

SENATE BILL No. 114

February 1, 2005, 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 2003 PA 106, and by adding section 745.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

14 (2) ~~The same name may be assumed by 2~~ **TWO** or more
15 corporations ~~—~~ or ~~by~~ 1 or more corporations and 1 or more
16 limited partnerships or other enterprises participating together in
17 a partnership or joint venture **MAY USE THE SAME ASSUMED NAME**. Each
18 participant corporation shall file a certificate under this
19 section.

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

1 period of the certificate of assumed name on file prior to the
2 merger, and the surviving entity may terminate or extend the
3 certificate of assumed name in accordance with 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, by
7 filing a certificate of assumed name under subsection (1) or by
8 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 the
11 certificate of merger for the use as an assumed name of an assumed
12 name of a merging entity not transferred under subsection (3). A
13 provision in the certificate of merger under this subsection ~~shall~~
14 ~~be~~ IS treated as a new certificate of assumed name.

15 (5) A LIMITED LIABILITY COMPANY CONVERTING TO A CORPORATION
16 UNDER SECTION 745 MAY TRANSFER TO THAT CORPORATION ANY UNEXPIRED
17 CERTIFICATE OF ASSUMED NAME THAT THE LIMITED LIABILITY COMPANY HAS
18 FILED WITH THE ADMINISTRATOR BEFORE THE CONVERSION BY PROVIDING FOR
19 THE TRANSFER OF THE ASSUMED NAME IN THE CERTIFICATE OF CONVERSION
20 UNDER SECTION 745. A CERTIFICATE OF ASSUMED NAME TRANSFERRED UNDER
21 THIS SUBSECTION CONTINUES FOR THE REMAINDER OF THE ORIGINAL
22 EFFECTIVE PERIOD OF THE CERTIFICATE OF ASSUMED NAME. AFTER
23 CONVERSION, THE CORPORATION MAY TERMINATE OR EXTEND THE CERTIFICATE
24 UNDER SUBSECTION (1).

25 (6) IF A LIMITED LIABILITY COMPANY CONVERTS TO A CORPORATION
26 UNDER SECTION 745, THE CORPORATION MAY TRANSACT BUSINESS IN THE
27 NAME OF THE LIMITED LIABILITY COMPANY AS AN ASSUMED NAME, OR UNDER

1 ANY ASSUMED NAME OF THE LIMITED LIABILITY COMPANY NOT TRANSFERRED
2 UNDER SUBSECTION (5), EITHER BY FILING A NEW CERTIFICATE OF ASSUMED
3 NAME UNDER SUBSECTION (1) OR BY PROVIDING FOR THE USE OF THE
4 ASSUMED NAME IN THE CERTIFICATE OF CONVERSION. A PROVISION IN A
5 CERTIFICATE OF CONVERSION FOR USE OF AN ASSUMED NAME DESCRIBED IN
6 THIS SUBSECTION IS TREATED AS A NEW CERTIFICATE OF ASSUMED NAME.

7 SEC. 745. (1) A DOMESTIC CORPORATION MAY CONVERT TO A LIMITED
8 LIABILITY COMPANY UNDER SECTION 708 OF THE MICHIGAN LIMITED
9 LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4708. A DOMESTIC LIMITED
10 LIABILITY COMPANY MAY CONVERT TO A CORPORATION UNDER THIS SECTION.

11 (2) A DOMESTIC LIMITED LIABILITY COMPANY CONVERTING TO A
12 CORPORATION SHALL PREPARE A PLAN OF CONVERSION THAT CONTAINS ALL OF
13 THE FOLLOWING:

14 (A) THE NAME OF THE LIMITED LIABILITY COMPANY, THE NAME OF THE
15 CORPORATION TO WHICH THE LIMITED LIABILITY COMPANY IS CONVERTING,
16 AND THE STREET ADDRESS OF THE CORPORATION'S PRINCIPAL PLACE OF
17 BUSINESS.

18 (B) THE MANNER AND BASIS OF CONVERTING THE MEMBERSHIP
19 INTERESTS OF THE LIMITED LIABILITY COMPANY INTO SHARES OR
20 OBLIGATIONS OF THE CORPORATION, INTO CASH OR OTHER CONSIDERATION,
21 OR INTO ANY COMBINATION OF SHARES, OBLIGATIONS, CASH, OR OTHER
22 CONSIDERATION, AND ANY OTHER TERMS AND CONDITIONS OF THE
23 CONVERSION.

24 (C) ANY OTHER PROVISION THAT THE LIMITED LIABILITY COMPANY
25 CONSIDERS NECESSARY OR DESIRABLE.

26 (3) FOR A CONVERSION TO OCCUR, THE MEMBERS OF THE LIMITED
27 LIABILITY COMPANY MUST APPROVE THE PLAN OF CONVERSION, IN THE SAME

1 MANNER REQUIRED FOR A MERGER UNDER SECTION 705A(5) OF THE MICHIGAN
2 LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4705A, UNLESS AN
3 OPERATING AGREEMENT SPECIFICALLY PROVIDES A PROCEDURE FOR APPROVAL
4 OF A CONVERSION. IF APPROVAL OF THE CONVERSION OF A LIMITED
5 LIABILITY COMPANY IS BY LESS THAN UNANIMOUS VOTE OF MEMBERS
6 ENTITLED TO VOTE, A MEMBER WHO VOTES AGAINST THE CONVERSION HAS THE
7 SAME WITHDRAWAL RIGHTS AS A MEMBER WHO VOTES AGAINST A MERGER UNDER
8 SECTION 705A(6) OF THAT ACT.

9 (4) IF THE CONVERSION IS APPROVED, THE LIMITED LIABILITY
10 COMPANY SHALL FILE BOTH OF THE FOLLOWING:

11 (A) ARTICLES OF INCORPORATION THAT COMPLY WITH SECTION 202 OR
12 WITH THE PROFESSIONAL SERVICE CORPORATION ACT, 1962 PA 192, MCL
13 450.221 TO 450.235, IF THE CORPORATION WILL RENDER PROFESSIONAL
14 SERVICES.

15 (B) A CERTIFICATE OF CONVERSION THAT CONTAINS ALL OF THE
16 FOLLOWING:

17 (i) THE NAME OF THE LIMITED LIABILITY COMPANY AND THE DATE IT
18 WAS FORMED.

19 (ii) A STATEMENT THAT THE PLAN OF CONVERSION WAS APPROVED IN
20 ACCORDANCE WITH SUBSECTION (3).

21 (iii) A STATEMENT SPECIFYING EACH ASSUMED NAME OF THE LIMITED
22 LIABILITY COMPANY TRANSFERRED TO THE CORPORATION UNDER SECTION
23 217(5). THE CERTIFICATE MAY INCLUDE A STATEMENT OF THE NAME OR
24 ASSUMED NAMES OF THE LIMITED LIABILITY COMPANY THAT ARE TO BE
25 TREATED AS NEWLY FILED ASSUMED NAMES OF THE CONVERTED ENTITY UNDER
26 SECTION 217(6).

27 (iv) THE EFFECTIVE DATE OF THE CONVERSION IF LATER THAN THE

1 DATE THE CERTIFICATE OF CONVERSION IS FILED.

2 (5) IF A CONVERSION UNDER THIS SECTION TAKES EFFECT, THE
3 CORPORATION IS CONSIDERED THE SAME ENTITY THAT EXISTED BEFORE THE
4 CONVERSION AND THE CONVERSION IS NOT A DISSOLUTION OF THE LIMITED
5 LIABILITY COMPANY. ALL PROPERTY AND RIGHTS OF THE LIMITED LIABILITY
6 COMPANY REMAIN VESTED IN THE CORPORATION. ALL LIABILITIES OF THE
7 LIMITED LIABILITY COMPANY REMAIN AS LIABILITIES OF THE CORPORATION.
8 AN ACTION OR PROCEEDING PENDING AGAINST THE LIMITED LIABILITY
9 COMPANY MAY BE CONTINUED AS IF THE CONVERSION UNDER THIS SECTION
10 HAD NOT OCCURRED.

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

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

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

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

27 (d) An amendment of the articles of incorporation giving rise

1 to a right to dissent ~~pursuant to~~ **UNDER** section 621.

2 (e) A transaction giving rise to a right to dissent ~~pursuant~~
3 ~~to~~ **UNDER** section 754.

4 (F) CONSUMMATION OF A PLAN OF CONVERSION UNDER SECTION 708 OF
5 THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL
6 450.4708, IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE CONVERSION
7 UNDER THAT SECTION.

8 (G) ~~—(f)—~~ Any corporate action taken pursuant to a
9 shareholder vote to the extent the articles of incorporation,
10 bylaws, or a resolution of the board provides that voting or
11 nonvoting shareholders are entitled to dissent and obtain payment
12 for their shares.

13 (H) ~~—(g)—~~ The approval of a control share acquisition giving
14 rise to a right to dissent ~~pursuant to~~ **UNDER** section 799.

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

18 (a) Any corporate action set forth in subsection (1)(a) to
19 ~~(e)~~ (F) as to shares that are listed on a national securities
20 exchange or designated as a national market system security on an
21 interdealer quotation system by the national association of
22 securities dealers, on the record date fixed to vote on the
23 corporate action or on the date the resolution of the parent
24 corporation's board is adopted in the case of a merger under
25 section 711 not requiring shareholder vote under section 713.

26 (b) A transaction described in subsection (1)(a) in which
27 shareholders receive cash or shares that satisfy the requirements

1 of subdivision (a) on the effective date of the merger or any
2 combination thereof.

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

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

15 **(E) A TRANSACTION DESCRIBED IN SUBSECTION (1)(F) IN WHICH THE**
16 **SHAREHOLDERS RECEIVE CASH.**

17 (3) A shareholder entitled to dissent and obtain payment for
18 his or her shares ~~pursuant to~~ **UNDER** subsection (1)(a) to ~~(e)~~
19 **(F)** may not challenge the corporate action creating his or her
20 entitlement unless the action is unlawful or fraudulent with
21 respect to the shareholder or the corporation.

22 (4) A shareholder who exercises his or her right to dissent
23 and seek payment for his or her shares ~~pursuant to~~ **UNDER**
24 subsection ~~(1)(f)~~ **(1)(G)** may not challenge the corporate action
25 creating his or her entitlement unless the action is unlawful or
26 fraudulent with respect to the shareholder or the corporation.

27 Sec. 1060. (1) The fees a person shall pay to the

1 administrator when the documents described in this subsection are
2 delivered to him or her for filing are as follows:

3 (a) Articles of a domestic corporation, \$10.00.

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

6 (c) Amendment to the articles of a domestic corporation,
7 \$10.00.

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

10 (e) Certificate of merger, ~~or~~ share exchange, **OR CONVERSION**
11 under chapter 7, \$50.00.

12 (f) Certificate attesting to the occurrence of a merger of a
13 foreign corporation under section 1021, \$10.00.

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

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

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

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

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

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

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

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

25 (o) Certificate of revocation of dissolution proceedings,
26 \$10.00.

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

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

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

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

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

8 (u) Report required under section 911, \$15.00 if paid before
9 October 1, 2003 or after September 30, 2007. After September 30,
10 2003 and before October 1, 2007, the fee is \$25.00.

11 (2) The fees described in subsection (1) are in addition to
12 any franchise fees prescribed in this act. The administrator shall
13 not refund all or any part of a fee described in this section.

14 (3) Except as provided in subsection (9), the administrator
15 shall deposit all fees received and collected under this section in
16 the state treasury to the credit of the administrator, who may only
17 use the money credited pursuant to legislative appropriation and
18 only in carrying out those duties of the department required by
19 law.

20 (4) The fees described in this section apply to documents
21 filed by a domestic or foreign regulated investment company as
22 defined in section 1064.

23 (5) If any money received by the administrator from fees paid
24 under subsection (1)(u) is not appropriated to the department in
25 that fiscal year, the money remaining from those fees shall revert
26 to the general fund of this state.

27 (6) A minimum charge of \$1.00 for each certificate and 50

1 cents per folio shall be paid to the administrator for certifying a
2 part of a file or record pertaining to a corporation if a fee for
3 that service is not described in subsection (1). The administrator
4 may furnish copies of documents, reports, and papers required or
5 permitted by law to be filed with the administrator, and shall
6 charge for those copies the fee established in a schedule of fees
7 adopted by the administrator with the approval of the state
8 administrative board. The administrator shall retain the revenue
9 collected under this subsection, and the department shall use it to
10 defray the costs for its copying and certifying services.

11 (7) If a domestic or foreign corporation pays fees or
12 penalties by check and the check is dishonored, the fee is unpaid
13 and the administrator shall rescind the filing of all related
14 documents.

15 (8) The administrator may accept a credit card in lieu of cash
16 or check as payment of a fee under this act. The administrator
17 shall determine which credit cards he or she shall accept for
18 payment.

19 (9) The administrator may charge a nonrefundable fee of up to
20 \$50.00 for any document submitted or certificate sent by facsimile
21 or electronic transmission. The administrator shall retain the
22 revenue collected under this subsection and the department shall
23 use it to carry out its duties required by law.

24 Enacting section 1. This amendatory act does not take effect
25 unless Senate Bill No. 115

26 of the 93rd Legislature is enacted into law.