual care fund mandatory for all corporations engaged in interment activities. It is thus similar to Mich. Comp. Laws sec. 456.213 requiring such a fund for columbarium corporations, but different from Mich. Comp. Laws secs. 456.35 and 456.115 (1948), which makes such a fund optional with cemetery corporations. This section exempts existing corporations which were not required to have such a fund, but permits them to establish one if they so desire. A perpetual care fund is desirable and should be made mandatory so that relatives of deceased persons will not be burdened with periodic assessments in perpetuity. Lack of such a fund may result in poor maintenance of the cemetery and deterioration to such an extent that it becomes a menace to health, morals and welfare. Statutory recognition of the perpetual care fund should be given so as to obviate any difficulty because of the Rule Against Perpetuities.

**Sec. 311. Individual perpetual care trusts.** Any corporation organized under this Act may also be named and constituted and may act as trustee of any gift, grant, bequest, or conveyance of personal property, to said corporation, in trust for the perpetual care, maintenance and preservation of, and the planting and cultivation of trees, shrubs, flowers and plants upon any cemetery lot or lots, or part of the cemetery owned or held and maintained by said corporation, and the care, preservation, repair, upkeep and replacement of any monument, tomb, fence,
mausoleum, columbarium, crypt, niche or other structure thereon or therein, or for any or all the above purposes upon such terms and conditions as may be provided in the instrument or writing creating such trust. No such trust shall be invalid because contravening any statute or rule of law forbidding accumulations of income, but shall be valid notwithstanding such statute or rule.

Note. This section is substantially the same as the second part of Mich. Comp. Laws sec. 456.35 (1948). It authorizes private perpetual care trusts and empowers the cemetery corporation to act as trustee. If the corporation itself has such a perpetual care fund, there would seem to be little need for such private trusts. However, some existing corporations might not have such funds and, if they do, some people might want private trusts for additional services.

Sec. 312. Potter's Field. Any corporation organized under this Act shall have power to set off a part of its burial ground as a potter's field, and under proper regulations permit the dead to be buried therein.

Note. This section is substantially the same as Mich. Comp. Laws sec. 456.34 (1948).

Sec. 313. Vacation of Cemetery. Whenever it may become necessary to vacate any burying ground, the property of any corporation organized under this Act, such corporation may, by a majority of its members present at any corporate meeting, direct the president and secretary of such corporation to petition the circuit court for the county in which such burying ground is situated, for leave to vacate the same; and such circuit court shall have plenary power to make such orders concerning disinterment, reinterment and compensation to interested parties as may be just and proper: Provided, No final order shall be made within 6 months from the time of filing such petition, and without due proof of publication of notice of
such petition, for 12 successive weeks, in such newspaper as may have been designated by said court for that purpose.

The provisions of this Act shall be in addition to and in no manner a restriction upon other legally provided methods of vacating cemeteries.

*Note.* This section is based on Mich. Comp. Laws sec. 456.21 (1948). No substantial change is made. This section expressly provides that the court shall make appropriate orders concerning disinterment, reinterment and compensation to interested parties. This is an elaboration of the present statute which simply states that the court "may make such order in the premises as shall be just and proper." The reference to other methods of vacating cemeteries refers specifically to Mich. Comp. Laws sec. 128.31 et seq., 128.41 et seq. and 128.51 et seq. (1948). These statutes give additional reasons for vacating cemeteries and provide specifically for the procedure to be followed as well as for disinterment and reinterment. More detail in this statute is not needed because of the policy evidenced in these other statutes and in the inherent power of equity.

*Additional Notes*

No specific provision specifying what officers or employees are authorized is included in these sections. See Mich. Comp. Laws secs. 456.9 and 456.208 (1948). The applicable general corporation statutes provide utmost flexibility in this regard and specific authority need not otherwise be granted. The general acts likewise apply to elections, compensation, meetings, notices and other routine corporate matters.

Mich. Comp. Laws sec. 456.22 (1948), concerning the disposal of a forfeited right of burial has been eliminated. Sec. 303 defining the right of burial "in accordance with the regulations established in the by-laws of any such corporation"; sec. 305 authorizing the board to fix the price of burial rights; and sec. 307 authorizing the by-laws to prescribe regulations governing transfer are ample to indicate that the corporation necessarily can provide sufficient regulations concerning full payment, default and resale of forfeited burial rights.

No provisions concerning assessments [Mich. Comp. Laws sec. 456.24 (1948)] have been included, as the mandatory provision for a perpetual care fund renders assessments unnecessary. Existing corporations without such a fund may maintain their assessments in accordance with their original charter.
The restrictions on highways, canals and similar easements contained in Mich. Comp. Laws sec. 456.110 (1948), have been eliminated as unnecessary. Naturally, such construction could not take place without the consent of the corporation in the absence of eminent domain proceedings. Therefore, the statute serves no useful purpose. General laws governing these matters will control.

Mich. Comp. Laws sec. 456.111 (1948), concerning restrictions on saloons and other amusements in proximity to cemetery corporations, has been eliminated. Mich. Comp. Laws sec. 456.114 (1948), prohibiting firearms and hunting within cemetery grounds, has likewise been omitted. These types of restrictions are part of the general police regulations and need not be repeated in acts governing incorporation procedures and powers.

Mich. Comp. Laws sec. 456.113 (1948), conferring police powers on superintendents and other employees of cemetery corporations, has been eliminated. Such power seems unnecessary as the usual law enforcement personnel of the area should be adequate to handle any offenses committed in, on or about cemeteries. The corporation officials, as other individuals, can make complaints to the proper law enforcement officials.

SEC. 314. INCORPORATION UNDER ACT; NECESSITY. No corporation which may be incorporated under this Act shall hereafter be incorporated except under the provisions of this Act.


SEC. 315. EXISTING CORPORATIONS; APPLICABILITY OF ACT. Every corporation heretofore organized and incorporated under any law of this state, which if now incorporated would be required to incorporate under and subject to this Act, shall hereafter be subject to the provisions of this Act without formal reorganization hereunder and such corporations shall be deemed to exist under this Act, and, except where otherwise provided in the Act under which any such particular corporation is incorporated, if
such Act has not been repealed, the provisions of this Act shall govern all corporations heretofore or hereafter incorporated in this state. Every foreign corporation heretofore admitted to do business in this state, which if seeking admission now would be required to comply with the provisions of this Act, shall hereafter be subject to the provisions of this Act. Nothing in this Act shall be construed as attempting to deprive any such corporation of any constitutional power, right, privilege or franchise which any such corporation now enjoys.


SEC. 316. CATCHLINE HEADINGS NOT PART OF ACT. The catchline headings of sections of this Act shall in no way be considered to be a part of the respective sections of this Act but are inserted herein for purposes of convenience.


SEC. 317. REPEAL. The following acts and parts of Acts amendatory thereto are hereby repealed:


The repeal of the following acts is likewise not suggested: Act 230 of the Public Acts of 1897, Act 39 of the Public Acts of 1889, Act 134 of the Public Acts of 1905, Act 69 of the Public Acts of 1887, Act 137 of the Public Acts of 1929, Act 12 of the Public Acts of 1901, Act 55 of the Public Acts of 1911, Act 161 of the Public Acts of 1911, being acts relating to the incorporation of summer resort and similar associations partaking of a municipal or quasi-municipal character. Similarly, there is no attempt to alter, amend or repeal any corporation acts relating to any public utility, banking or insurance corporation, or any corporation engaged in activity that might come within the purview of such businesses affected with a public interest and subject to corresponding social control.

Sec. 318. Saving clause. This Act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this Act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this Act had not been passed.

Sec. 319. Effect of invalidity of part of this Act. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, para-
graph, section or part of this Act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this Act so adjudged to be invalid or unconstitutional.