

## BUSINESS CORPORATION ACT (EXCERPT)

### Act 284 of 1972

#### CHAPTER 7

#### CORPORATE COMBINATIONS AND DISPOSITIONS

##### **450.1701 Merger of domestic corporations; adoption and contents of plan of merger.**

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 by this act.

(2) The board of each corporation proposing to participate in a merger shall adopt a plan of merger, setting forth 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) As to each constituent corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote; each class and series 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) The terms and conditions of the proposed merger, including the manner and basis of converting the shares of each constituent corporation into shares, bonds, or other securities of the surviving corporation, or into cash or other consideration, which may include shares, bonds, rights, or other property or securities of a corporation whether or not a party to the merger, or into a combination thereof.

(d) A statement of any amendment to the articles of incorporation of the surviving corporation to be effected by the merger or any restatement of the articles as provided in section 641(1), which shall be in the form of restated articles as provided in section 642.

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

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1978, Act 32, Imd. Eff. Feb. 24, 1978;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

##### **450.1702 Plan of share exchange; approval; contents; power of corporation not limited.**

Sec. 702. (1) A corporation may acquire all of the outstanding shares of 1 or more classes or series of another corporation pursuant to a plan of share exchange approved in the manner provided by this act.

(2) The board of each corporation proposing to participate in a share exchange shall adopt a plan of share exchange setting forth all of the following:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation.

(b) The terms and conditions of the exchange, including the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(c) Other provisions with respect to the proposed exchange as the board considers necessary or desirable.

(3) This section does not limit the power of a corporation to acquire all or part of the shares of 1 or more classes or series of another corporation through a voluntary exchange or otherwise.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

##### **450.1703 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

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

##### **450.1703a Plan of merger or share exchange; approval; definitions.**

Sec. 703a. (1) A plan of merger or share exchange adopted by the board of each constituent corporation shall, except as provided in subsections (2)(f) and (g) and (3), be submitted for approval at a meeting of the shareholders.

(2) All of the following apply to the approval of a plan of merger or share exchange under this section:

(a) The board must recommend the plan of merger or share exchange to the shareholders, or, if an offer described in subsection (3)(b) is made, recommend that the shareholders tender their shares to the offeror in response to the offer, unless section 529 applies or the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation.

(b) If, because 1 or more of the exceptions described in subdivision (a) apply, the board does not make a recommendation described in subdivision (a), or the board recommends that the shareholders vote against the plan of merger or share exchange or recommends against a tender of shares by the shareholders in response to an offer described in subsection (3)(b), as applicable, the board must communicate to the shareholders the

basis for its decision.

(c) The board may condition its submission of the proposed merger or share exchange on any basis.

(d) Notice of the shareholder meeting shall be given to each shareholder 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. The notice shall include or be accompanied by all of the following:

(i) A copy or summary of the plan of merger or share exchange. If a summary of the plan is given, the notice shall state that a copy of the plan is available on request.

(ii) A statement informing shareholders that are entitled to dissent under section 762 that they have the right to dissent and to be paid the fair value of their shares by complying with the procedures set forth in sections 764 to 772.

(e) At the meeting, the shareholders shall vote on the proposed plan of merger or share exchange. The plan is approved if it receives the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote on the plan, and if a class or series is entitled to vote on the plan as a class, the affirmative vote of the holders of a majority of the outstanding shares of the class or series. A class or series of shares 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 or series of shares to vote as a class, or, in the case of a share exchange, if the class or series is included in the exchange. A class or series of shares is not entitled to vote as a class in the case of a merger or share exchange, if the board of directors determines on a reasonable basis that the class or series is to receive consideration under the plan of merger or share exchange that has a fair value that is not less than the fair value of the shares of the class or series on the date of adoption of the plan.

(f) Except as provided in section 754 or unless required by the articles of incorporation, action by the shareholders of the surviving corporation on a plan of merger 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, preferences, limitations, and relative rights, immediately after the merger.

(g) Except as provided in section 754, action by the shareholders of the acquiring corporation on a plan of share exchange is not required.

(h) Except as provided in subsection (3), a plan of merger or share exchange may provide for differing forms of consideration for holders of shares in the same class based on the election of the holders, the amount of shares held, or another reasonable basis.

(3) Unless the articles of incorporation provide otherwise, approval of a plan of merger or share exchange by the shareholders of a corporation that has a class of voting stock registered with the Securities and Exchange Commission under section 12 of the securities exchange act of 1934, 15 USC 78l, immediately before the execution of the plan of merger or share exchange is not required if all of the following are met:

(a) The plan of merger or share exchange meets both of the following:

(i) It expressly permits or requires the merger or share exchange to be effected under this subdivision.

(ii) It expressly provides that, if the merger or share exchange is to be effected under this subdivision, the merger or share exchange will be effected as soon as practicable after subdivision (f) is met.

(b) Another party to the merger or share exchange, or a parent of another party to the merger or share exchange, makes an offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that would be entitled to vote on the plan or merger or share exchange if this subdivision did not apply, except that the offer may exclude shares of the corporation that are owned at the commencement of the offer by the corporation, the offeror, or a parent of the offeror or by any wholly owned subsidiary of the corporation, offeror, or parent.

(c) The offer discloses that the plan of merger or share exchange provides that the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement set forth in subdivision (f) and that the shares of the corporation that are not tendered in response to the offer will be treated as set forth in subdivision (h).

(d) The offer remains open for at least 20 business days or for any other period that is required for tender offers under the rules or regulations of the Securities and Exchange Commission under section 14(e) of the securities exchange act of 1934, 15 USC 78n(e).

(e) The offeror purchases all shares that are properly tendered in response to the offer and not properly withdrawn.

(f) Shares that meet any of the following are collectively entitled to cast at least the minimum number of votes on the merger or share exchange that, except for this subdivision, would be required under this act and

under the articles of incorporation of the corporation for the approval of the merger or share exchange by the shareholders and by any other voting group that is entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote on the approval were present and voted:

- (i) Are purchased by the offeror in accordance with the offer.
- (ii) Are otherwise owned by the offeror or by any parent or wholly owned subsidiary of the offeror.
- (iii) Are subject to an agreement to be transferred, contributed, or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of the offeror in exchange for stock or other equity interests in that offeror, parent, or subsidiary.

(g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or effects a share exchange in which it acquires shares of, the corporation.

(h) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities, interests, obligations, rights, cash, or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that shares of the corporation that are owned by the corporation or that are described in subdivision (f)(ii) or (iii) need not be converted into or exchanged for the consideration described in this subparagraph.

(4) As used in subsection (3):

- (a) "Offer" means the offer described in subsection (3)(b).
- (b) "Offeror" means a person that makes the offer.
- (c) "Parent" of an entity means a person that owns, directly or indirectly, through 1 or more wholly owned subsidiaries, all of the outstanding shares of or interests in that entity.

(d) Shares tendered in response to an offer are considered to have been "purchased" in accordance with the offer at the earliest time as of which both of the following are met:

(i) The offeror has irrevocably accepted those shares for payment.

(ii) One of the following is met, as applicable:

(A) In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares.

(B) In the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an entity of or in which that person owns, directly or indirectly, through 1 or more wholly owned subsidiaries, all of the outstanding shares or interests.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013;—Am. 2018, Act 85, Eff. June 24, 2018.

#### **450.1704 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed section pertained to authorization of merger.

#### **450.1706 Merger with domestic or foreign corporation; execution of certificate by incorporators; compliance.**

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

(2) In order to effect the merger, the majority of incorporators shall execute a certificate of merger in accordance with section 707.

(3) The other domestic or foreign corporations participating in the merger shall comply with the provisions of this act dealing with mergers that are applicable to them.

**History:** Add. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

#### **450.1707 Certificate of merger or share exchange.**

Sec. 707. (1) After a plan of merger or share exchange is approved, a certificate of merger or share exchange shall be executed and filed on behalf of each corporation. The certificate shall set forth the following:

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

(b) In the case of a share exchange, the statement required under section 702(2)(a), and the manner and basis of exchanging the shares to be acquired as set forth in the plan of exchange.

(c) A statement that the plan of merger or share exchange has been adopted by the boards in accordance with section 701 or 702.

(d) A statement that the plan of merger or share exchange will be furnished by the surviving or acquiring corporation, on request and without cost, to any shareholder of any constituent corporation.

(e) If approval of the shareholders of 1 or more corporations party to the merger or share exchange was required, a statement that the plan was approved by the shareholders in accordance with section 703a. If a plan of merger or share exchange is adopted without the vote of shareholders under section 703a(3), a statement that the plan of merger or share exchange has been adopted under section 703a(3) and that the conditions specified in that section have been satisfied.

(f) In the case of a merger governed by section 706, a statement that the merging corporation has not commenced business, has not issued any shares, and has not elected a board and that the plan of merger was approved by the unanimous consent of the incorporators.

(g) A statement of any assumed names of merging corporations transferred to the surviving corporation as authorized 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 or share exchange under this section becomes effective.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2018, Act 85, Eff. June 24, 2018.

#### **450.1711 Merger of parent and subsidiary corporations; approval; mailing copy or summary of plan of merger to minority shareholders; waiver; compliance; effectuation of merger under other provisions.**

Sec. 711. (1) A domestic corporation owning not less than 90% of the outstanding shares of each class of another domestic corporation or corporations may merge the other corporation or corporations into itself, or may merge itself, or itself and any such subsidiary corporation or corporations, into any such subsidiary corporation, without approval of the shareholders of any of the corporations, except as provided in section 713. The board of the parent corporation shall approve a plan of merger setting forth those matters required to be set forth in a plan of merger under section 701. Approval by the board of any such subsidiary corporation is not required.

(2) If the parent corporation owns less than 100% of the outstanding shares of any constituent subsidiary corporation, the parent corporation shall mail promptly after the filing of the certificate of merger to each minority shareholder of record of each such subsidiary corporation, unless waived in writing, a copy or summary of the plan of merger and shall comply with the provisions of this chapter respecting dissenters' rights.

(3) The grant of power to merge under this section does not preclude the effectuation of a merger as elsewhere provided in this act.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1712 Merger of parent and subsidiary corporations; certificate of merger.**

Sec. 712. (1) After a plan of merger is adopted as provided in section 711, a certificate of merger shall be executed and filed on behalf of the parent corporation and shall set forth all of the following:

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

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

(c) A statement of any assumed names of merging corporations transferred to the surviving corporation as authorized by 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 pursuant to section 217(4).

(2) The merger shall become effective in accordance with section 131.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

#### **450.1713 Merger of parent and subsidiary corporations; approval of shareholders.**

Sec. 713. (1) Approval by shareholders of a subsidiary corporation shall be obtained pursuant to its articles of incorporation, if the articles require approval of a merger by the affirmative vote of holders of more than the percentage of the shares of any class or series of the corporation then owned by the parent corporation.

(2) Approval of the shareholders of the parent corporation shall be obtained in either of the following cases:

(a) If its articles require shareholder approval of the merger.

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

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1721-450.1723 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed sections pertained to surviving or new corporation, the effect of merger or consolidation on articles of incorporation.

#### **450.1724 Merger; applicable provisions; share exchange.**

Sec. 724. (1) When a merger takes effect, all of the following apply:

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

(b) The title to all real estate and other property and rights owned by each corporation party to the merger are 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 liabilities of each corporation party to the merger.

(e) A proceeding pending against any corporation party to the merger may be continued 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 of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

#### **450.1731-450.1734 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed sections pertained to merger or consolidation of foreign and domestic corporations, and application of MCL 450.1704 to surviving domestic corporation.

#### **450.1735 Foreign corporations and domestic corporations; merger or share exchange; compliance; liability; power of foreign corporation not limited.**

Sec. 735. (1) One or more foreign corporations may merge or enter into a share exchange with 1 or more domestic corporations if all of the following that apply are met:

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

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

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

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.

(c) Each domestic corporation complies with the applicable provisions of sections 701 through 713.

(d) Each foreign corporation authorized to transact business in this state complies with section 1021 or 1035, as applicable.

(2) If the surviving corporation of a merger or the acquiring corporation in a share exchange is 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 transact business in this state. 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, and in a proceeding for the enforcement of a right of a dissenting shareholder of a domestic corporation against the surviving corporation.

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

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2006, Act 72, Imd. Eff. Mar. 20, 2006.

**Compiler's note:** Former MCL 450.1735, which pertained to certificate of merger or consolidation of domestic and foreign corporations, was repealed by Act 303 of 1974, Imd. Eff. Oct. 21, 1974.

#### **450.1736 Merger of domestic corporation with business organization.**

Sec. 736. (1) 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 corporation.

(b) "Entity" means a business organization or domestic 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 who, under applicable law, is generally liable for the obligations of the business enterprise.

(2) One or more domestic corporations may merge with 1 or more business organizations if the requirements of this section are satisfied. If all of the business organizations are foreign corporations, the merger shall proceed under section 735, without regard to this section.

(3) The merger is permitted by 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.

(4) The board of each domestic corporation proposing to participate in a merger shall adopt a plan of merger, setting forth all of the following:

(a) 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.

(b) For the domestic corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote, each class and series 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) 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 or obligations of the surviving entity, or into cash or other consideration, which may include ownership interests or obligations of an entity not a party to the merger, or into a combination thereof.

(d) If the surviving entity is to be a domestic corporation, a statement of any amendment to the articles of incorporation of the surviving corporation to be effected by the merger or any restatement of the articles as provided in section 641(1), which shall be in the form of restated articles as provided in section 642.

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

(5) A plan of merger adopted by the board of each constituent domestic corporation shall be submitted for approval at a meeting of the shareholders as provided in section 703a(2).

(6) A domestic corporation that has not commenced business, has not issued any shares, and has not elected a board may merge with any domestic or foreign entity by unanimous consent of its incorporators. To effect the merger, the majority of the incorporators shall execute a certificate of merger in accordance with subsection (7).

(7) After a plan of merger is approved, a certificate of merger shall be executed and filed on behalf of each domestic corporation. The certificate shall set forth all of the following:

(a) A statement of the requirements set forth in subsection (4)(a), (b), and (d), and the manner and basis of converting the ownership interests of each constituent entity as set forth in the plan of merger.

(b) A statement that the plan of merger has been adopted by the board in accordance with subsection (4).

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

(d) If approval of the shareholders of the domestic corporation was required, a statement that the plan was approved by the shareholders in accordance with subsection (5).

(e) In the case of a merger governed by subsection (6), a statement that the corporation has not commenced business, has not issued any shares, 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 entities transferred to the surviving entity as authorized by 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 transact business 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 pursuant to section 217(4).

(8) The certificate of merger shall become effective in accordance with section 131.

(9) When a merger takes effect, all of the following apply:

(a) Every other entity party to the merger merges into the surviving entity and the separate existence of every entity 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 party to the merger are vested in the surviving entity without reversion or impairment.

(c) The surviving entity may use the name and the assumed names of any merging entity, if the filings required by section 217(3) or (4) or other applicable statute are made.

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

(e) A proceeding pending against any entity party to the merger may be continued 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 of each entity party to the merger that are to be converted into ownership interests or obligations of the surviving entity or into cash or other property are converted.

(10) If the surviving entity 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 party to the merger, and in a proceeding for the enforcement of a right of a dissenting shareholder of a domestic corporation against the surviving entity.

**History:** Add. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

#### **450.1741 Abandonment of merger or share exchange.**

Sec. 741. At any time before the effective date of a certificate of merger or share exchange, the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board. If a certificate of merger or share exchange has been filed by a corporation, it shall file a certificate of abandonment within 10 days after the abandonment, but not later than the proposed effective day.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

#### **450.1745 Conversion of domestic corporation into business organization; requirements; "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 by 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 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 different from the street address of the surviving business organization, and the principal place of business of the surviving business organization.

(ii) For the domestic corporation, the designation and number of outstanding shares of each class and series, specifying the classes and series entitled to vote, each class and series 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) The terms and conditions of the proposed conversion, including the manner and basis of converting the shares 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.

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

(v) 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 same manner required for a merger under section 703a(2), including the procedures pertaining to dissenters' rights if any shareholder has the right to dissent under section 762.

(d) If the domestic corporation has not commenced business, has not issued any shares, and has not elected a board, subdivisions (b) and (c) do not apply and the incorporators may approve of the conversion of the corporation into a business organization by unanimous consent. To effect the conversion, the 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 governing the internal affairs of the surviving business organization, in the manner prescribed 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) and (ii) and the manner and basis of converting the shares of the domestic corporation contained in the plan of conversion.

(ii) Unless subdivision (d) applies, a statement that the board has adopted the plan of conversion by the board 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, and has not elected a board and that the plan of 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 of the domestic corporation.

(iv) If approval of the shareholders of the domestic corporation was required, a statement that the plan was approved by the shareholders 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 shall not be considered to affect any obligations or liabilities of the domestic corporation incurred before the conversion or the personal liability of any person 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 arising before the conversion.

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

(d) The surviving business organization may use the name and the 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 proceeding pending against the domestic corporation may be continued 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 of the domestic corporation that were 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 a plan of conversion adopted in accordance with this section, 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 in this state if it transacts business 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, and in a proceeding for the enforcement of a right of a dissenting shareholder of the domestic corporation against the surviving business organization.

(5) As used in this section and section 746, "business organization" and "entity" mean those terms as defined in section 736(1).

**History:** Add. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

#### **450.1746 Conversion of business organization into domestic corporation; requirements.**

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 by the law that governs the internal affairs of the business organization and the business organization complies with that law in converting.

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

(c) After the conversion is approved in accordance with the law that governs the internal affairs of the business organization, the business organization files a certificate of conversion with the administrator. The certificate of conversion shall include 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 statement that the business organization has, in connection with the conversion, complied with the law that governs the internal affairs of the business organization.

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

(iv) Articles of incorporation for 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 conversion under this section takes effect, all of the following apply:

(a) The business organization converts into 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 shall not be considered to affect any obligations or liabilities of the business organization incurred before the conversion or the personal liability of any person 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 arising before the conversion.

(c) The title to all real estate and other property and rights owned by the business organization remain vested in the surviving domestic corporation without reversion or impairment. The rights, privileges, powers, and interests in property of the business organization, as well as the debts, liabilities, and duties of the business organization, shall not be considered, as a consequence of the conversion, to have been transferred to the surviving domestic corporation to which the business organization has converted for any purpose of 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 use and form of names are followed.

(e) A proceeding pending against the business organization may be continued 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 to be converted into shares or obligations of the surviving domestic corporation or into cash or other property are converted.

(h) Unless otherwise provided under the law that governs the internal affairs of the business organization, 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. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2018, Act 85, Eff. June 24, 2018.

#### **450.1751 Disposition of corporate property and assets; approval by shareholders.**

Sec. 751. (1) A corporation may take any of the following actions upon the terms and conditions and for a consideration, which may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other domestic or foreign corporation 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 shareholder approval of dissolution under section 804 if either of the following applies:

(i) The shares held by the shareholders who would be entitled to vote on a sale of assets under section 753 satisfy the requirements of section 762(2)(a) on the effective date of the dissolution.

(ii) The disposition of assets is pursuant to a plan of dissolution providing for the distribution of substantially all of the corporation's net assets to shareholders in accordance with their respective interests within 1 year after the date of the closing of the sale or other disposition, and the disposition is for cash or for shares that satisfy the requirements of section 762(2)(a) on the date of closing, or for any combination thereof.

(c) Transfer any or all of its property and assets to another corporation all of the shares of which are owned, or to another entity wholly owned, by the corporation, 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 of a transaction described in subsection (1) is not required.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

#### **450.1753 Disposition of corporate property and assets not in usual and regular course of business; recommendation and submission of transaction; notice; authorization; abandonment; disposition by second corporation; transaction as 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, if not in the usual and regular course of its business as conducted by the corporation, on terms and conditions and for a consideration, which may consist in whole or in part of cash or other property, including shares, bonds, or other securities of any other corporation, domestic or foreign, as authorized under this section. A corporation has not disposed of all or substantially all of its property and assets 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 retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis.

(2) The board must recommend a transaction described in subsection (1) to the shareholders unless section 529 applies or the board determines that because of conflict of interest, events occurring after the board adopts the plan, contractual obligations, or other special circumstances it should make no recommendation. If the board does not recommend the transaction described in subsection (1) to the shareholders, or recommends against the transaction, in either case because 1 or more of the exceptions described in this subsection apply,

the board must communicate to the shareholders the basis for its decision.

(3) The board may condition its submission of a transaction described in subsection (1) on any basis.

(4) A transaction described in subsection (1) shall be submitted for approval at a meeting of shareholders. Notice of the meeting shall be given to each shareholder 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. The notice shall include or be accompanied by both of the following:

(a) A statement summarizing the principal terms of the transaction or a copy of any documents containing the principal terms.

(b) A statement informing shareholders that are entitled to dissent under section 762 that they have the right to dissent and to be paid the fair value of their shares by complying with the procedures set forth in sections 762 to 772.

(5) At the meeting described in subsection (4), the shareholders may authorize the transaction described in subsection (1) and may fix, or may authorize the board to fix, any term or condition and the consideration to be received by the corporation. The authorization requires the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote on the transaction.

(6) Notwithstanding authorization by the shareholders, the board may abandon a transaction described in subsection (1), subject to the rights of third parties under any contracts relating to the sale, lease, exchange, or other disposition, without further action or approval by shareholders.

(7) A sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of a corporation or other entity a majority of the shares or beneficial interests of which are owned by a second corporation, including a change in shares of the corporation or beneficial interest in another entity held by the second corporation because of a merger or share exchange, 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.

(8) A transaction that is a distribution is governed by section 345 and not by this section or section 751.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

#### **450.1754 Rights of shareholders.**

Sec. 754. Shareholders of a corporation that proposes to issue, directly or through a subsidiary, its shares, obligations, or securities in the course of a merger, acquisition of some or all of the outstanding shares of another corporation or interests in 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 in section 703a(2) and to receive dissenters' rights as provided in section 762 if both of the following apply:

(a) The securities to be issued or delivered in the acquisition are or may be converted into shares of the acquiring corporation's common stock.

(b) The number of the acquiring corporation's common shares to be issued or delivered, plus those initially issuable upon conversion or exchange of any other securities to be issued or delivered, will exceed 100% of the number of its common shares outstanding immediately prior to the acquisition plus the number of its common shares, if any, initially issuable upon conversion or exchange of any other securities then outstanding.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

#### **450.1761 Definitions.**

Sec. 761. As used in sections 762 to 774:

(a) "Beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.

(b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving corporation by merger of that issuer.

(c) "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 762 and who exercises that right when and in the manner required by sections 764 through 772.

(d) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(e) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(f) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(g) "Shareholder" means the record or beneficial shareholder.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1988, Act 58, Eff. Apr. 1, 1988;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

**Compiler's note:** Section 2 of Act 58 of 1988 provides: "This amendatory act shall not apply to any domestic corporation before June 1, 1989, unless the corporation's board of directors adopts a resolution, pursuant to this section, electing to have this act apply to the corporation. The resolution shall specify the date after January 1, 1988 and before June 1, 1989 on which this act will apply to the corporation. The resolution shall be filed with the department of commerce, corporation and securities bureau, on or before the date that the act will apply to the corporation."

#### **450.1762 Right of shareholder to dissent and obtain payment for shares.**

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

(a) Consummation of a plan of merger to which the corporation is a party if any of the following are met:

(i) Shareholder approval is required for the merger under section 703a or 736(5) or the articles of incorporation and the shareholder is entitled to vote on the merger.

(ii) Shareholder approval would be required if section 703a(3) did not apply and the shareholder is a shareholder on the date of the offer under section 703a(3).

(iii) The corporation is a subsidiary that is merged with its parent under section 711.

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if either of the following are met:

(i) The shareholder is entitled to vote on the plan.

(ii) The shareholder would be entitled to vote on the plan if section 703a(3) did not apply and the shareholder is a shareholder on the date of the offer under section 703a(3).

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

(d) Consummation of a plan of conversion to which the corporation is a party as the corporation that is being converted, if the shareholder is entitled to vote on the plan. However, any rights provided under this section are not available if that corporation is converted into a foreign corporation and the shareholder receives shares that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation, as the shares held by the shareholder before the conversion.

(e) An amendment of the articles of incorporation that creates a right to dissent under section 621.

(f) A transaction that creates a right to dissent under section 754.

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

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

(a) Any corporate action set forth in subsection (1)(a) to (f) as to shares that are listed on a national securities exchange on the record date fixed to vote on the corporate action or on the date the resolution of the parent corporation's board is adopted in the case of a merger under section 711 that does not require a shareholder vote under section 713. For purposes of this subdivision, "national securities exchange" includes the NASDAQ Global Select Market and the NASDAQ Global Market, but does not include the NASDAQ Capital Market, formerly known as the NASDAQ SmallCap Market.

(b) A transaction described in subsection (1)(a) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the merger, or any combination of cash and those shares.

(c) A transaction described in subsection (1)(b) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the share exchange, or any combination of cash and those shares.

(d) A transaction described in subsection (1)(c) that is conducted pursuant to a plan of dissolution that provides for distribution of substantially all of the corporation's net assets to shareholders in accordance with their respective interests within 1 year after the date of closing of the transaction, if the transaction is for cash, shares that satisfy the requirements of subdivision (a) on the date of closing, or any combination of cash and those shares.

(e) A transaction described in subsection (1)(d) in which shareholders receive cash, shares that satisfy the requirements of subdivision (a) on the effective date of the conversion, or any combination of cash and those shares.

(3) A shareholder that is entitled to dissent and obtain payment for shares under subsection (1)(a) to (f) may not challenge the corporate action that creates that entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(4) A shareholder that exercises a right to dissent and seek payment for shares under subsection (1)(g) may not challenge the corporate action that creates that entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1988, Act 58, Eff. Apr. 1, 1988;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013;—Am. 2018, Act 85, Eff. June 24, 2018.

**Compiler's note:** Section 2 of Act 58 of 1988 provides: "This amendatory act shall not apply to any domestic corporation before June 1, 1989, unless the corporation's board of directors adopts a resolution, pursuant to this section, electing to have this act apply to the corporation. The resolution shall specify the date after January 1, 1988 and before June 1, 1989 on which this act will apply to the corporation. The resolution shall be filed with the department of commerce, corporation and securities bureau, on or before the date that the act will apply to the corporation."

#### **450.1763 Rights of partial dissenter; assertion of dissenters' rights by beneficial shareholder.**

Sec. 763. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his or her name only if he or she dissents with respect to all shares beneficially owned by any 1 person and notifies the corporation in writing of the name and address of each person on whose behalf he or she asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he or she dissents and his or her other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if all of the following apply:

(a) He or she submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights.

(b) He or she does so with respect to all shares of which he or she is the beneficial shareholder or over which he or she has power to direct the vote.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1764 Corporate action creating dissenters' rights; vote of shareholders; notice.**

Sec. 764. (1) If a proposed corporate action that creates dissenters' rights under section 762 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this act and be accompanied by a copy of sections 761 to 774.

(2) Except as provided in subsection (3), if a corporate action that creates dissenters' rights under section 762 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders that are entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 766. A shareholder that consents to the corporate action is not entitled to assert dissenters' rights.

(3) If a corporate action creates dissenters' rights under section 762(1)(a)(ii) or (b)(ii), an offer made under section 703a(3) must state that shareholders are or may be entitled to assert dissenters' rights under this act and be accompanied by a copy of sections 761 to 774 and the dissenters' notice described in section 766.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2018, Act 85, Eff. June 24, 2018.

#### **450.1765 Notice of intent to demand payment for shares.**

Sec. 765. (1) If a proposed corporate action that creates dissenters' rights under section 762 is submitted to a vote at a shareholders' meeting, a shareholder that wishes to assert dissenters' rights must deliver to the corporation before the vote is taken written notice of his, her, or its intent to demand payment for his, her, or its shares if the proposed action is effectuated and must not vote his, her, or its shares in favor of the proposed action.

(2) If a corporate action creates dissenters' rights under section 762(1)(a)(ii) or (b)(ii), a shareholder that wishes to assert dissenters' rights must deliver to the corporation before the shares are purchased pursuant to the offer written notice of his, her, or its intent to demand payment for his, her, or its shares if the proposed action is taken and must not tender, or cause or permit to be tendered, any shares in response to the offer.

(3) A shareholder that does not satisfy the requirements of subsection (1) or (2), as applicable, is not entitled to payment for his, her, or its shares under this act.



**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2018, Act 85, Eff. June 24, 2018.

#### **450.1766 Dissenters' notice; delivery to shareholders; contents.**

Sec. 766. (1) If proposed corporate action creating dissenters' rights under section 762 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 765.

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken, and must provide all of the following:

(a) State where the payment demand must be sent and where and when certificates for shares represented by certificates must be deposited.

(b) Inform holders of shares without certificates to what extent transfer of the shares will be restricted after the payment demand is received.

(c) Supply a form for the payment demand that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether he or she acquired beneficial ownership of the shares before the date.

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (1) notice is delivered.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1767 Duties of shareholder sent dissenter's notice; retention of rights; failure to demand payment or deposit share certificates.**

Sec. 767. (1) A shareholder sent a dissenter's notice described in section 766 must demand payment, certify whether he or she acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to section 766(2)(c), and deposit his or her certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits his or her share certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit his or her share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his or her shares under this act.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1985, Act 76, Imd. Eff. July 5, 1985;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1768 Restriction on transfer of shares without certificates; retention of rights.**

Sec. 768. (1) The corporation may restrict the transfer of shares without certificates from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 770.

(2) The person for whom dissenters' rights are asserted as to shares without certificates retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1985, Act 76, Imd. Eff. July 5, 1985;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

#### **450.1768a Repealed. 1989, Act 121, Eff. Oct. 1, 1989.**

**Compiler's note:** The repealed section pertained to referees.

#### **450.1769 Payment by corporation to dissenter; accompanying documents.**

Sec. 769. (1) Except as provided in section 771, within 7 days after the proposed corporate action is taken or a payment demand is received, whichever occurs later, the corporation shall pay each dissenter who complied with section 767 the amount the corporation estimates to be the fair value of his or her shares, plus accrued interest.

(2) The payment must be accompanied by all of the following:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and if available the latest interim financial statements.

(b) A statement of the corporation's estimate of the fair value of the shares.

(c) An explanation of how the interest was calculated.

(d) A statement of the dissenter's right to demand payment under section 772.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

**450.1770 Return of deposited certificates and release of transfer restrictions; effect of corporation taking proposed action.**

Sec. 770. (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on shares without certificates.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 766 and repeat the payment demand procedure.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

**450.1771 Election to withhold payment from dissenter; offer to pay estimated fair value of shares, plus accrued interest; statements; explanation.**

Sec. 771. (1) A corporation may elect to withhold payment required by section 769 from a dissenter unless he or she was the beneficial owner of the shares before the date set forth in the dissenters' notice pursuant to section 766(2)(c).

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall offer to pay this amount to each dissenter who shall agree to accept it in full satisfaction of his or her demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 772.

**History:** 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

**450.1772 Demand for payment of dissenter's estimate or rejection of corporation's offer and demand for payment of fair value and interest due; waiver.**

Sec. 772. (1) A dissenter may notify the corporation in writing of his or her own estimate of the fair value of his or her shares and amount of interest due, and demand payment of his or her estimate, less any payment under section 769, or reject the corporation's offer under section 771 and demand payment of the fair value of his or her shares and interest due, if any 1 of the following applies:

(a) The dissenter believes that the amount paid under section 769 or offered under section 771 is less than the fair value of his or her shares or that the interest due is incorrectly calculated.

(b) The corporation fails to make payment under section 769 within 60 days after the date set for demanding payment.

(c) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on shares without certificates within 60 days after the date set for demanding payment.

(2) A dissenter waives his or her right to demand payment under this section unless he or she notifies the corporation of his or her demand in writing under subsection (1) within 30 days after the corporation made or offered payment for his or her shares.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

**450.1773 Petitioning court to determine fair value of shares and accrued interest; failure of corporation to commence proceeding; venue; parties; service; jurisdiction; appraisers; discovery rights; judgment.**

Sec. 773. (1) If a demand for payment under section 772 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the circuit court of the county in which the corporation's principal place of business or registered office is located. If the corporation is a foreign corporation without a registered office or principal place of business in this state, it shall commence the proceeding in the county in this state where the principal place of business or registered office of the domestic corporation whose shares are to be valued was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and

exclusive. The court may appoint 1 or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the corporation or for the fair value, plus accrued interest, of his or her after-acquired shares for which the corporation elected to withhold payment under section 771.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

**450.1773a Referee; appointment; powers; compensation; duties; objections to report; application to court for action; adoption, modification, or recommitment of report; further evidence; judgment; review.**

Sec. 773a. (1) In a proceeding brought pursuant to section 773, the court may, pursuant to the agreement of the parties, appoint a referee selected by the parties and subject to the approval of the court. The referee may conduct proceedings within the state, or outside the state by stipulation of the parties with the referee's consent, and pursuant to the Michigan court rules. The referee shall have powers that include, but are not limited to, the following:

(a) To hear all pretrial motions and submit proposed orders to the court. In ruling on the pretrial motion and proposed orders, the court shall consider only those documents, pleadings, and arguments that were presented to the referee.

(b) To require the production of evidence, including the production of all books, papers, documents, and writings applicable to the proceeding, and to permit entry upon designated land or other property in the possession or control of the corporation.

(c) To rule upon the admissibility of evidence pursuant to the Michigan rules of evidence.

(d) To place witnesses under oath and to examine witnesses.

(e) To provide for the taking of testimony by deposition.

(f) To regulate the course of the proceeding.

(g) To issue subpoenas, when a written request is made by any of the parties, requiring the attendance and testimony of any witness and the production of evidence including books, records, correspondence, and documents in the possession of the witness or under his or her control, at a hearing before the referee or at a deposition convened pursuant to subdivision (e). In case of a refusal to comply with a subpoena, the party on whose behalf the subpoena was issued may file a petition in the court for an order requiring compliance.

(2) The amount and manner of payment of the referee's compensation shall be determined by agreement between the referee and the parties, subject to the court's allocation of compensation between the parties at the end of the proceeding pursuant to equitable principles, notwithstanding section 774.

(3) The referee shall do all of the following:

(a) Make a record and reporter's transcript of the proceeding.

(b) Prepare a report, including proposed findings of fact and conclusions of law, and a recommended judgment.

(c) File the report with the court, together with all original exhibits and the reporter's transcript of the proceeding.

(4) Unless the court provides for a longer period, not more than 45 days after being served with notice of the filing of the report described in subsection (3), any party may serve written objections to the report upon the other party. Application to the court for action upon the report and objections to the report shall be made by motion upon notice. The court, after hearing, may adopt the report, may receive further evidence, may modify the report, or may recommit the report to the referee with instructions. Upon adoption of the report, judgment shall be entered in the same manner as if the action had been tried by the court and shall be subject to review in the same manner as any other judgment of the court.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.

**450.1774 Costs of appraisal proceeding.**

Sec. 774. (1) The court in an appraisal proceeding commenced under section 773 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 772.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in

amounts the court finds equitable in the following manner:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 764 through 772.

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this act.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to those counsel reasonable fees paid out of the amounts awarded the dissenters who were benefited.

**History:** Add. 1989, Act 121, Eff. Oct. 1, 1989.