

# SENATE BILL No. 746

September 30, 2003, Introduced by Senator CLARKE and referred to the Committee on  
Commerce and Labor.

A bill to amend 1972 PA 284, entitled  
"Business corporation act,"  
by amending sections 217, 762, and 1060 (MCL 450.1217, 450.1762,  
and 450.2060), sections 217 and 762 as amended by 1997 PA 118 and  
section 1060 as amended by 2001 PA 57, and by adding  
section 745.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 217. (1) A domestic or foreign corporation may  
2 transact business under any assumed name or names other than its  
3 corporate name, if not precluded from use by section 212, by  
4 filing a certificate stating the true name of the corporation and  
5 the assumed name under which the business is to be transacted.  
6 ~~The certificate is effective, unless~~ **Unless** sooner terminated  
7 by filing a certificate of termination or by the dissolution or  
8 withdrawal of the corporation, **the certificate is effective** for a

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1 period expiring on December 31 of the fifth full calendar year  
2 following the year in which it was filed. The **corporation may**  
3 **extend the** certificate of assumed name ~~may be extended~~ for  
4 additional consecutive periods of 5 full calendar years each by  
5 filing similar certificates not earlier than 90 days before the  
6 expiration of the initial or a subsequent 5-year period. The  
7 administrator shall notify the corporation of the impending  
8 expiration of the certificate of assumed name not later than 90  
9 days before the expiration of the initial or a subsequent 5-year  
10 period. A certificate of assumed name filed under this section  
11 does not create substantive rights to the use of a particular  
12 assumed name.

13 (2) ~~The same name may be assumed by 2~~ **Two** or more  
14 corporations ~~—~~ or ~~by~~ 1 or more corporations and 1 or more  
15 limited partnerships or other enterprises participating together  
16 in a partnership or joint venture **may use the same assumed name.**  
17 Each participant corporation shall file a certificate under this  
18 section.

19 (3) A corporation participating in a merger, or any other  
20 entity participating in a merger under section 736, may transfer  
21 to the surviving entity the use of an assumed name for which a  
22 certificate of assumed name is on file with the administrator  
23 prior to the merger, if the transfer is noted in the certificate  
24 of merger as provided in section 707(1)(g), 712(1)(c), or  
25 736(7)(f) ~~—~~ or other applicable statute. The use of an assumed  
26 name transferred under this subsection may continue for the  
27 remaining effective period of the certificate of assumed name on

1 file prior to the merger, and the surviving entity may terminate  
2 or extend the certificate of assumed name in accordance with  
3 subsection (1).

4 (4) A corporation surviving a merger may use as an assumed  
5 name the corporate name of a merging corporation, or the name of  
6 any other entity participating in the merger under section 736,  
7 by filing a certificate of assumed name under subsection (1) or  
8 by providing for the use of the name as an assumed name in the  
9 certificate of merger. The surviving corporation also may file a  
10 certificate of assumed name under subsection (1) or provide in  
11 the certificate of merger for the use as an assumed name of an  
12 assumed name of a merging entity not transferred under subsection  
13 (3). A provision in the certificate of merger under this  
14 subsection ~~shall be~~ **is** treated as a new certificate of assumed  
15 name.

16 (5) A limited liability company converting to a corporation  
17 under section 745 may transfer to that corporation any unexpired  
18 certificate of assumed name that the limited liability company  
19 has filed with the administrator before the conversion by  
20 providing for the transfer of the assumed name in the certificate  
21 of conversion under section 745. A certificate of assumed name  
22 transferred under this subsection continues for the remainder of  
23 the original effective period of the certificate of assumed  
24 name. After conversion, the corporation may terminate or extend  
25 the certificate under subsection (1).

26 (6) If a limited liability company converts to a corporation  
27 under section 745, the corporation may transact business in the

1 name of the limited liability company as an assumed name, or  
2 under any assumed name of the limited liability company not  
3 transferred under subsection (5), either by filing a new  
4 certificate of assumed name under subsection (1) or by providing  
5 for the use of the assumed name in the certificate of  
6 conversion. A provision in a certificate of conversion for use  
7 of an assumed name described in this subsection is treated as a  
8 new certificate of assumed name.

9       Sec. 745. (1) A domestic corporation may convert to a  
10 limited liability company under section 708 of the Michigan  
11 limited liability company act, 1993 PA 23, MCL 450.4708. A  
12 domestic limited liability company may convert to a corporation  
13 under this section.

14       (2) A domestic limited liability company converting To a  
15 corporation shall prepare a plan of conversion that contains all  
16 of the following:

17       (a) The name of the limited liability company, the name of  
18 the corporation to which the limited liability company is  
19 converting, and the street address of the corporation's principal  
20 place of business.

21       (b) The manner and basis of converting the membership  
22 interests of the limited liability company into shares or  
23 obligations of the corporation, into cash or other consideration,  
24 or into any combination of shares, obligations, cash, or other  
25 consideration, and any other terms and conditions of the  
26 conversion.

27       (c) Any other provision that the limited liability company

1 considers necessary or desirable.

2 (3) For a conversion to occur, the members of the limited  
3 liability company must approve the plan of conversion, in the  
4 same manner required for a merger under section 705a(5) of the  
5 Michigan limited liability company act, 1993 PA 23, MCL  
6 450.4705a, unless an operating agreement specifically provides a  
7 procedure for approval of a conversion. If approval of the  
8 conversion of a limited liability company is by less than  
9 unanimous vote of members entitled to vote, a member who votes  
10 against the conversion has the same withdrawal rights as a member  
11 who votes against a merger under section 705a(6) of that act.

12 (4) If the conversion is approved, the limited liability  
13 company shall file both of the following:

14 (a) Articles of incorporation that comply with section 202 or  
15 with the professional service corporation act, 1962 PA 192, MCL  
16 450.221 to 450.235, if the corporation will render professional  
17 services.

18 (b) A certificate of conversion that contains all of the  
19 following:

20 (i) The name of the limited liability company and the date it  
21 was formed.

22 (ii) A statement that the plan of conversion was approved in  
23 accordance with subsection (3).

24 (iii) A statement specifying each assumed name of the limited  
25 liability company transferred to the corporation under section  
26 217(5). The certificate may include a statement of the name or  
27 assumed names of the limited liability company that are to be

1 treated as newly filed assumed names of the converted entity  
2 under section 217(6).

3 (iv) The effective date of the conversion if later than the  
4 date the certificate of conversion is filed.

5 (5) If a conversion under this section takes effect, the  
6 corporation is considered the same entity that existed before the  
7 conversion and the conversion is not a dissolution of the limited  
8 liability company. All property and rights of the limited  
9 liability company remain vested in the corporation. All  
10 liabilities of the limited liability company remain as  
11 liabilities of the corporation. An action or proceeding pending  
12 against the limited liability company may be continued as if the  
13 conversion under this section had not occurred.

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

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

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

26 (c) Consummation of a sale or exchange of all, or  
27 substantially all, of the property of the corporation other than

1 in the usual and regular course of business, if the shareholder  
2 is entitled to vote on the sale or exchange, including a sale in  
3 dissolution but not including a sale pursuant to court order.

4 (d) An amendment of the articles of incorporation giving rise  
5 to a right to dissent ~~pursuant to~~ **under** section 621.

6 (e) A transaction giving rise to a right to dissent ~~pursuant~~  
7 ~~to~~ **under** section 754.

8 (f) **Consummation of a plan of conversion under section 708 of**  
9 **the Michigan limited liability company act, 1993 PA 23, MCL**  
10 **450.4708, if the shareholder is entitled to vote on the**  
11 **conversion under that section.**

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

17 (h) ~~(g)~~ The approval of a control share acquisition giving  
18 rise to a right to dissent ~~pursuant to~~ **under** section 799.

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

22 (a) Any corporate action set forth in subsection (1)(a) to  
23 ~~(e)~~ (f) as to shares that are listed on a national securities  
24 exchange or designated as a national market system security on an  
25 interdealer quotation system by the national association of  
26 securities dealers, on the record date fixed to vote on the  
27 corporate action or on the date the resolution of the parent

1 corporation's board is adopted in the case of a merger under  
2 section 711 not requiring shareholder vote under section 713.

3 (b) A transaction described in subsection (1)(a) in which  
4 shareholders receive cash or shares that satisfy the requirements  
5 of subdivision (a) on the effective date of the merger or any  
6 combination thereof.

7 (c) A transaction described in subsection (1)(b) in which  
8 shareholders receive cash or shares that satisfy the requirements  
9 of subdivision (a) on the effective date of the share exchange or  
10 any combination thereof.

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

19 **(e) A transaction described in subsection (1)(f) in which the**  
20 **shareholders receive cash.**

21 (3) A shareholder entitled to dissent and obtain payment for  
22 his or her shares ~~pursuant to~~ **under** subsection (1)(a) to ~~(e)~~  
23 **(f)** may not challenge the corporate action creating his or her  
24 entitlement unless the action is unlawful or fraudulent with  
25 respect to the shareholder or the corporation.

26 (4) A shareholder who exercises his or her right to dissent  
27 and seek payment for his or her shares ~~pursuant to~~ **under**

1 subsection ~~(1)(f)~~ **(1)(g)** may not challenge the corporate action  
2 creating his or her entitlement unless the action is unlawful or  
3 fraudulent with respect to the shareholder or the corporation.

4 Sec. 1060. (1) The fees to be paid to the administrator  
5 when the documents described in this subsection are delivered to  
6 him or her for filing are as follows:

7 (a) Articles of domestic corporations, \$10.00.

8 (b) Application of a foreign corporation for a certificate of  
9 authority to transact business in this state, \$10.00.

10 (c) Amendment to the articles of a domestic corporation,  
11 \$10.00.

12 (d) Amended application for a certificate of authority to  
13 transact business in this state, \$10.00.

14 (e) Certificate of merger, ~~or~~ share exchange, ~~as provided~~  
15 ~~in~~ **or conversion, under** chapter 7, \$50.00.

16 (f) Certificate attesting to the occurrence of a merger of a  
17 foreign corporation ~~as provided in~~ **under** section 1021, \$10.00.

18 (g) Certificate of dissolution, \$10.00.

19 (h) Application for withdrawal and issuance of a certificate  
20 of withdrawal of a foreign corporation, \$10.00.

21 (i) Application for reservation of corporate name, \$10.00.

22 (j) Certificate of assumed name or a certificate of  
23 termination of assumed name, \$10.00.

24 (k) Statement of change of registered office or resident  
25 agent, \$5.00.

26 (l) Restated articles of domestic corporations, \$10.00.

27 (m) Certificate of abandonment, \$10.00.

1 (n) Certificate of correction, \$10.00.

2 (o) Certificate of revocation of dissolution proceedings,  
3 \$10.00.

4 (p) Certificate of renewal of corporate existence, \$10.00.

5 (q) For examining a special report required by law, \$2.00.

6 (r) Certificate of registration of corporate name of a  
7 foreign corporation, \$50.00.

8 (s) Certificate of renewal of registration of corporate name  
9 of a foreign corporation, \$50.00.

10 (t) Certificate of termination of registration of corporate  
11 name of a foreign corporation, \$10.00.

12 (2) The fees prescribed in subsection (1), no part of which  
13 shall be refunded, shall be in addition to the franchise fees  
14 prescribed in this act ~~—~~ and shall, when collected, be paid  
15 into the **state** treasury ~~of the state~~ and credited to the  
16 administrator to be used solely by the department in carrying out  
17 those duties required by law.

18 (3) Fees paid by or on behalf of domestic and foreign  
19 regulated investment companies as defined in section 1064 are the  
20 same as are charged foreign and domestic corporations for the  
21 purposes specified in this section.

22 (4) The fees received ~~pursuant to~~ **under** section 915 shall  
23 be deposited in the state treasury to the credit of the  
24 administrator to be used by the department in carrying out those  
25 duties required by law. After the payment of the amounts  
26 appropriated by the legislature for the necessary expenses  
27 incurred in the administration of this act, the money remaining

1 shall be credited to the general fund of the state.

2 (5) A minimum charge of \$1.00 for each certificate and 50  
3 cents per folio shall be paid to the administrator for certifying  
4 a part of a file or record pertaining to a corporation for which  
5 provision for payment is not set forth in subsection (1). The  
6 administrator may furnish copies of documents, reports, and  
7 papers required or permitted by law to be filed with the  
8 administrator — and shall charge for those copies pursuant to a  
9 schedule of fees which the administrator shall adopt with the  
10 approval of the state administrative board. The administrator  
11 shall retain the revenue collected under this subsection to be  
12 used by the department to defray the costs for its copying and  
13 certifying services.

14 (6) If a domestic or foreign corporation pays fees or  
15 penalties by check and the check is dishonored, the fee is unpaid  
16 and the filing of all related documents will be rescinded.

17 (7) The administrator may accept a credit card, in lieu of  
18 cash or check, as payment of a fee under this act. The  
19 administrator shall determine which credit cards may be accepted  
20 for payment.

21 (8) The administrator may charge a nonrefundable fee of up to  
22 \$50.00 for any document submitted or certificate sent by  
23 facsimile or electronic transmission. The administrator shall  
24 retain the revenue collected under this section and to be used by  
25 the department in carrying out its duties required by law.

26 Enacting section 1. This amendatory act does not take  
27 effect unless all of the following bills of the 92nd Legislature

1 are enacted into law:

2 (a) Senate Bill No. 745. \_\_\_\_\_

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4 (b) Senate Bill No. 747. \_\_\_\_\_

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6 (c) Senate Bill No. 748. \_\_\_\_\_

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