

SENATE BILL No. 1116

February 9, 2010, Introduced by Senators HARDIMAN, PAPPAGEORGE, BIRKHOLZ and JANSEN
and referred to the Committee on Health Policy.

A bill to amend 1982 PA 162, entitled
"Nonprofit corporation act,"
by amending sections 123 and 217 (MCL 450.2123 and 450.2217),
section 123 as amended by 2008 PA 482, and by adding section 746.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 123. (1) Unless otherwise provided in, and to the extent
2 not inconsistent with, the act under which a corporation is or has
3 been formed, this act applies to a corporation that is or has been
4 organized under an act other than this act and not repealed by this
5 act.

6 (2) A corporation covered by subsection (1) includes, but is
7 not limited to, all of the following:

8 (a) A cooperative corporation classified as a nonprofit

1 corporation under section 98 of 1931 PA 327, MCL 450.98.

2 (b) A secret society or lodge.

3 (c) A trustee corporation holding property for charitable,
4 religious, benevolent, educational, or other public benefit
5 purposes.

6 (d) A church trustee corporation.

7 (e) An educational corporation that is organized as a trustee
8 corporation or a nonprofit corporation.

9 (f) An ecclesiastical corporation.

10 (g) A public building corporation.

11 (h) A street railway under the nonprofit street railway act,
12 1867 PA 35, MCL 472.1 to ~~472.31~~ 472.27.

13 (I) A DOMESTIC CORPORATION FORMED BY THE CONVERSION OF A
14 MUNICIPAL HEALTH FACILITIES CORPORATION UNDER SECTION 308 OF THE
15 MUNICIPAL HEALTH FACILITIES CORPORATIONS ACT, 1987 PA 230, MCL
16 331.1308.

17 (3) Except as provided in subsection (2)(h), this act does not
18 apply to insurance, surety, credit unions, savings and loan
19 associations, fraternal benefit societies, railroad, bridge, or
20 tunnel companies, union depot companies, and banking corporations.

21 Sec. 217. (1) Except as otherwise prohibited by law, a
22 domestic or foreign corporation may conduct its affairs under any
23 assumed name or names other than its corporate name, not precluded
24 from use by section 212, and the same name may be assumed by 2 or
25 more corporations participating together in any partnership or
26 joint venture by filing a certificate stating the true name of the
27 corporation and the assumed name under which its affairs are to be

1 conducted. The certificate shall be effective, unless sooner
2 terminated by the filing of a certificate of termination or by the
3 dissolution or withdrawal of the corporation, for a period expiring
4 on December 31 of the fifth full calendar year following the year
5 in which it was filed. It may be extended for additional
6 consecutive periods of 5 full calendar years each by the filing of
7 similar certificates not earlier than 90 days preceding the
8 expiration of any such period. The administrator shall notify the
9 corporation of the impending expiration of the certificate of
10 assumed name no later than 90 days before the initial or subsequent
11 5-year period will expire. This section does not create substantive
12 rights to the use of a particular assumed name.

13 (2) A CORPORATION INTO WHICH 1 OR MORE NONPROFIT ORGANIZATIONS
14 HAVE CONVERTED UNDER SECTION 746 MAY USE AS AN ASSUMED NAME THE
15 NAME OF ANY NONPROFIT ORGANIZATION CONVERTING INTO THAT
16 CORPORATION, OR USE AS AN ASSUMED NAME AN ASSUMED NAME OF THAT
17 NONPROFIT ORGANIZATION, BY FILING A CERTIFICATE OF ASSUMED NAME
18 UNDER SUBSECTION (1) OR BY PROVIDING FOR THE USE OF THAT NAME OR
19 ASSUMED NAME AS AN ASSUMED NAME OF THE CORPORATION IN THE
20 CERTIFICATE OF CONVERSION. A PROVISION IN THE CERTIFICATE OF
21 CONVERSION UNDER THIS SUBSECTION SHALL BE TREATED AS A NEW
22 CERTIFICATE OF ASSUMED NAME.

23 SEC. 746. (1) A NONPROFIT ORGANIZATION MAY CONVERT INTO A
24 DOMESTIC CORPORATION IF ALL OF THE FOLLOWING REQUIREMENTS ARE
25 SATISFIED:

26 (A) THE CONVERSION IS PERMITTED BY THE LAW THAT GOVERNS THE
27 INTERNAL AFFAIRS OF THE NONPROFIT ORGANIZATION AND THE NONPROFIT

1 ORGANIZATION COMPLIES WITH THAT LAW IN CONVERTING.

2 (B) THE NONPROFIT ORGANIZATION PROPOSING TO CONVERT INTO A
3 DOMESTIC CORPORATION ADOPTS A PLAN OF CONVERSION THAT INCLUDES ALL
4 OF THE FOLLOWING:

5 (i) THE NAME OF THE NONPROFIT ORGANIZATION, THE TYPE OF
6 NONPROFIT ORGANIZATION THAT IS CONVERTING, THE IDENTIFICATION OF
7 THE STATUTE THAT GOVERNS THE INTERNAL AFFAIRS OF THE NONPROFIT
8 ORGANIZATION, THE NAME OF THE SURVIVING DOMESTIC CORPORATION INTO
9 WHICH THE NONPROFIT ORGANIZATION IS CONVERTING, THE STREET ADDRESS
10 OF THE SURVIVING DOMESTIC CORPORATION, AND THE PRINCIPAL PLACE OF
11 BUSINESS OF THE SURVIVING DOMESTIC CORPORATION.

12 (ii) A DESCRIPTION OF ALL OF THE OWNERSHIP INTERESTS IN THE
13 NONPROFIT ORGANIZATION, SPECIFYING THE INTERESTS ENTITLED TO VOTE,
14 ANY RIGHTS THOSE INTERESTS HAVE TO VOTE COLLECTIVELY OR AS A CLASS,
15 AND, IF THE OWNERSHIP INTERESTS ARE SUBJECT TO CHANGE BEFORE THE
16 EFFECTIVE DATE OF THE CONVERSION, THE MANNER IN WHICH THE CHANGE
17 MAY OCCUR.

18 (iii) THE TERMS AND CONDITIONS OF THE PROPOSED CONVERSION,
19 INCLUDING THE MANNER AND BASIS OF CONVERTING THE OWNERSHIP
20 INTERESTS OF THE NONPROFIT ORGANIZATION INTO SHARES OF THE
21 SURVIVING DOMESTIC CORPORATION IF IT IS ORGANIZED ON A STOCK BASIS
22 OR INTO MEMBER OR DIRECTOR INTERESTS IF ORGANIZED ON A NONSTOCK
23 BASIS; INTO OTHER OBLIGATIONS OF THE SURVIVING DOMESTIC
24 CORPORATION; INTO CASH; INTO OTHER CONSIDERATION THAT MAY INCLUDE
25 OWNERSHIP INTERESTS OR OBLIGATIONS OF AN ENTITY THAT IS NOT A PARTY
26 TO THE CONVERSION; OR INTO A COMBINATION OF CASH AND OTHER
27 CONSIDERATION.

1 (iv) THE TERMS AND CONDITIONS OF THE ARTICLES AND BYLAWS THAT
2 ARE TO GOVERN THE SURVIVING DOMESTIC CORPORATION.

3 (v) ANY OTHER PROVISIONS WITH RESPECT TO THE PROPOSED
4 CONVERSION THAT THE NONPROFIT ORGANIZATION CONSIDERS NECESSARY OR
5 DESIRABLE.

6 (C) IF A PLAN OF CONVERSION IS ADOPTED BY THE NONPROFIT
7 ORGANIZATION UNDER SUBDIVISION (B), THE PLAN OF CONVERSION IS
8 SUBMITTED FOR APPROVAL IN THE MANNER REQUIRED BY THE LAW GOVERNING
9 THE INTERNAL AFFAIRS OF THAT NONPROFIT ORGANIZATION.

10 (D) AFTER THE PLAN OF CONVERSION IS APPROVED UNDER
11 SUBDIVISIONS (B) AND (C), THE NONPROFIT ORGANIZATION FILES A
12 CERTIFICATE OF CONVERSION WITH THE ADMINISTRATOR. THE CERTIFICATE
13 OF CONVERSION SHALL INCLUDE ALL OF THE FOLLOWING:

14 (i) ALL OF THE INFORMATION DESCRIBED IN SUBDIVISION (B) (i) AND
15 (ii) AND THE MANNER AND BASIS OF CONVERTING THE OWNERSHIP INTERESTS
16 OF THE NONPROFIT ORGANIZATION CONTAINED IN THE PLAN OF CONVERSION.

17 (ii) A STATEMENT THAT THE NONPROFIT ORGANIZATION HAS ADOPTED
18 THE PLAN OF CONVERSION UNDER SUBDIVISION (C).

19 (iii) A STATEMENT THAT THE SURVIVING DOMESTIC CORPORATION WILL
20 FURNISH A COPY OF THE PLAN OF CONVERSION, ON REQUEST AND WITHOUT
21 COST, TO ANY OWNER OF THE NONPROFIT ORGANIZATION.

22 (iv) A STATEMENT SPECIFYING EACH ASSUMED NAME OF THE NONPROFIT
23 ORGANIZATION TO BE USED BY THE SURVIVING DOMESTIC CORPORATION AND
24 AUTHORIZED UNDER SECTION 217(2).

25 (v) ARTICLES OF INCORPORATION FOR THE SURVIVING DOMESTIC
26 CORPORATION THAT MEET ALL OF THE REQUIREMENTS OF THIS ACT
27 APPLICABLE TO ARTICLES OF INCORPORATION.

1 (2) SECTION 131 APPLIES IN DETERMINING WHEN A CERTIFICATE OF
2 CONVERSION UNDER THIS SECTION BECOMES EFFECTIVE.

3 (3) WHEN A CONVERSION UNDER THIS SECTION TAKES EFFECT, ALL OF
4 THE FOLLOWING APPLY:

5 (A) THE NONPROFIT ORGANIZATION CONVERTS INTO THE SURVIVING
6 DOMESTIC CORPORATION. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,
7 THE SURVIVING DOMESTIC CORPORATION IS ORGANIZED UNDER AND SUBJECT
8 TO THIS ACT.

9 (B) THE SURVIVING DOMESTIC CORPORATION HAS ALL OF THE
10 LIABILITIES OF THE NONPROFIT ORGANIZATION. THE CONVERSION OF THE
11 NONPROFIT ORGANIZATION INTO A DOMESTIC CORPORATION UNDER THIS
12 SECTION SHALL NOT BE CONSIDERED TO AFFECT ANY OBLIGATIONS OR
13 LIABILITIES OF THE NONPROFIT ORGANIZATION INCURRED BEFORE THE
14 CONVERSION OR THE PERSONAL LIABILITY OF ANY PERSON INCURRED BEFORE
15 THE CONVERSION, AND THE CONVERSION SHALL NOT BE CONSIDERED TO
16 AFFECT THE CHOICE OF LAW APPLICABLE TO THE NONPROFIT ORGANIZATION
17 WITH RESPECT TO MATTERS ARISING BEFORE THE CONVERSION.

18 (C) THE TITLE TO ALL REAL ESTATE AND OTHER PROPERTY AND RIGHTS
19 OWNED BY THE NONPROFIT ORGANIZATION REMAIN VESTED IN THE SURVIVING
20 DOMESTIC CORPORATION WITHOUT REVERSION OR IMPAIRMENT. THE RIGHTS,
21 PRIVILEGES, POWERS, AND INTERESTS IN PROPERTY OF THE NONPROFIT
22 ORGANIZATION, AS WELL AS THE DEBTS, LIABILITIES, AND DUTIES OF THE
23 NONPROFIT ORGANIZATION, SHALL NOT BE CONSIDERED, AS A CONSEQUENCE
24 OF THE CONVERSION, TO HAVE BEEN TRANSFERRED TO THE SURVIVING
25 DOMESTIC CORPORATION TO WHICH THE NONPROFIT ORGANIZATION HAS
26 CONVERTED FOR ANY PURPOSE OF THE LAWS OF THIS STATE.

27 (D) THE SURVIVING DOMESTIC CORPORATION MAY USE THE NAME AND

1 THE ASSUMED NAMES OF THE NONPROFIT ORGANIZATION IF THE FILINGS
2 REQUIRED UNDER SECTION 217(2) OR ANY OTHER APPLICABLE STATUTE ARE
3 MADE AND THE LAWS REGARDING USE AND FORM OF NAMES ARE FOLLOWED.

4 (E) A PROCEEDING PENDING AGAINST THE NONPROFIT ORGANIZATION
5 MAY BE CONTINUED AS IF THE CONVERSION HAD NOT OCCURRED, OR THE
6 SURVIVING DOMESTIC CORPORATION MAY BE SUBSTITUTED IN THE PROCEEDING
7 FOR THE NONPROFIT ORGANIZATION.

8 (F) THE SURVIVING DOMESTIC CORPORATION IS CONSIDERED TO BE THE
9 SAME ENTITY THAT EXISTED BEFORE THE CONVERSION AND IS CONSIDERED TO
10 BE INCORPORATED OR ORGANIZED ON THE DATE THAT THE NONPROFIT
11 ORGANIZATION WAS ORIGINALLY INCORPORATED OR ORGANIZED.

12 (G) THE OWNERSHIP INTERESTS OF THE NONPROFIT ORGANIZATION THAT
13 WERE TO BE CONVERTED INTO SHARES, MEMBER OR DIRECTOR INTERESTS, OR
14 OTHER OBLIGATIONS OF THE SURVIVING DOMESTIC CORPORATION OR INTO
15 CASH OR OTHER PROPERTY ARE CONVERTED.

16 (H) UNLESS OTHERWISE PROVIDED IN A PLAN OF CONVERSION ADOPTED
17 IN ACCORDANCE WITH THIS SECTION, THE NONPROFIT ORGANIZATION IS NOT
18 REQUIRED TO WIND UP ITS AFFAIRS OR PAY ITS LIABILITIES AND
19 DISTRIBUTE ITS ASSETS ON ACCOUNT OF THE CONVERSION, AND THE
20 CONVERSION DOES NOT CONSTITUTE A DISSOLUTION OF THE NONPROFIT
21 ORGANIZATION.

22 (4) AS USED IN THIS SECTION:

23 (A) "ENTITY" MEANS A DOMESTIC CORPORATION OR NONPROFIT
24 ORGANIZATION.

25 (B) "NONPROFIT ORGANIZATION" MEANS AN ORGANIZATION OR ENTITY
26 ORGANIZED OR FORMED TO CARRY OUT ANY LAWFUL PURPOSE OR PURPOSES
27 THAT DOES NOT INVOLVE PECUNIARY PROFIT OR GAIN FOR ITS DIRECTORS,

1 OFFICERS, SHAREHOLDERS, MEMBERS, PARTNERS, OR OWNERS. THE TERM
2 INCLUDES, BUT IS NOT LIMITED TO, A MUNICIPAL HEALTH FACILITIES
3 CORPORATION INCORPORATED UNDER OR GOVERNED BY THE MUNICIPAL HEALTH
4 FACILITIES CORPORATIONS ACT, 1987 PA 230, MCL 331.1101 TO 331.1507.

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No. 1115

7 of the 95th Legislature is enacted into law.