

SENATE BILL No. 1494

November 12, 2002, Introduced by Senator BULLARD and referred to the Committee on Financial Services.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

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

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

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

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

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

16 (A) THE NAME OF THE LIMITED LIABILITY COMPANY, THE NAME OF
17 THE CORPORATION TO WHICH THE LIMITED LIABILITY COMPANY IS CON-
18 VERTING, AND THE STREET ADDRESS OF THE CORPORATION'S PRINCIPAL
19 PLACE OF BUSINESS.

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

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

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

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

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

17 (B) A CERTIFICATE OF CONVERSION THAT CONTAINS ALL OF THE
18 FOLLOWING:

19 (i) THE NAME OF THE LIMITED LIABILITY COMPANY AND THE DATE
20 IT WAS FORMED.

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

23 (iii) A STATEMENT SPECIFYING EACH ASSUMED NAME OF THE
24 LIMITED LIABILITY COMPANY TRANSFERRED TO THE CORPORATION UNDER
25 SECTION 217(5). THE CERTIFICATE MAY INCLUDE A STATEMENT OF THE
26 NAME OR ASSUMED NAMES OF THE LIMITED LIABILITY COMPANY THAT ARE

1 TO BE TREATED AS NEWLY FILED ASSUMED NAMES OF THE CONVERTED
2 ENTITY UNDER SECTION 217(6).

3 (iv) THE EFFECTIVE DATE OF THE CONVERSION IF LATER THAN THE
4 DATE THE CERTIFICATE OF CONVERSION IS FILED.

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

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

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

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

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

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

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

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

8 (F) CONSUMMATION OF A PLAN OF CONVERSION UNDER SECTION 708
9 OF THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL
10 450.4708, IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE CONVER-
11 SION UNDER THAT SECTION.

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

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

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

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

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

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

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

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

19 (E) A TRANSACTION DESCRIBED IN SUBSECTION (1)(F) IN WHICH
20 THE SHAREHOLDERS RECEIVE CASH.

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

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

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

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

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

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

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

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

14 (e) Certificate of merger, ~~or~~ share exchange, ~~as provided~~
15 ~~in~~ OR CONVERSION, UNDER chapter 7, \$50.00.

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

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

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

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

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

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

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

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

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

3 (o) Certificate of revocation of dissolution proceedings,
4 \$10.00.

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

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

7 (r) Certificate of registration of corporate name of a for-
8 eign corporation, \$50.00.

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

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

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

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

23 (4) The fees received ~~pursuant to~~ UNDER section 915 shall
24 be deposited in the state treasury to the credit of the adminis-
25 trator to be used by the department in carrying out those duties
26 required by law. After the payment of the amounts appropriated
27 by the legislature for the necessary expenses incurred in the

1 administration of this act, the money remaining shall be credited
2 to the general fund of the state.

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

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

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

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

1 Enacting section 1. This amendatory act does not take
 2 effect unless all of the following bills of the 91st Legislature
 3 are enacted into law:

4 (a) Senate Bill No. 1493.

5

6 (b) Senate Bill No. 1495.

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8 (c) Senate Bill No. 1496.

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