

## NONPROFIT CORPORATION ACT (EXCERPT)

### Act 162 of 1982

#### CHAPTER 7

#### **450.2701 Merger of domestic corporations; plan; contents; distributions.**

Sec. 701. (1) Two or more domestic corporations may merge into 1 of the corporations pursuant to a plan of merger approved in the manner provided in this act.

(2) The board of each corporation that proposes to participate in a merger shall adopt a plan of merger that contains all of the following:

(a) The name of each constituent corporation and the name of the constituent corporation that will be the surviving corporation.

(b) For each constituent corporation that is a stock corporation, the designation and number of outstanding shares of each class, specifying the classes that are entitled to vote; each class that is entitled to vote as a class; and, if the number of shares is subject to change before the effective date of the merger, the manner in which the change may occur.

(c) For each constituent corporation that is a membership corporation, a description of the members, including the number, classification, and voting rights of members.

(d) For each constituent corporation that is a directorship corporation, a description of the organization of the board, including the number, classification, and voting rights of directors.

(e) The terms and conditions of the proposed merger, including the manner and basis of converting the shares of or membership or other interest in each constituent corporation into shares, obligations, or other securities of or membership or other interest in the surviving corporation, or into cash or other consideration, if any, that may include shares, bonds, rights, or other property or securities of or membership or other interests in a corporation whether or not a party to the merger, or into a combination of those securities, interests, and property.

(f) A statement of any amendment to the articles of incorporation of the surviving corporation to result from the merger or any restatement of the articles of incorporation under section 641(1), in the form for restated articles of incorporation required under section 642.

(g) Other provisions with respect to the proposed merger that the board considers necessary or desirable.

(3) Notwithstanding the provisions of this section and other provisions of this act, a corporation shall make distributions to shareholders or members of any corporation or to any other person in connection with a merger only in conformity with section 301 and with limitations on distributions in the articles of incorporation of that corporation.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2703 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015**

**Compiler's note:** The repealed section pertained to approval or authorization of plan of merger or consolidation.

#### **450.2703a Plan of merger; approval.**

Sec. 703a. (1) Except as provided in subsection (2)(e) and (f), a plan of merger adopted by the board of each constituent corporation that is organized on a stock or membership basis shall, except as provided in subsection (2)(e) and (f), be submitted for approval at a meeting of the shareholders or members.

(2) For approval of a plan of merger under subsection (1), all of the following apply:

(a) The board must recommend the plan of merger to the shareholders or members, unless section 529 applies or the board determines that because of conflict of interest, events that occur after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation. If 1 or more of the exceptions described in this subdivision apply, the board must communicate the basis for not making a recommendation to the shareholders or members.

(b) The board may condition its submission of the proposed merger on any basis.

(c) Except as provided in subdivision (h), the corporation shall give notice of the shareholder or membership meeting to each shareholder or member of record, whether or not entitled to vote at the meeting, within the time and in the manner provided in this act for giving notice of meetings of shareholders or members. The notice shall include or be accompanied by a copy or summary of the plan of merger. If a summary of the plan is given, the notice shall state that a copy of the plan is available on request.

(d) At the meeting of the shareholders or members, the shareholders or members shall vote on the proposed plan of merger. Subject to subdivision (e), the plan is approved if all of the following are met:

(i) A majority of the votes held by shareholders or members of the corporation that are entitled to vote on

the plan are cast in favor of the plan.

(ii) If a class of members or shareholders is entitled to vote on the plan as a class, a majority of the votes held by shareholders or members of the class are cast in favor of the plan. A class of shares or of members is entitled to vote as a class in the case of a merger if the plan of merger contains a provision that, if contained in a proposed amendment to the articles of incorporation, would entitle the class of shares or members to vote as a class.

(e) Notwithstanding subdivision (d), unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, if there are more than 20 shareholders or members that are entitled to vote at the meeting, the plan of merger is adopted if a majority of the votes held by shareholders or the members present in person or by proxy at the meeting are cast in favor of the plan and, if a class of shareholders or members is entitled to vote on the proposed merger as a class, a majority of the votes held by shareholders or members of that class present in person or by proxy at the meeting are cast in favor of the plan.

(f) Except as provided in section 754 or unless required in the articles of incorporation or bylaws, action on a plan of merger by the shareholders or members of a surviving corporation that is organized on a stock or membership basis is not required if all of the following apply:

(i) The articles of incorporation of the surviving corporation will not differ from its articles of incorporation before the merger.

(ii) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, voting rights, preferences, limitations, and relative rights, immediately after the merger or each member of the surviving corporation whose membership was outstanding immediately before the effective date of the merger will be a member with identical designations, voting rights, preferences, limitations, and relative rights, immediately after the merger.

(g) A plan of merger may provide for differing forms of consideration for holders of shares or memberships within the same class based on the election of the holders or members, the amount of shares or memberships held, or another reasonable basis.

(h) A corporation that has more than 20 shareholders or members is not required to give notice under subdivision (c) to any shareholder or member, and is not required to allow the shareholder or member to vote on a proposed plan of merger or conversion, if both of the following apply:

(i) The shareholder or member is not entitled to vote on the proposed plan of merger or conversion under the articles of incorporation or bylaws of the corporation.

(ii) The shareholder or member is not entitled to receive any distributions from the corporation on dissolution under the articles of incorporation or bylaws of the corporation, under this act, or under other applicable law.

(3) If any merging corporation is organized on a directorship basis, the board shall approve a plan of merger by an affirmative vote of a majority of the directors who are then in office or a higher number of directors if specified in the articles of incorporation or bylaws. The corporation shall give notice of the meeting to authorize the merger to each director who is then in office at least 20 days before the meeting. The notice shall include or be accompanied by a copy or a summary of the plan of merger.

(4) If a person solicits proxies in connection with the approval of a plan of merger under this section from more than 25 shareholders or members, the person soliciting the proxies must provide a form of proxy to each voting shareholder or member solicited that contains all of the following:

(a) A blank space for the date and the signature of a shareholder or member that is voting by proxy.

(b) Clear identification of each matter or group of related matters on which the shareholders or members are voting.

(c) The phrase "revocable proxy".

(d) An acknowledgment that the shareholder or member received the notice of meeting and the plan or a summary of the plan of merger.

(e) The date, time, and place of the meeting of the shareholders or members.

(f) A place for the shareholder or member to indicate on the proxy whether the shareholder or member votes for, votes against, or abstains from voting on the merger.

(g) A statement that the person designated as the proxy holder will vote the proxy in accordance with the instructions of the shareholder or member.

(h) A statement indicating how the proxy holder will vote the proxy if the shareholder or member does not specify a choice for a matter.

(i) A statement that if the proxy is not returned by the shareholder or member, the proxy holder may vote any valid proxy previously executed by the shareholder or member.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2706 Merger of domestic corporation with domestic or foreign corporation; conditions; consent; execution of certificate of merger; participation of other corporations.**

Sec. 706. (1) If a domestic corporation has not commenced business, has not issued any shares or memberships, and has not elected a board, the corporation may merge with any domestic or foreign corporation by unanimous consent of its incorporators.

(2) If incorporators unanimously consent to a merger under subsection (1), a majority of incorporators shall execute a certificate of merger under section 707.

(3) The other domestic or foreign corporations that participate in the merger with a domestic corporation under subsection (1) shall comply with the provisions of this act dealing with mergers that are applicable to them.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2707 Certificate of merger; signing and filing; contents; determining effectiveness.**

Sec. 707. (1) After a plan of merger is approved under this act, each constituent corporation shall sign and file a certificate of merger on behalf of that corporation. The certificate shall set forth all of the following:

(a) The statements required under section 701(2)(a), (b), and (d), and the manner and basis of converting the shares or memberships of each constituent corporation that is organized on a stock or membership basis as set forth in the plan of merger.

(b) A statement that the boards have adopted the plan of merger under section 701.

(c) A statement that the surviving corporation will furnish the plan of merger, on request and without cost, to any shareholder or member of any constituent corporation.

(d) If approval of the shareholders or members of 1 or more corporations that are parties to the merger was required, a statement that the plan was approved by the shareholders or members under section 703a.

(e) If section 706 applies to the merger, a statement that the merging corporation has not commenced business, has not issued any shares or memberships, and has not elected a board and that the plan of merger was approved by the unanimous consent of the incorporators.

(f) A statement of any assumed names of merging corporations that are transferred to the surviving corporation under section 217(3), specifying each transferred assumed name and the name of the corporation from which it is transferred. The certificate may include a statement of corporate names or assumed names of merging corporations that are to be treated as newly filed assumed names of the surviving corporation under section 217(4).

(2) Section 131 applies in determining when a certificate of merger under this section becomes effective.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2711 Merger of domestic corporation with subsidiary corporation; approval of plan of merger; mailing copy of plan to minority shareholder or member of record; other provisions; definitions.**

Sec. 711. (1) A domestic corporation may merge 1 or more subsidiary corporations into itself, or may merge itself, or itself and any 1 or more subsidiary corporations, into any other subsidiary corporation, without approval of the shareholders or members of any of the corporations, except as provided in section 713. The board of the parent corporation shall approve a plan of merger that sets forth those matters required to be set forth in a plan of merger under section 701. Approval by the board of a subsidiary corporation described in this subsection is not required.

(2) If the parent corporation owns less than 100% of the outstanding shares or memberships of any subsidiary corporation that is a constituent corporation, the parent corporation shall promptly after the filing of the certificate of merger mail a copy or summary of the plan of merger to each minority shareholder or member of record of each subsidiary corporation, unless the shareholder or member waives the requirement in writing or unless the subsidiary corporation is required to obtain the approval of its shareholders or members under section 713.

(3) The authority of a corporation to merge under this section does not prevent the corporation from using other provisions of this act to complete a merger.

(4) As used in this section and in sections 712 and 713:

(a) "Constituent corporation" means a corporation that is a party to the merger described in subsection (1).

(b) A domestic corporation is a "subsidiary corporation" if another domestic corporation holds at least 90% of its shareholder or member votes.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2712 Certificate of merger; execution and filing of certificate of merger by parent company; determination of effective date.**

Sec. 712. (1) After a plan of merger is adopted under section 711, the parent corporation shall execute and file a certificate of merger that sets forth all of the following:

(a) The statements required under section 701(2)(a) and (d), and the manner and basis of converting shares or memberships of each constituent corporation as set forth in the plan of merger.

(b) The number of outstanding shares or memberships of each class of each subsidiary corporation that is a party to the merger and the number of shares or memberships of each class owned by the parent corporation.

(c) A statement of any assumed names of merging corporations transferred to the surviving corporation as under section 217(3), specifying each transferred assumed name and the name of the corporation from which it is transferred. The certificate may include a statement of corporate names or assumed names of merging corporations that are to be treated as newly filed assumed names of the surviving corporation under section 217(4).

(2) Section 131 applies in determining when a certificate of merger becomes effective under this section.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2713 Subsidiary corporation as constituent corporation in merger; approval of shareholders or members.**

Sec. 713. (1) A subsidiary corporation that is a constituent corporation in a merger under section 711 shall obtain the approval of its shareholders or members in accordance with the applicable provisions of section 703a.

(2) A parent corporation shall obtain approval of its shareholders or members for a merger under section 711 if either of the following applies:

(a) Its articles of incorporation require shareholder or member approval of the merger.

(b) Pursuant to section 703a, the plan of merger contains a provision that would amend any part of the articles of incorporation of the parent corporation into which a subsidiary corporation is being merged, or a subsidiary corporation is to be the surviving corporation of the merger.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2721 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to effect of merger or consolidation.

**450.2722 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to rights, privileges, liabilities, and obligations of surviving or new corporation.

**450.2723 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to changes in articles stated in plan of merger.

**450.2724 Merger other than under MCL 450.2736a.**

Sec. 724. All of the following apply when a merger, other than a merger under section 736a, takes effect:

(a) Every other corporation that is a party to the merger merges into the surviving corporation and the separate existence of every corporation that is a party to the merger except the surviving corporation ceases. A merger in which a domestic corporation is the surviving corporation is not considered a dissolution of any constituent domestic corporation or domestic business corporation.

(b) The title to all real estate and other property and rights owned by each corporation that is a party to the merger is vested in the surviving corporation without reversion or impairment.

(c) The surviving corporation may use the corporate name and the assumed names of any merging corporation, if the filings required under section 217(3) and (4) are made.

(d) The surviving corporation has all of the liabilities of each corporation that is a party to the merger.

(e) A person may continue any proceeding that is pending against any corporation that is a party to the merger as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

(f) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

(g) The shares or memberships of each corporation party to the merger that are to be converted into shares, obligations, or other securities of or membership or other interests in the surviving or any other corporation or into cash or other property are converted.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2731 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to merger or consolidation of foreign and domestic corporations.

**450.2732 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to effect of merger or consolidation authorized by MCL 450.2731.

**450.2735 Merger of domestic business corporation, foreign corporation, or foreign business corporation with domestic corporation; surviving corporation; compliance; liability for enforcement of obligation; acquisition of shares or memberships through voluntary exchange; distributions.**

Sec. 735. (1) One or more domestic business corporations, foreign corporations, or foreign business corporations may merge with 1 or more domestic corporations if all of the following are met:

(a) In a merger involving a foreign corporation or a foreign business corporation, the merger is permitted under the law of the state or country under whose law each foreign corporation and each foreign business corporation is incorporated and each foreign corporation or foreign business corporation complies with that law in effecting the merger. If the parent corporation in a merger conducted under section 711 is a foreign corporation or a foreign business corporation, it shall comply with all of the following, notwithstanding the provisions of the laws of its jurisdiction of incorporation:

(i) Section 711(2) with respect to notice to shareholders or members of a domestic subsidiary corporation that is a party to the merger.

(ii) Section 712 with respect to the certificate of merger.

(b) If a foreign corporation that is authorized to conduct affairs or transact business in this state is a party to the merger, it shall comply with the applicable provision of sections 1021 and 1035.

(c) In a merger involving 1 or more domestic business corporations, the merger is permitted under the business corporation act, and each domestic business corporation complies with that law in effecting the merger. However, if the parent corporation in a merger that is conducted under section 711 is a domestic business corporation, it shall also comply with all of the following:

(i) Section 711(2) with respect to notice to shareholders or members of a domestic subsidiary corporation that is a party to the merger.

(ii) Section 712 with respect to the certificate of merger.

(d) Each domestic corporation complies with the applicable provisions of sections 701 to 713.

(2) If the surviving corporation of a merger is a foreign corporation to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of this act with respect to foreign corporations if it is to conduct affairs in this state. If the surviving corporation in a merger is a foreign business corporation to be governed by the laws of a jurisdiction other than this state, it shall comply with the provisions of the business corporation act with respect to foreign business corporations if it is to transact business in this state.

(3) The surviving corporation in a merger is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is party to the merger.

(4) This section does not limit the power of a domestic business corporation, foreign corporation, or foreign business corporation to acquire all or part of the shares or memberships of 1 or more classes of a domestic corporation through a voluntary exchange or otherwise.

(5) Notwithstanding this section or any other provisions of this act, a corporation shall make distributions to its shareholders or members or to any other person in connection with a merger with a domestic business corporation, foreign corporation, or foreign business corporation under this section only in conformity with section 301 and with any limitations on distributions in the articles of the corporation.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2736 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to merger or consolidation of domestic corporations and domestic or foreign business corporations.

**450.2736a Merger of domestic corporations with business organizations; requirements; merger of domestic corporation with domestic or foreign entity; consent; executing and filing certificate of merger; contents; effect of merger; surviving entity; liability for enforcement of obligation; distributions; applicability of MCL 450.2735; definitions.**

Sec. 736a. (1) Except as provided in subsection (2) and subject to subsection (8), 1 or more domestic corporations may merge with 1 or more business organizations if all of the following requirements are met:



(a) The merger is permitted under the law of the jurisdiction in which each constituent business organization is organized and each constituent business organization complies with that law in effecting the merger, and each foreign constituent business organization transacting business in this state complies with the applicable laws of this state.

(b) The board of each domestic corporation that is participating in the merger adopts a plan of merger that sets forth all of the following:

(i) The name of each constituent entity, the name of the constituent entity that will be the surviving entity, the street address of the surviving entity's principal place of business, and the type of organization of the surviving entity.

(ii) If a domestic corporation that is a party to the merger is a stock corporation, the designation and number of outstanding shares of each class, specifying the classes entitled to vote, each class entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the merger, the manner in which the change may occur.

(iii) If a domestic corporation that is a party to the merger is a membership corporation, a description of the members, including the number, classification, and voting rights of members.

(iv) If a domestic corporation that is a party to a merger is a directorship corporation, a description of the organization of the board, including the number, classification, and voting rights of directors.

(v) The terms and conditions of the proposed merger, including the manner and basis of converting the shares, partnership interests, membership interests, or other ownership interests of each constituent entity into ownership interests, obligations, or other securities of or membership or other interests in the surviving entity, or into cash or other consideration, if any, that may include ownership interests, obligations, or other securities of or membership or other interests in an entity that is not a party to the merger, or into a combination of those securities, interests, or property.

(vi) If the surviving entity is to be a domestic corporation, a statement of any amendment to the articles of incorporation of the surviving corporation that will result from the merger or any restatement of the articles under section 641(1), in the form for restated articles required under section 642.

(vii) Any other provisions with respect to the proposed merger that the board considers necessary or desirable.

(c) A plan of merger adopted by the board of each constituent domestic corporation shall be submitted for approval at a meeting of the shareholders or members under section 703a(1) or, if the corporation is organized on a directorship basis, for approval by the board of directors under section 703a(3).

(2) If a domestic corporation has not commenced business, has not issued any shares, and has not elected a board, the corporation may merge with any domestic or foreign entity by unanimous consent of its incorporators. If the incorporators unanimously consent to a merger under this subsection, a majority of the incorporators must execute and file a certificate of merger under subsection (3).

(3) After a plan of merger is approved under subsection (1) or the merger is approved under subsection (2), each domestic corporation that is a party to the merger shall execute and file a certificate of merger. The certificate shall set forth all of the following:

(a) A statement of the applicable requirements set forth in subsection (1)(b)(i), (ii), (iii), (iv), (v), (vi), and (vii), and the manner and basis of converting the ownership, membership, or other interests of each constituent entity included in the plan of merger.

(b) A statement that the plan of merger has been adopted by the board under subsection (1)(b).

(c) A statement that the surviving entity will furnish the plan of merger, on request and without cost, to any shareholder or member of the domestic corporation.

(d) If approval of the shareholders or members of the domestic corporation is required, a statement that the plan was approved by the shareholders or members under subsection (1)(c) or, if the corporation is organized on a directorship basis, a statement that the plan was approved by the board of directors under subsection (1)(c).

(e) If subsection (2) applies to the merger, a statement that the corporation has not commenced business, has not issued any shares or memberships, and has not elected a board, and that the merger was approved by the unanimous consent of the incorporators.

(f) A statement of any assumed names of merging entities that are transferred to the surviving entity under section 217(3), specifying each transferred assumed name and the name of the entity from which it is transferred. If the surviving entity is a domestic corporation or a foreign corporation authorized to conduct affairs in this state, the certificate may include a statement of the names or assumed names of merging entities that are to be treated as newly filed assumed names of the surviving corporation under section 217(4).

(4) Section 131 applies in determining when a certificate of merger under subsection (3) becomes effective.

(5) When a merger under this section takes effect, all of the following apply:

(a) Every other entity that is a party to the merger merges into the surviving entity and the separate existence of every entity that is a party to the merger except the surviving entity ceases.

(b) The title to all real estate and other property and rights owned by each entity that is a party to the merger is vested in the surviving entity without reversion or impairment.

(c) The surviving entity may use the name and the assumed names of any entity that is a party to the merger, if the filings required under section 217(3) or (4) or any other applicable statute are made.

(d) The surviving entity has all of the liabilities of each entity that is a party to the merger. This subdivision does not affect the liability, if any, of a person that was an obligated person with respect to an entity that is a party to the merger for acts or omissions that occurred before the merger.

(e) A person may continue any proceeding that is pending against any entity that was a party to the merger as if the merger did not occur, or the surviving entity may be substituted in the proceeding for the entity whose existence ceased.

(f) The articles of incorporation of a surviving domestic corporation are amended to the extent provided in the plan of merger.

(g) The ownership interests, shares, or memberships of each entity that is a party to the merger that are to be converted into ownership interests or obligations of or membership or other interests in the surviving entity or into cash or other property are converted.

(6) If the surviving entity in a merger under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business in this state if it transacts business in this state. The surviving entity is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of a domestic corporation that is a party to the merger.

(7) Notwithstanding this section or any other provisions of this act, a corporation shall make distributions to its shareholders or members or to any other person in connection with a merger with a business organization under this section only in conformity with section 301 and with any limitations on distributions in its articles of incorporation.

(8) Section 735, and not this section, applies to a merger if all of the business organizations merging with 1 or more domestic corporations are foreign corporations, domestic business corporations, or foreign business corporations.

(9) As used in this section:

(a) "Business organization" means a domestic or foreign limited liability company, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic business corporation, foreign corporation, or foreign business corporation.

(b) "Entity" means a business organization, domestic corporation, foreign corporation, or foreign business corporation.

(c) "Obligated person" means a general partner of a limited partnership, a partner of a general partnership, or a participant in or an owner of an interest in any other type of business enterprise that, under applicable law, is generally liable for the obligations of the business enterprise.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2737 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to effect of merger or consolidation where surviving or new corporation is domestic corporation, domestic business corporation, or foreign business corporation.

#### **450.2741 Abandonment of merger; procedure; certificate of abandonment.**

Sec. 741. At any time before the effective date of the certificate of merger, subject to any contractual rights, a corporation may abandon a merger without further shareholder or member action, under a procedure set forth in the plan of merger or, if the plan of merger does not include an abandonment procedure, in the manner determined by the board. If a certificate of merger was filed by a corporation that abandons a merger, it shall file a certificate of abandonment within 10 days after the abandonment, but not later than the proposed effective date.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2745 Conversion of domestic corporation into business organization; requirements; effect; surviving business organization; liability for certain obligation; distributions; "business organization" and "entity" defined.**

Sec. 745. (1) A domestic corporation may convert into a business organization if all of the following requirements are satisfied:

(a) The conversion is permitted under the law that will govern the internal affairs of the business organization after conversion and the surviving business organization complies with that law in converting.

(b) Unless subdivision (d) applies, the board of the domestic corporation that is proposing to convert adopts a plan of conversion that includes all of the following:

(i) The name of the domestic corporation, the name of the business organization into which the domestic corporation is converting, the type of business organization into which the domestic corporation is converting, identification of the statute that will govern the internal affairs of the surviving business organization, the street address of the surviving business organization, the street address of the domestic corporation if it is different from the street address of the surviving business organization, and the principal place of business of the surviving business organization.

(ii) For a domestic corporation that is organized on a stock basis, the designation and number of outstanding shares of each class, specifying the classes that are entitled to vote, each class that is entitled to vote as a class, and, if the number of shares is subject to change before the effective date of the conversion, the manner in which the change may occur.

(iii) For a domestic corporation that is organized on a membership basis, a description of the members, including the number, classification, and voting rights of members.

(iv) For a domestic corporation that is organized on a directorship basis, a description of the organization of the board, including the number, classification, and voting rights of directors.

(v) The terms and conditions of the proposed conversion, including the manner and basis of converting the shares or memberships into ownership interests, or obligations of the surviving business organization, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(vi) The terms and conditions of the organizational documents that are to govern the surviving business organization.

(vii) Any other provisions with respect to the proposed conversion that the board considers necessary or desirable.

(c) If the board adopts the plan of conversion under subdivision (b), the plan of conversion is submitted for approval in the manner required for a merger under section 703a(2).

(d) If the domestic corporation has not commenced business, has not issued any shares or memberships, and has not elected a board, subdivisions (b) and (c) do not apply and the incorporators may approve the conversion of the corporation into a business organization by unanimous consent. To effect the conversion, a majority of the incorporators must execute and file a certificate of conversion under subdivision (e).

(e) After the plan of conversion is approved under subdivisions (b) and (c) or the conversion is approved under subdivision (d), the domestic corporation files any formation documents required to be filed under the laws that govern the internal affairs of the surviving business organization, in the manner required by those laws, and files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(i) Unless subdivision (d) applies, all of the information described in subdivision (b)(i), (ii), (iii), and (iv) and the manner and basis for converting the shares or memberships, if any, of the domestic corporation included in the plan of conversion.

(ii) Unless subdivision (d) applies, a statement that the board has adopted the plan of conversion under subdivision (c), or if subdivision (d) applies to the conversion, a statement that the domestic corporation has not commenced business, has not issued any shares or memberships, and has not elected a board and that the conversion was approved by the unanimous consent of the incorporators.

(iii) A statement that the surviving business organization will furnish a copy of the plan of conversion, on request and without cost, to any shareholder or member of the domestic corporation.

(iv) If approval of the shareholders or members of the domestic corporation is required, a statement that the plan was approved by the shareholders or members under subdivision (c).

(v) A statement specifying each assumed name of the domestic corporation to be used by the surviving business organization and authorized under section 217(5).

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a conversion under this section takes effect, all of the following apply:

(a) The domestic corporation converts into the surviving business organization, and the articles of incorporation of the domestic corporation are canceled. Except as otherwise provided in this section, the surviving business organization is organized under and subject to the organizational laws of the jurisdiction of the surviving business organization as stated in the certificate of conversion.

(b) The surviving business organization has all of the liabilities of the domestic corporation. The



conversion of the domestic corporation into a business organization under this section does not affect any obligations or liabilities of the domestic corporation before conversion or the personal liability of any person that is incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the domestic corporation with respect to matters that arise before the conversion.

(c) The title to all real estate and other property and rights owned by the domestic corporation is vested in the surviving business organization without reversion or impairment. The rights, privileges, powers, and interests in property of the domestic corporation, and the debts, liabilities, and duties of the domestic corporation, shall not be considered, as a consequence of the conversion, as transferred to the surviving business organization to which the domestic corporation has converted for any purposes of the laws of this state.

(d) The surviving business organization may use the name and assumed names of the domestic corporation if the filings required under section 217(5) or any other applicable statute are made and the laws regarding use and form of names are followed.

(e) A person may continue any proceeding that is pending against the domestic corporation as if the conversion had not occurred, or the surviving business organization may be substituted in the proceeding for the domestic corporation.

(f) The surviving business organization is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the domestic corporation was originally incorporated.

(g) The shares or memberships of the domestic corporation that are to be converted into ownership interests or obligations of the surviving business organization or into cash or other property are converted.

(h) Unless otherwise provided in the plan of conversion, the domestic corporation is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the domestic corporation.

(4) If the surviving business organization of a conversion under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business and the conduct of affairs in this state if it transacts business or conducts affairs in this state. The surviving business organization is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of the domestic corporation.

(5) Notwithstanding this section and other provisions of this act, a corporation shall make distributions to shareholders or members of any corporation or to any other person in connection with a conversion under this section only in conformity with section 301 and with limitations on distributions in its articles of incorporation.

(6) As used in this section and section 746, "business organization" and "entity" mean those terms as defined in section 736a(9).

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2746 Conversion of business organization into domestic corporation; requirements; effectiveness of certificate of conversion; surviving domestic corporation.**

Sec. 746. (1) A business organization may convert into a domestic corporation if all of the following requirements are satisfied:

(a) The conversion is permitted under the law that governs the internal affairs of the business organization and the business organization complies with that law in converting.

(b) The business organization that is proposing to convert into a domestic corporation adopts a plan of conversion that includes all of the following:

(i) The name of the business organization, the type of business organization that is converting, identification of the statute that governs the internal affairs of the business organization, the name of the surviving domestic corporation into which the business organization is converting, the street address of the surviving domestic corporation, and the principal place of business of the surviving domestic corporation.

(ii) A description of all of the ownership interests in the business organization, specifying the interests that are entitled to vote, any right those interests have to vote collectively or as a class, and, if the ownership interests are subject to change before the effective date of the conversion, the manner in which the change may occur.

(iii) The terms and conditions of the proposed conversion, including the manner and basis of converting the ownership interests of the business organization into shares, memberships, or obligations of the surviving domestic corporation, into cash, into other consideration that may include ownership interests or obligations of an entity that is not a party to the conversion, or into a combination of cash and other consideration.

(iv) The terms and conditions of the articles and bylaws that are to govern the surviving domestic

corporation.

(v) Any other provisions with respect to the proposed conversion that the business organization considers necessary or desirable.

(c) If the plan of conversion is adopted by the business organization under subdivision (b), the plan of conversion is submitted for approval in the manner required under the law governing the internal affairs of that business organization.

(d) After the plan of conversion is approved under subdivisions (b) and (c), the business organization files a certificate of conversion with the administrator. The certificate of conversion shall include all of the following:

(i) All of the information described in subdivision (b)(i) and (ii) and the manner and basis of converting the ownership interests of the business organization included in the plan of conversion.

(ii) A statement that the business organization has adopted the plan of conversion under subdivision (c).

(iii) A statement that the surviving corporation will furnish a copy of the plan of conversion, on request and without cost, to any owner of the business organization.

(iv) A statement specifying each assumed name of the business organization to be used by the surviving domestic corporation and authorized under section 217(6).

(v) Articles of incorporation of the surviving domestic corporation that meet all of the requirements of this act applicable to articles of incorporation.

(2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.

(3) When a business organization converts into a surviving domestic corporation under this section, all of the following apply:

(a) The business organization converts to the surviving domestic corporation. Except as otherwise provided in this section, the surviving domestic corporation is organized under and subject to this act.

(b) The surviving domestic corporation has all of the liabilities of the business organization. The conversion of the business organization into a domestic corporation under this section does not affect any obligations or liabilities of the business organization that are incurred before the conversion or the personal liability of any person that is incurred before the conversion and the conversion shall not be considered to affect the choice of law applicable to the business organization with respect to matters that arise before conversion.

(c) The title to all real estate and other property and rights owned by the business organization is vested in the surviving domestic corporation without reversion or impairment. The rights, privileges, powers, and interests in property of the business organization, and the debts, liabilities, and duties of the business organization, shall not be considered, as a consequence of the conversion, as transferred to the surviving domestic corporation to which the business organization has converted for any purpose under the laws of this state.

(d) The surviving domestic corporation may use the name and the assumed names of the business organization if the filings required under section 217(6) or any other applicable statute are made and the laws regarding the use and form of names are followed.

(e) A person may continue any proceeding that is pending against the business organization as if the conversion had not occurred, or the surviving domestic corporation may be substituted in the proceeding for the business organization.

(f) The surviving domestic corporation is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the business organization was originally organized.

(g) The ownership interests of the business organization that were converted into shares, memberships, or obligations of the surviving domestic corporation or into cash or other property are converted.

(h) Unless otherwise provided in the plan of conversion, the business organization is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the business organization.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2751 Actions by corporation; terms and conditions; consideration; "consideration" defined.**

Sec. 751. (1) A corporation may take any of the following actions on the terms and conditions and for a consideration authorized by its board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets in the usual and regular course of its business.

(b) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets following approval of a dissolution under section 804.

(c) Transfer any or all of its property and assets to another corporation of which it owns all of the shares, or to another entity that it controls or wholly owns, whether or not in the usual and regular course of business.

(d) Mortgage or pledge any or all of its property and assets, whether or not in the usual and regular course of business.

(2) Unless otherwise provided in the articles of incorporation, approval by the shareholders or members of a transaction described in subsection (1) is not required.

(3) As used in subsection (1), "consideration" may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other domestic corporation, domestic business corporation, foreign corporation, or foreign business corporation.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2753 Disposition of property and assets of corporation; disposal of all or substantially all of property; presumption that corporation retains significant continuing business activity; "consideration" defined; recommendation of proposed transaction; exceptions; submission to shareholders or members; approval; notice of meeting; statement; authorization; fixing term or condition and consideration; voting; abandonment; distribution.**

Sec. 753. (1) Except as provided in section 751, a corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets, with or without the goodwill, in a transaction that is not in the usual and regular course of its business, on any terms and conditions and for any consideration that is authorized under this section. A corporation has not disposed of all or substantially all of its property and assets under this subsection if it retains a significant continuing business activity. For purposes of this subsection, it is conclusively presumed that a corporation has retained a significant continuing business activity if the corporation and its subsidiaries reported on a consolidated basis continue to conduct an activity that represented at least 25% of total revenues or 25% of total assets at the end of the most recently completed fiscal year or at least 25% of total program expenditures for that fiscal year. As used in this subsection, "consideration" may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other domestic corporation, domestic business corporation, foreign corporation, or foreign business corporation.

(2) The board of a stock or membership corporation must recommend a proposed transaction described in subsection (1) to the shareholders or members, unless any of the following apply:

(a) The board determines that because of a conflict of interest, events that occur after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation.

(b) The power to initiate the transaction is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488.

(c) Section 529 applies.

(3) If 1 or more of the exceptions in subsection (2) apply, the board must communicate the basis for not making a recommendation to the shareholders or members.

(4) The board may condition its submission to shareholders or members under subsection (2) on any basis.

(5) If a corporation is organized on a stock or membership basis, the corporation must submit a proposed transaction described in subsection (1) for approval at a meeting of shareholders or members. The corporation shall give notice of the meeting to each shareholder or member of record, whether or not that person is entitled to vote at the meeting, within the time and in the manner provided under this act for the giving of notice of meetings of shareholders or members. The notice shall include or be accompanied by a statement that summarizes the principal terms of the proposed transaction or a copy of any documents that contain the principal terms.

(6) At a meeting described in subsection (5), the shareholders or members may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board to fix, any term or condition and the consideration to be received by the corporation for that transaction. Subject to subsections (8) and (9), the transaction is approved if a majority of the votes held by shareholders or members of the corporation entitled to vote are cast in favor of the sale, lease, exchange, or other disposition.

(7) Notwithstanding subsection (6), unless a greater vote is required in the articles of incorporation or in a bylaw adopted by the shareholders or members, if there are more than 20 shareholders or members that are entitled to vote at the meeting, the sale, lease, exchange, or other disposition is approved if a majority of the votes held by shareholders or members that are present in person or by proxy at the meeting are cast in favor

of the sale, lease, exchange, or other disposition.

(8) Notwithstanding authorization by the shareholders or members under subsection (5) or (6), unless the power to initiate the transaction is reserved to the shareholders or members without action of the board in the articles of incorporation or in an agreement under section 488, the board may abandon a sale, lease, exchange, or other disposition under subsection (1), subject to the rights of third parties under any contracts that relate to the sale, lease, exchange, or other disposition, without further action or approval by shareholders or members.

(9) If a corporation is organized on a directorship basis, a sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets, with or without goodwill, of a corporation, in a transaction that is not in the usual and regular course of its business, is authorized if it receives the affirmative vote of a majority of the directors who are then in office. A corporation shall give notice of the meeting to authorize a sale, lease, exchange, or other disposition under this subsection to each director who is then in office at least 20 days before the meeting, and the notice shall include a statement that summarizes the principal terms of the proposed transaction or a copy of any documents that contain the principal terms.

(10) A sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of a corporation or other entity of which a second corporation owns a majority of the shares or beneficial interests, including a change in shares of the corporation or beneficial interest in another entity held by the second corporation because of a merger, is a disposition by the second corporation of its pro rata share of the property and assets of the corporation or other entity on a consolidated basis for purposes of this section.

(11) A transaction that is a distribution permitted under section 301 is governed by section 545, and this section and section 751 do not apply to that transaction.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2754 Merger or acquisition under MCL 2703a(2); right of shareholders or members to receive notice and vote.**

Sec. 754. Shareholders or members of a corporation that proposes to issue, directly or through a subsidiary, its shares, memberships, obligations, or securities in the course of a merger, acquisition of some or all of the outstanding shares of another corporation or interests in or memberships of another entity, or acquisition of some or all of the assets other than cash of a corporation or other entity have the rights to receive notice and to vote on the proposed merger or acquisition provided under section 703a(2) if both of the following apply:

(a) The securities or other interests to be issued or delivered in the acquisition are or may be converted into shares or memberships of the acquiring corporation.

(b) The number of the acquiring corporation's voting shares or member votes to be issued or delivered, plus those initially issuable on the conversion or exchange of any other securities to be issued or delivered, will exceed 100% of the number of its voting shares or member votes outstanding immediately before the acquisition plus the number of its common shares or memberships, if any, initially issuable on the conversion or exchange of any other securities that are then outstanding.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.