

NONPROFIT CORPORATION ACT (EXCERPT)
Act 162 of 1982

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

Sec. 745.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) Section 131 applies in determining when a certificate of conversion under this section becomes effective.
- (3) When a conversion under this section takes effect, all of the following apply:
- (a) The domestic corporation converts into the surviving business organization, and the articles of incorporation of the domestic corporation are canceled. Except as otherwise provided in this section, the surviving business organization is organized under and subject to the organizational laws of the jurisdiction of the surviving business organization as stated in the certificate of conversion.
- (b) The surviving business organization has all of the liabilities of the domestic corporation. The conversion of the domestic corporation into a business organization under this section does not affect any obligations or liabilities of the domestic corporation before conversion or the personal liability of any person that is incurred before the conversion, and the conversion shall not be considered to affect the choice of law applicable to the domestic corporation with respect to matters that arise before the conversion.
- (c) The title to all real estate and other property and rights owned by the domestic corporation is vested in the surviving business organization without reversion or impairment. The rights, privileges, powers, and interests in property of the domestic corporation, and the debts, liabilities, and duties of the domestic corporation, shall not be considered, as a consequence of the conversion, as transferred to the surviving business corporation to which the domestic corporation has converted for any purposes of the laws of this state.
- (d) The surviving business organization may use the name and assumed names of the domestic corporation if the filings required under section 217(5) or any other applicable statute are made and the laws regarding use and form of names are followed.
- (e) A person may continue any proceeding that is pending against the domestic corporation as if the conversion had not occurred, or the surviving business organization may be substituted in the proceeding for the domestic corporation.
- (f) The surviving business organization is considered to be the same entity that existed before the conversion and is considered to be organized on the date that the domestic corporation was originally incorporated.
- (g) The shares or memberships of the domestic corporation that are to be converted into ownership interests or obligations of the surviving business organization or into cash or other property are converted.
- (h) Unless otherwise provided in the plan of conversion, the domestic corporation is not required to wind up its affairs or pay its liabilities and distribute its assets on account of the conversion, and the conversion does not constitute a dissolution of the domestic corporation.
- (4) If the surviving business organization of a conversion under this section is a foreign business organization, it is subject to the laws of this state pertaining to the transaction of business and the conduct of affairs in this state if it transacts business or conducts affairs in this state. The surviving business organization is liable, and is subject to service of process in a proceeding in this state, for the enforcement of an obligation of the domestic corporation.
- (5) Notwithstanding this section and other provisions of this act, a corporation shall make distributions to shareholders or members of any corporation or to any other person in connection with a conversion under this section only in conformity with section 301 and with limitations on distributions in its articles of incorporation.
- (6) As used in this section and section 746, "business organization" and "entity" mean those terms as defined in section 736a(9).

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