

CORPORATE LAWS COMMITTEE
REPORT PREPARED FOR THE SEPTEMBER 20, 2007 COUNCIL MEETING

1. Next Scheduled Meeting of the Committee

The Committee does not hold regular meetings but rather meets when in the process of considering amendments to the Business Corporation Act. The Committee has held multiple meetings in 2007 to develop the currently proposed amendments to the Business Corporation Act and Professional Service Corporation Act.

2. Council Approval

The Committee requests that the Council approve proposed amendments to the BCA, PSCA and (in one instance) Limited Liability Company Act. Submitted with this Report are a summary of the amendments and a copy of the full text of the amendments.

3. Membership

The Committee remains open to participation by any interested parties.

4. Accomplishments Toward Committee Objectives

The Committee continues to monitor developments in corporate laws throughout the country and to consider changes to the Business Corporation Act. This is an ongoing and continuous process.

5. Meetings and Programs

No programs are currently scheduled, though the Committee is open to participation in presentations discussing changes to the Act.

6. Publications

The last issue of the Michigan Business Law Journal sponsored by the Committee was the Summer 2005 issue.

7. Legislative/Judicial/Administrative Developments

The most recent BCA amendments developed by the Committee were passed and became law in March, 2006.

The Committee is proposing additional amendments to the BCA as well as the Professional Service Corporation Act (and one conforming amendment to the Limited Liability Company Act). As indicated in the attachment, these amendments include several substantive amendments, some technical amendments and amendments aimed at overcoming the Court of Appeals ruling in Miller v. Allstate, 2007 Mich. App. LEXIS 1441 (May 31, 2007). The Miller case held that any corporation providing "professional services" (services to the public requiring a license) could incorporate only under the PSCA. The amendments would address this issue by creating a regime similar to that in the LLC Act. Corporations providing "services in a learned profession" (dentists, osteopathic physicians, physicians, surgeons, doctors of divinity or other clergy, or attorneys) would be required to incorporate under the PSCA but corporations providing other "professional services" could incorporate under the PSCA or the BCA.

8. Analysis of Applicable Strategic Plan Issues.

The activity of the Committee is directly related to the Strategic Plan mission of promoting improved legislation and regulation for business and the goal of reviewing Michigan laws affecting business formation, capital raising, corporate governance and related legal matters. The Committee attempts to keep Michigan corporate law current with national trends and competitive with the business law environments of other jurisdictions.

9. Miscellaneous

The Committee will continue to accept ideas for technical and other amendments to the Business Corporation Act, which is amended periodically. Suggestions in this regard may be addressed to either of the committee co-chairs, Cyril Moscow or Justin G. Klimko. The Committee also will consult with the Department of Labor and Economic Growth regarding efforts to further streamline corporate filings and information dissemination.

Any questions regarding this report may be directed to me.

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**SUMMARY OF PROPOSED AMENDMENTS TO THE
MICHIGAN BUSINESS CORPORATION ACT (BCA) AND THE
MICHIGAN PROFESSIONAL SERVICE CORPORATION ACT (PSCA)**

1. **AMENDMENTS TO ADDRESS MILLER V. ALLSTATE, 2007 MICH. APP. LEXIS 1441 (MAY 31, 2007):**

- These amendments would follow the model of the Limited Liability Company Act (LLCA) and distinguish between “professional services” in general and “services in a learned profession” in particular. Only corporations providing the latter would be required to form under the PSCA. Corporations providing professional services not including services in a learned profession could elect to form under the BCA or the PSCA.
- BCA Section 103 would add a definition of “professional service” to match the definition in the Professional Service Corporation Act following the amendment to PSCA Section 2 noted below. BCA Section 103, PSCA Section 2 and LLCA Section 902 would then use the same terms in a consistent fashion.
- BCA Section 109 would add a definition of “services in a learned profession” to encompass services rendered by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy or an attorney-at-law. The definition follows the similar definition in LLCA Section 102(2)(s).
- BCA Section 123. The amendment would delete the reference in subsection (1) to professional service corporations in the list of the types of corporations that cannot form under the BCA. This purpose is to eliminate the suggestion that the BCA might not apply to professional service corporations. A separate subsection (3) would be added that deals solely with corporations formed under the Professional Service Corporation Act. The new subsection (3) would copy the approach contained in Section 13 of the PSCA to conflicts between the BCA and PSCA, by providing that the PSCA takes precedence for corporations formed under that act. A new subsection (4) would provide a savings clause for professional service corporations previously organized under the BCA, so long as they do not provide services in a learned profession. Such corporations would not be deemed improperly organized simply because they were organized under the BCA rather than the PSCA.
- BCA Section 251 would be amended to provide that a corporation could not be formed under the BCA to provide a service in a learned profession. The provision is similar to LLCA Section 201. The amendments to PSCA Section 4 described below would work together with this section to permit incorporation under the BCA for providers of licensed services that are not services in a learned profession.
- PSCA Section 2(c) would be amended to make the definition of “professional service” consistent with the definition that is being added concurrently to Section 108 of the BCA and to delete the list of professions currently contained in the second sentence of this section. The list is not necessary to the working of the statute and has tended to cause confusion about the reason for the list and the status of activities not included in the list.

The list is non-exclusive. It was not intended to limit the professions that may organize under the PSCA or to indicate those that must organize under that act. A parallel amendment would also be made to LLCA Section 902(b).

- PSCA Section 3 would add a new subsection (2) to make clear that the PSCA doesn't apply to corporations that were previously organized under the BCA and that provide professional services, if such corporations would not be required to organize under the PSCA following adoption of the amendment. The purpose of this savings clause is to prevent claims that such corporations are not duly incorporated or duly organized because they were not initially incorporated or organized under the PSCA. See the comment to BCA Section 123.
- PSCA Section 4(1) would be amended to add a specific statement to permit corporations to form under the BCA if the corporation does not provide services in a learned profession. The amendment is intended to provide the specific permission required by BCA Section 251(1) to allow corporations to choose to form under the BCA.
- PSCA Section 13 would be amended to substitute a general reference to the law governing business corporations for the existing specific reference to the BCA. The amendment is intended to capture future amendments to the BCA. Specifically, it addresses Attorney General opinion number 6592 (July 10, 1989) and is intended to conform to the interpretation set forth in *Public Schools of the City of Battle Creek v. Kennedy*, 245 Mich 585 (1929). The court in that case stated that a cross-reference in one statute to another statute by name incorporates only the form of the referenced statute existing on the date of adoption of the statute containing the cross-reference, while a reference not to any particular act by its title or otherwise but rather to the general law regulating the subject at hand includes amendments made to that law from time to time. This would further the attempt previously made by P.A. 58 of 2001 to keep the PSCA automatically up to date with BCA amendments, rather than requiring a separate amendment of the PSCA every time that the BCA is amended.

2. AMENDMENTS TO PERMIT ENTITY CONVERSIONS:

- New sections would be added to the BCA to permit direct conversion of domestic corporations into other forms of business entities, such as limited liability companies, partnerships and other forms, whether domestic or foreign, and also to permit such other forms of entities to convert directly into domestic corporations. This would enable entities to avoid having to engage in mergers for this purpose. Shareholders of corporations making such conversions would have dissenters' rights, subject to existing exemptions. The conversion provisions would represent a middle ground between the very broad conversion provisions of statutes such as the Delaware General Corporation Law and the more detailed and narrow provisions found in the Model Business Corporation Act.
- BCA Section 217 would be amended to permit a converted entity to use the assumed names of the entity existing prior to conversion.
- BCA Section 745 would permit a Michigan corporation to convert into another business organization (either foreign or domestic) provided that the law governing the surviving

business organization permits conversion. For purposes of this Section and Section 746, "business organization" would have the same meaning as in existing Section 736.

- BCA Section 746 would permit a business organization (either foreign or domestic) to convert into a Michigan corporation, provided that the law governing such business organization permits conversion.
- BCA Section 762(d) would be added to grant dissenters' rights to shareholders of a corporation that undergoes a conversion, except where the conversion is into a foreign corporation and the shareholders' relative rights and voting percentages are not changed (as in a merger meant solely to change a corporation's domicile of incorporation). Section 762(e) would create an exception to dissenter's rights for conversions in which shareholders receive cash or marketable securities (or a combination thereof), similar to existing exceptions for other transactions.
- BCA Section 1060(e) would be amended to provide a \$50.00 fee for filing a certificate of conversion.

3. INTERESTED DIRECTOR TRANSACTIONS:

- BCA Section 545a would be amended to reverse the outcome of Camden v. Kaufman, 240 Mich. App. 389 (2000), in which the Court of Appeals, in dictum, found that approval of a transaction in accordance with Section 545a barred a claim for breach of fiduciary duty. Section 545a was intended to provide a means to remove the common law taint that would make a transaction in which a director or officer had an interest void or voidable. It was not intended to validate transactions or to afford a conflicted transaction greater protection than a non-conflicted transaction. The amendment would make clear that a transaction with an interested director or officer could still be subject to attack for other defects, such as insufficient corporate approval, breach of fiduciary or other duties, or illegality, even though the taint of the conflict is removed by satisfying section 545a(1). The amendment would state that claims arising from a transaction for which Section 545(a)(1) had been satisfied would be evaluated under legal principles applicable to transactions in which no conflict existed.

4. INDEMNIFICATION:

- BCA Section 564a(1) would be amended to provide that no review of an indemnitee's standard of conduct would be required where indemnification is mandatory pursuant to Section 563. This clarification is intended to harmonize the statute. Section 563 provides that a defendant who is successful on the merits or otherwise in defense of an action or claim must be indemnified, but Section 564a(1) may be read to imply that an inquiry into the standard of conduct would first be necessary for the corporation to voluntarily pay such a claim. In cases where indemnification is mandatory under Section 563 because the defendant has been successful, an evaluation of the indemnitee's standard of conduct should not be required.

- BCA Section 564b would be amended to permit a general authorization of future advances in connection with a single proceeding, thereby eliminating any question as to whether each advance must be separately authorized.

5. REPEAL OF CHAPTER 7B:

- Chapter 7B of the BCA, the Michigan Control Share Act, would be repealed. The Committee had suggested repeal in connection with the 2006 amendments but the change was dropped in the legislative process.
- BCA Section 762(1)(h), which provides an appraisal right tied to Chapter 7B, would be eliminated.

6. MISCELLANEOUS AMENDMENTS:

- BCA Section 201 would be amended to eliminate the requirement that incorporators sign articles of incorporation “in ink.” The amendment would bring this section up to date with prior amendments permitting electronic transmission of filings.
- BCA Section 211 would make clear that abbreviations in corporate names (“inc.,” “co.,” “corp.,” etc.) may be used with or without periods (e.g. “inc.” or “inc”).
- BCA Section 241(b) would be amended to permit limited liability companies to act as registered agents.
- BCA Section 1002 would add a new subsection (2) to provide that the BCA does not authorize Michigan to regulate the organization or internal affairs of a foreign corporation authorized to transact business in the state. This would codify the internal affairs doctrine. The Committee does not believe that it constitutes a change in Michigan law.

MICHIGAN BUSINESS CORPORATION ACT
Act 284 of 1972

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
by amending sections 108 (MCL 450.1108), 109 (MCL 450.1109), 123 (MCL 450.1123), 201 (MCL 450.1201), 211 (MCL 450.1211), 217 (MCL 450.1217), 241 (MCL 450.1241), 151 (MCL 450.1251), 545a (MCL 450.1545a), 564a (MCL 450.1564a), 564b (MCL 450.1564b), 762 (MCL 450.1762), 1002 (MCL 450.2002) and 1060 (MCL 450.2060);
by repealing Chapter 7B (Sections 790 through 799, inclusive (MCL 450.1790 through 450.1799, inclusive));
and by adding Sections 745 (MCL 450.1745) and 746 (MCL 450.1746).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

450.1108 Definitions; N to P.

Sec. 108. (1) "Nonprofit corporation" or "domestic nonprofit corporation" means a nonprofit corporation subject to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws.

(2) "Person" means an individual, a partnership, a domestic or foreign corporation, or any other association, corporation, trust, or legal entity.

(3) "PROFESSIONAL SERVICE" MEANS A TYPE OF PERSONAL SERVICE TO THE PUBLIC THAT REQUIRES AS A CONDITION PRECEDENT TO THE RENDERING OF THE SERVICE THE OBTAINING OF A LICENSE OR OTHER LEGAL AUTHORIZATION.

COMMENT: The amendment, together with other proposed amendments, will make the definition of "professional service" uniform across the Business Corporation Act, Limited Liability Company Act and Professional Service Corporation Act. It is part of the amendments that are meant to clarify which professions are required to form professional corporations under the Professional Service Corporation Act.

450.1109 Definitions; S.

SEC. 109. (1) "SERVICES IN A LEARNED PROFESSION" MEANS SERVICES RENDERED BY A DENTIST, AN OSTEOPATHIC PHYSICIAN, A PHYSICIAN, A SURGEON, A DOCTOR OF DIVINITY OR OTHER CLERGY, OR AN ATTORNEY-AT-LAW.

(2) "Shareholder" means a person holding units of proprietary interest in a corporation and is considered to be synonymous with "member" in a nonstock corporation.

(23) "Shares" means the units into which proprietary interests in a corporation are divided and is considered to be synonymous with "membership" in a nonstock corporation.

COMMENT: The term "services in a learned profession" will be used in amendments to section 251. The definition follows the definition for "services in a learned profession" in Limited Liability Company Act Section 102(2)(s).

450.1123 Applicability of act generally.

Sec. 123. (1) ~~Unless otherwise provided~~ EXCEPT TO THE EXTENT in, or inconsistent CONFLICT with, the act under which a corporation is or has been formed, this act applies to deposit and security companies, summer resort associations, brine pipeline companies, telegraph companies, telephone companies, safety and collateral deposit companies, canal, river, and harbor improvement companies, cemetery, burial, and cremation associations, railroad, bridge, and tunnel companies, AND agricultural and horticultural fair societies, ~~and professional service corporations formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.~~ The entities specified in this subsection shall not be incorporated under this act.

(2) This act does not apply to insurance, surety, savings and loan associations, fraternal benefit societies, and banking corporations.

(3) THIS ACT IS APPLICABLE TO CORPORATIONS ORGANIZED UNDER THE LAW OF THIS STATE GOVERNING THE FORMATION AND INTERNAL AFFAIRS OF PROFESSIONAL SERVICE CORPORATIONS, EXCEPT TO THE EXTENT THAT A PROVISION OF THIS ACT IS IN CONFLICT WITH THE PROVISIONS OF THAT LAW. IF THERE IS A CONFLICT BETWEEN A PROVISION OF THIS ACT AND THAT LAW, THE PROVISION THAT LAW APPLIES WITH RESPECT TO A CORPORATION ORGANIZED UNDER THAT ACT. A CORPORATION THAT PROVIDES ONE OR MORE SERVICES IN A LEARNED PROFESSION MAY NOT INCORPORATE UNDER THIS ACT.

(4) A CORPORATION THAT ENGAGES IN PROVIDING PROFESSIONAL SERVICES THAT WAS ORGANIZED UNDER THIS ACT PRIOR TO THE EFFECTIVE DATE OF THE ACT THAT ADDED THIS SUBSECTION, AND THAT PROVIDES NO SERVICES IN A LEARNED PROFESSION, SHALL NOT BE DEEMED TO HAVE BEEN IMPROPERLY ORGANIZED BECAUSE IT WAS ORGANIZED UNDER THIS ACT.

COMMENT: The amendment removes professional service corporations from the list included in subsection (1) in favor of a separate new subsection (3) that deals solely with corporations formed under law applicable to professional service corporations, which in Michigan includes the Professional Service Corporation Act. This amendment is intended to make clear that the law applicable to professional service corporations is the Business Corporations Act including not only such law as is in force at the date of the adopting of this section, but also the law in force when action is taken or proceedings are resorted to regardless of whether such action or proceedings are prior to or after the date of adoption. Specifically this amendment addresses Attorney General opinion number 6592 (July 10, 1989) and is intended to conform to the interpretation of law described in *Public Schools of the City of Battle Creek v. Kennedy*, 245 Mich 585 (1929) regarding adopting statutes that make no reference to any particular act by its title or otherwise but refer to the general law regulating the subject in hand. The new subsection (3) mirrors the approach contained in Professional Service Corporation Act Section 13 (MCL §450.223) to deal with conflicts between the Business Corporation Act and the Professional

Service Corporation Act. Subsection (4) provides a savings clause for professional service corporations that were previously organized under the Business Corporation Act, so long as they do not provide services in a learned profession. Such corporations would not be deemed improperly organized simply because they were organized under the Business Corporation Act rather than the Professional Service Corporation Act. They would still have to satisfy the Business Corporation Act's organizational requirements in order to be properly organized. Subsection (4) is intended to avoid uncertainty regarding the organizational status of such corporations in light of the holding in *Miller v. Allstate*, 2007 Mich. App. LEXIS 1441 (May 31, 2007).

450.1201 Incorporators.

Sec. 201. One or more persons may be the incorporators of a corporation by signing in-ink and filing articles of incorporation for the corporation.

COMMENT: The amendment updates this section as contemplated by prior changes to the act regarding electronic transmissions.

450.1211 Corporate name; required words and abbreviations.

Sec. 211. The corporate name of a domestic corporation shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain 1 of the following abbreviations, corp., co., inc., or ltd., WITH OR WITHOUT PERIODS.

COMMENT: The amendment is intended as a clarification and does not represent a change in the approach generally used in Michigan.

450.1217 Transacting business under assumed name; certificate.

Sec. 217. (1) A domestic or foreign corporation may transact business under any assumed name or names other than its corporate name, if not precluded from use by section 212, by filing a certificate stating the true name of the corporation and the assumed name under which the business is to be transacted. The certificate is effective, unless sooner terminated by filing a certificate of termination or by the dissolution or withdrawal of the corporation, for a period expiring on December 31 of the fifth full calendar year following the year in which it was filed. The certificate of assumed name may be extended for additional consecutive periods of 5 full calendar years each by filing similar certificates not earlier than 90 days before the expiration of the initial or a subsequent 5-year period. The administrator shall notify the corporation of the impending expiration of the certificate of assumed name not later than 90 days before the expiration of the initial or a subsequent 5-year period. A certificate of assumed name filed under this section does not create substantive rights to the use of a particular assumed name.

(2) The same name may be assumed by 2 or more corporations, or by 1 or more corporations and 1 or more limited partnerships or other enterprises participating together in a partnership or joint venture. Each participant corporation shall file a certificate under this section.

(3) A corporation participating in a merger, or any other entity participating in a merger under section 736, may transfer to the surviving entity the use of an assumed name for which a

certificate of assumed name is on file with the administrator prior to the merger, if the transfer is noted in the certificate of merger as provided in section 707(1)(g), 712(1)(c), or 736(7)(f), or other applicable statute. The use of an assumed name transferred under this subsection may continue for the remaining effective period of the certificate of assumed name on file prior to the merger, and the surviving entity may terminate or extend the certificate of assumed name in accordance with subsection (1).

(4) A corporation surviving a merger may use as an assumed name the corporate name of a merging corporation, or the name of any other entity participating in the merger under section 736, by filing a certificate of assumed name under subsection (1) or by providing for the use of the name as an assumed name in the certificate of merger. The surviving corporation also may file a certificate of assumed name under subsection (1) or provide in the certificate of merger for the use as an assumed name of an assumed name of a merging entity not transferred under subsection (3). A provision in the certificate of merger under this subsection shall be treated as a new certificate of assumed name.

(5) A BUSINESS ORGANIZATION INTO WHICH A CORPORATION HAS CONVERTED UNDER SECTION 745, MAY USE AN ASSUMED NAME OF SUCH CORPORATION FOR WHICH A CERTIFICATE OF ASSUMED NAME IS ON FILE WITH THE ADMINISTRATOR PRIOR TO THE CONVERSION, BY PROVIDING FOR THE USE OF THE NAME AS AN ASSUMED NAME IN THE CERTIFICATE OF CONVERSION. THE USE OF AN ASSUMED NAME PURSUANT TO THIS SUBSECTION MAY CONTINUE FOR THE REMAINING EFFECTIVE PERIOD OF THE CERTIFICATE OF ASSUMED NAME ON FILE PRIOR TO THE CONVERSION, AND THE SURVIVING BUSINESS ENTITY MAY TERMINATE OR EXTEND THE CERTIFICATE OF ASSUMED NAME IN ACCORDANCE WITH SUBSECTION (1).

(6) A CORPORATION MAY USE AS AN ASSUMED NAME THE NAME OF ANY BUSINESS ORGANIZATION CONVERTING INTO SUCH CORPORATION UNDER SECTION 746, BY FILING A CERTIFICATE OF ASSUMED NAME UNDER SUBSECTION (1) OR BY PROVIDING FOR THE USE OF THE NAME AS AN ASSUMED NAME IN THE CERTIFICATE OF CONVERSION. THE CORPORATION ALSO MAY FILE A CERTIFICATE OF ASSUMED NAME UNDER SUBSECTION (1) OR PROVIDE IN THE CERTIFICATE OF CONVERSION FOR THE USE AS AN ASSUMED NAME OF AN ASSUMED NAME OF A BUSINESS ORGANIZATION. A PROVISION IN THE CERTIFICATE OF CONVERSION UNDER THIS SUBSECTION SHALL BE TREATED AS A NEW CERTIFICATE OF ASSUMED NAME.

COMMENT: The amendment implements components of the proposed addition of section 745 permitting the conversion of a domestic corporation into a business organization and section 746 permitting the conversion of a business organization into a domestic corporation, specifically section 745(4)(c) and section 746(4)(c), respectively.

450.1241 Registered office and resident agent required.

Sec. 241. Each domestic corporation and each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state both of the following:

(a) A registered office which may be the same as its place of business.

(b) A resident agent, which agent may be either an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation OR LIMITED LIABILITY COMPANY, or a foreign corporation OR LIMITED LIABILITY COMPANY authorized to transact business in this state and having a business office identical with the registered office.

COMMENT: The amendment permits limited liability companies to act as registered agents.

450.1251 Formation of corporation for lawful purpose; exception; aiding national emergency.

Sec. 251. (1) A corporation may be formed under this act for any lawful purpose, except to engage in a business for which a corporation may be formed under any other statute of this state unless that statute permits formation under this act. IT IS NOT A LAWFUL PURPOSE OF A CORPORATION TO ENGAGE IN ONE OR MORE SERVICES IN A LEARNED PROFESSION.

(2) In time of war or other national emergency, a corporation may take any lawful action to provide aid, notwithstanding the purposes set forth in its articles of incorporation, at the request or direction of a competent governmental authority.

COMMENT: The amendment clarifies that a corporation cannot be formed under the Business Corporation Act to provide a service in a learned profession. The provision is similar to Limited Liability Company Act Section 201. A proposed amendment to Professional Service Corporation Act Section 4 would work with this section to permit incorporation under the Business Corporation Act for providers of licensed services that are not services in a learned profession.

450.1545a Interest of director or officer in transaction; compensation of directors.

Sec. 545a. (1) A transaction in which a director or officer is determined to have an interest shall not, because of the interest, be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, if the person interested in the transaction establishes any of the following:

(a) The transaction was fair to the corporation at the time entered into.

(b) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board, a committee of the board, or the independent director or directors, and the board, committee, or independent director or directors authorized, approved, or ratified the transaction.

(c) The material facts of the transaction and the director's or officer's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(2) For purposes of subsection (1)(b), a transaction is authorized, approved, or ratified if it received the affirmative vote of the majority of the directors on the board or the committee who had no interest in the transaction, though less than a quorum, or all independent directors who had no interest in the transaction. The presence of, or a vote cast by, a director with an interest in the transaction does not affect the validity of the action taken under subsection (1)(b).

(3) For purposes of subsection (1)(c), a transaction is authorized, approved, or ratified if it received the majority of votes cast by the holders of shares who did not have an interest in the transaction. A majority of the shares held by shareholders who did not have an interest in the transaction constitutes a quorum for the purpose of taking action under subsection (1)(c).

(4) SATISFACTION OF THE REQUIREMENTS SET FORTH IN THIS SECTION 545A DOES NOT PRECLUDE OTHER CLAIMS RELATING TO A TRANSACTION IN WHICH A DIRECTOR OR OFFICER IS DETERMINED TO HAVE AN INTEREST. ANY SUCH CLAIMS SHALL BE EVALUATED UNDER PRINCIPLES OF LAW APPLICABLE TO TRANSACTIONS IN WHICH NO DIRECTOR OR OFFICER HAS AN INTEREST.

(5) The board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the corporation as directors or officers, but approval of the shareholders is required if the articles of incorporation, bylaws, or other provisions of this act so provide. Transactions pertaining to the compensation of directors for services to the corporation as directors or officers shall not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation unless it is shown that the compensation was unreasonable at the time established.

COMMENT: Section 545a was originally intended to remove the common law taint that would make a transaction in which a director or officer had an interest void or voidable. However, this section as originally enacted was not intended to give a conflicted transaction greater protection than a non-conflicted transaction. The amendment is intended to make clear that a transaction with an interested director or officer could still be subject to attack for other defects, such as insufficient corporate approval, breach of fiduciary or other duties, or illegality, even though the taint of the conflict is removed by satisfying section 545a(1), thereby overturning the decision in *Camden v. Kaufman*, 240 Mich. App. 389 (2000).

450.1564a Indemnification under § 450.1561 or § 450.1562; determination and evaluation; designation of committee or selection of independent legal counsel; partial indemnification; payment authorization; indemnification for expenses and liabilities.

Sec. 564a. (1) Except as otherwise provided in subsection (5), an indemnification under section 561 or 562, unless ordered by the court OR REQUIRED BY SECTION 563, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in sections 561 and 562 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If a quorum cannot be obtained under subdivision (a), by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion, which counsel shall be selected in 1 of the following ways:

(i) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(2) In the designation of a committee under subsection (1)(b) or in the selection of independent legal counsel under subsection (1)(c)(ii), all directors may participate.

(3) If a person is entitled to indemnification under section 561 or 562 for a portion of expenses, including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the corporation may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

(4) An authorization of payment of indemnification under this section shall be made in any of the following ways:

(a) By the board in 1 of the following ways:

(i) If there are 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all directors who are not parties or threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(ii) By a majority of the members of a committee of 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(iii) If the corporation has 1 or more independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all independent directors who are not parties or are threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(iv) If there are no independent directors and less than 2 directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by the vote necessary for action by the board in accordance with section 523, in which authorization all directors may participate.

(b) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted on the authorization.

(5) To the extent that the articles of incorporation include a provision eliminating or limiting the liability of a director pursuant to section 209(1)(c), a corporation may indemnify a director for the expenses and liabilities described in this subsection without a determination that the director has met the standard of conduct set forth in sections 561 and 562, but no indemnification may be made except to the extent authorized in section 564c if the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders, violated section 551, or intentionally committed a criminal act. In connection with an action or suit by or in the right of the corporation as described in section 562, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred. In connection with an action, suit, or proceeding other than an action, suit, or proceeding by or in the right of the corporation, as described in section 561, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred, and for judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred.

COMMENT: The amendment in section 564a(1) is intended to harmonize the statute with itself regarding indemnification in the case of a successful defense of a claim. Section 563 provides that a defendant who is successful shall be indemnified, but Section 564a(1) may be read to imply that an inquiry into the standard of conduct would first be necessary for the corporation to voluntarily pay such claim. In cases where the defendant is successful there does not need to be a standard of conduct evaluation.

450.1564b Payment or reimbursement of party in advance of final disposition of proceeding; undertaking as unlimited general obligation; evaluation of reasonableness; advancement of expenses.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent who is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the person furnishes the corporation a written undertaking, executed personally or on his or her behalf, to repay the advance if it is ultimately determined that he or she did not meet the applicable standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) The undertaking required by subsection (1) must be an unlimited general obligation of the person but need not be secured and may be accepted without reference to the financial ability of the person to make repayment.

(3) An evaluation of reasonableness under this section shall be made in the manner specified in section 564a(1) for an evaluation of reasonableness of expenses, and an authorization shall be

made in the manner specified in section 564a(4) unless an advance is mandatory. AUTHORIZATION OF ADVANCES WITH RESPECT TO A PROCEEDING AND A DETERMINATION OF REASONABLENESS OF ADVANCES OR SELECTION OF A METHOD FOR DETERMINING REASONABLENESS MAY BE MADE IN A SINGLE ACTION OR RESOLUTION COVERING THE ENTIRE PROCEEDING, PROVIDED, THAT UNLESS THE RESOLUTION OR ACTION PROVIDES OTHERWISE, THE AUTHORIZING OR DETERMINING AUTHORITY MAY SUBSEQUENTLY TERMINATE OR AMEND THE AUTHORIZATION OR DETERMINATION WITH RESPECT TO ADVANCES NOT YET MADE.

COMMENT: The amendment is intended to explicitly permit a general authorization of future advances in connection with a single proceeding.

450.1745 Conversion of domestic corporation into a business organization.

SEC. 745. (1) AS USED IN THIS SECTION, EACH OF THE TERMS "BUSINESS ORGANIZATION" AND "ENTITY" HAS THE MEANING ASCRIBED TO SUCH TERM IN SECTION 736(1).

(2) A DOMESTIC CORPORATION MAY CONVERT INTO A BUSINESS ORGANIZATION IF THE FOLLOWING REQUIREMENTS ARE SATISFIED:

(A) THE CONVERSION IS PERMITTED BY THE LAW THAT WILL GOVERN THE INTERNAL AFFAIRS OF THE BUSINESS ORGANIZATION UPON CONVERSION AND SUCH SURVIVING BUSINESS ORGANIZATION COMPLIES WITH THAT LAW IN EFFECTING THE CONVERSION.

(B) IF THE SURVIVING BUSINESS ORGANIZATION IS TO BE A FOREIGN BUSINESS ORGANIZATION TRANSACTING BUSINESS IN THIS STATE, SUCH SURVIVING BUSINESS ORGANIZATION COMPLIES WITH THE APPLICABLE LAWS OF THIS STATE.

(C) THE BOARD OF THE DOMESTIC CORPORATION PROPOSING TO CONVERT ADOPTS A PLAN OF CONVERSION, SETTING FORTH 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 (INCLUDING THE LAW GOVERNING THE INTERNAL AFFAIRS OF SUCH SURVIVING BUSINESS ORGANIZATION), THE STREET ADDRESS OF THE SURVIVING BUSINESS ORGANIZATION, THE STREET ADDRESS OF THE DOMESTIC CORPORATION (IF DIFFERENT) 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, OR INTO CASH OR OTHER CONSIDERATION, WHICH MAY INCLUDE OWNERSHIP INTERESTS OR OBLIGATIONS OF AN ENTITY NOT A PARTY TO THE CONVERSION, OR INTO A COMBINATION THEREOF.

(IV) THE TERMS AND CONDITIONS OF THE ORGANIZATIONAL DOCUMENTS THAT ARE TO GOVERN THE SURVIVING BUSINESS ORGANIZATION.

(V) OTHER PROVISIONS WITH RESPECT TO THE PROPOSED CONVERSION AS THE BOARD CONSIDERS NECESSARY OR DESIRABLE.

(D) A PLAN OF CONVERSION ADOPTED BY THE BOARD SHALL BE 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.

(E) A DOMESTIC CORPORATION THAT HAS NOT COMMENCED BUSINESS, HAS NOT ISSUED ANY SHARES, AND HAS NOT ELECTED A BOARD MAY CONVERT INTO A BUSINESS ORGANIZATION BY UNANIMOUS CONSENT OF ITS INCORPORATORS. TO EFFECT THE CONVERSION, THE MAJORITY OF THE INCORPORATORS SHALL EXECUTE A CERTIFICATE OF CONVERSION IN ACCORDANCE WITH SUBSECTION (2)(F).

(F) AFTER A PLAN OF CONVERSION IS APPROVED, THE DOMESTIC CORPORATION SHALL FILE ANY FORMATION DOCUMENTS REQUIRED TO BE FILED UNDER, AND IN THE MANNER PROSCRIBED BY, THE LAWS GOVERNING THE INTERNAL AFFAIRS OF THE SURVIVING BUSINESS ORGANIZATION AND SHALL FILE A CERTIFICATE OF CONVERSION WITH THE ADMINISTRATOR. THE CERTIFICATE OF CONVERSION SHALL SET FORTH ALL OF THE FOLLOWING:

(I) A STATEMENT OF THE REQUIREMENTS SET FORTH IN SUBSECTION (2)(C)(I) AND (2)(C)(II), AND THE MANNER AND BASIS OF CONVERTING THE SHARES OF THE DOMESTIC CORPORATION AS SET FORTH IN THE PLAN OF CONVERSION.

(II) A STATEMENT THAT THE PLAN OF CONVERSION HAS BEEN ADOPTED BY THE BOARD IN ACCORDANCE WITH SUBSECTION (2)(D) OR, IN THE CASE OF A CONVERSION GOVERNED BY SUBSECTION (2)(E), A STATEMENT THAT THE DOMESTIC CORPORATION HAS NOT COMMENCED BUSINESS, HAS NOT ISSUED ANY SHARES, 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 PLAN OF CONVERSION WILL BE FURNISHED BY THE SURVIVING BUSINESS ORGANIZATION, 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 IN ACCORDANCE WITH SUBSECTION (2)(D).

(V) A STATEMENT OF ANY ASSUMED NAMES OF THE DOMESTIC CORPORATION TO BE USED BY THE SURVIVING BUSINESS ORGANIZATION AS AUTHORIZED BY SECTION 217(5), SPECIFYING EACH SUCH ASSUMED NAME.

(3) THE CERTIFICATE OF CONVERSION SHALL BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 131.

(4) WHEN A CONVERSION 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 CANCELLED. 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 IN ACCORDANCE WITH THIS SECTION SHALL NOT BE DEEMED TO AFFECT ANY OBLIGATIONS OR LIABILITIES OF THE DOMESTIC CORPORATION INCURRED PRIOR TO SUCH CONVERSION OR THE PERSONAL LIABILITY OF ANY PERSON INCURRED PRIOR TO SUCH CONVERSION, NOR SHALL IT BE DEEMED TO AFFECT THE CHOICE OF LAW APPLICABLE TO THE DOMESTIC CORPORATION WITH RESPECT TO MATTERS ARISING PRIOR TO SUCH 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 DEEMED, AS A CONSEQUENCE OF THE CONVERSION, TO HAVE BEEN TRANSFERRED TO THE SURVIVING BUSINESS ORGANIZATION TO WHICH SUCH DOMESTIC CORPORATION HAS CONVERTED FOR ANY PURPOSE OF THE LAWS OF THE STATE OF MICHIGAN.

(D) THE SURVIVING BUSINESS ORGANIZATION MAY USE THE NAME AND THE ASSUMED NAMES OF THE DOMESTIC CORPORATION IF THE FILINGS REQUIRED

BY SECTION 217(5) OR 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 DEEMED TO BE THE SAME ENTITY THAT EXISTED BEFORE THE CONVERSION AND IS DEEMED TO BE ORGANIZED ON THE DATE THAT THE DOMESTIC CORPORATION WAS ORIGINALLY INCORPORATED.

(G) THE SHARES 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 A PLAN OF CONVERSION ADOPTED IN ACCORDANCE WITH THIS SECTION, THE DOMESTIC CORPORATION SHALL NOT BE REQUIRED TO WIND UP ITS AFFAIRS OR PAY ITS LIABILITIES AND DISTRIBUTE ITS ASSETS ON ACCOUNT OF THE CONVERSION, AND THE CONVERSION SHALL NOT CONSTITUTE A DISSOLUTION OF SUCH DOMESTIC CORPORATION.

(5) IF THE SURVIVING BUSINESS ORGANIZATION 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.

COMMENT: The amendment permits a corporation to convert into another business entity (either foreign or domestic) provided that the law governing such surviving business organization permits conversion. The basic structure and organizational approach for this section is taken from section 736 (MCL 450.1736 - Merger of domestic corporation with business organization). The conversion concepts embodied in this section represent a middle ground between the very broad conversion provisions embodied in statutes such as the Delaware General Corporation Law Section 266 (Conversion of a domestic corporation to other entities) and the more detailed and narrow provisions found in the Model Business Corporation Act Chapter 9 (Domestication and Conversion).

450.1746 Conversion of a business organization into a domestic corporation.

SEC. 746. (1) AS USED IN THIS SECTION, EACH OF THE TERMS "BUSINESS ORGANIZATION" AND "ENTITY" HAS THE MEANING ASCRIBED TO SUCH TERM IN SECTION 736(1).

(2) A BUSINESS ORGANIZATION MAY CONVERT INTO A DOMESTIC CORPORATION IF 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 EFFECTING THE CONVERSION.

(B) THE BUSINESS ORGANIZATION PROPOSING TO CONVERT INTO A DOMESTIC CORPORATION ADOPTS A PLAN OF CONVERSION, SETTING FORTH ALL OF THE FOLLOWING:

(I) THE NAME OF THE BUSINESS ORGANIZATION, THE TYPE OF BUSINESS ORGANIZATION THAT IS CONVERTING (INCLUDING THE LAW GOVERNING THE INTERNAL AFFAIRS OF SUCH 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) THE OWNERSHIP INTERESTS OF THE BUSINESS ORGANIZATION, SPECIFYING THE INTERESTS ENTITLED TO VOTE (INCLUDING COLLECTIVELY OR AS A CLASS, AS THE CASE MAY BE) AND, IF THE OWNERSHIP INTERESTS ARE SUBJECT TO CHANGE BEFORE THE EFFECTIVE DATE OF THE CONVERSION, THE MANNER IN WHICH THE CHANGE MAY OCCUR.

(III) THE TERMS AND CONDITIONS OF THE PROPOSED CONVERSION, INCLUDING THE MANNER AND BASIS OF CONVERTING THE OWNERSHIP INTERESTS OF THE BUSINESS ORGANIZATION INTO SHARES OR OBLIGATIONS OF THE SURVIVING DOMESTIC CORPORATION, OR INTO CASH OR OTHER CONSIDERATION, WHICH MAY INCLUDE OWNERSHIP INTERESTS OR OBLIGATIONS OF AN ENTITY NOT A PARTY TO THE CONVERSION, OR INTO A COMBINATION THEREOF.

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

(V) OTHER PROVISIONS WITH RESPECT TO THE PROPOSED CONVERSION AS THE BUSINESS ORGANIZATION CONSIDERS NECESSARY OR DESIRABLE.

(C) A PLAN OF CONVERSION ADOPTED BY THE BUSINESS ORGANIZATION SHALL BE SUBMITTED FOR APPROVAL IN THE MANNER REQUIRED BY THE LAW GOVERNING THE INTERNAL AFFAIRS OF SUCH BUSINESS ORGANIZATION.

(D) AFTER A PLAN OF CONVERSION IS APPROVED, THE BUSINESS ORGANIZATION SHALL FILE A CERTIFICATE OF CONVERSION WITH THE ADMINISTRATOR. THE CERTIFICATE OF CONVERSION SHALL SET FORTH AND INCLUDE ALL OF THE FOLLOWING:

(I) A STATEMENT OF THE REQUIREMENTS SET FORTH IN SUBSECTION (2)(B)(I) AND (2)(B)(II), AND THE MANNER AND BASIS OF CONVERTING THE OWNERSHIP INTERESTS OF THE BUSINESS ORGANIZATION AS SET FORTH IN THE PLAN OF CONVERSION.

(II) A STATEMENT THAT THE PLAN OF CONVERSION HAS BEEN ADOPTED BY THE BUSINESS ORGANIZATION IN ACCORDANCE WITH SUBSECTION (2)(C).

(III) A STATEMENT THAT THE PLAN OF CONVERSION WILL BE FURNISHED BY THE SURVIVING DOMESTIC CORPORATION, ON REQUEST AND WITHOUT COST, TO ANY OWNER OF THE BUSINESS ORGANIZATION.

(IV) A STATEMENT OF ANY ASSUMED NAMES OF THE BUSINESS ORGANIZATION TO BE USED BY THE SURVIVING DOMESTIC CORPORATION AS AUTHORIZED BY SECTION 217(6), SPECIFYING EACH SUCH ASSUMED NAME.

(V) ARTICLES OF INCORPORATION FOR THE SURVIVING DOMESTIC CORPORATION THAT MEET ALL OF THE REQUIREMENTS FOR SUCH UNDER THIS ACT.

(3) THE CERTIFICATE OF CONVERSION SHALL BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 131.

(4) WHEN A CONVERSION 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 IN ACCORDANCE WITH THIS SECTION SHALL NOT BE DEEMED TO AFFECT ANY OBLIGATIONS OR LIABILITIES OF THE BUSINESS ORGANIZATION INCURRED PRIOR TO SUCH CONVERSION OR THE PERSONAL LIABILITY OF ANY PERSON INCURRED PRIOR TO SUCH CONVERSION, NOR SHALL IT BE DEEMED TO AFFECT THE CHOICE OF LAW APPLICABLE TO THE BUSINESS ORGANIZATION WITH RESPECT TO MATTERS ARISING PRIOR TO SUCH 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 DEEMED, AS A CONSEQUENCE OF THE CONVERSION, TO HAVE BEEN TRANSFERRED TO THE SURVIVING DOMESTIC

CORPORATION TO WHICH SUCH BUSINESS ORGANIZATION HAS CONVERTED FOR ANY PURPOSE OF THE LAWS OF THE STATE OF MICHIGAN.

(D) THE SURVIVING DOMESTIC CORPORATION MAY USE THE NAME AND THE ASSUMED NAMES OF THE BUSINESS ORGANIZATION IF THE FILINGS REQUIRED BY SECTION 217(6) OR 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 DEEMED TO BE THE SAME ENTITY THAT EXISTED BEFORE THE CONVERSION AND IS DEEMED TO BE ORGANIZED ON THE DATE THAT THE BUSINESS ORGANIZATION WAS ORIGINALLY ORGANIZED.

(G) THE OWNERSHIP INTERESTS OF THE BUSINESS ORGANIZATION THAT ARE TO BE CONVERTED INTO SHARES OR OBLIGATIONS OF THE SURVIVING DOMESTIC CORPORATION OR INTO CASH OR OTHER PROPERTY ARE CONVERTED.

(H) UNLESS OTHERWISE PROVIDED IN A PLAN OF CONVERSION ADOPTED IN ACCORDANCE WITH THIS SECTION, THE BUSINESS ORGANIZATION SHALL NOT BE REQUIRED TO WIND UP ITS AFFAIRS OR PAY ITS LIABILITIES AND DISTRIBUTE ITS ASSETS ON ACCOUNT OF THE CONVERSION, AND THE CONVERSION SHALL NOT CONSTITUTE A DISSOLUTION OF SUCH BUSINESS ORGANIZATION.

COMMENT: The amendment permits a business organization (either foreign or domestic) to convert into a corporation, provided that the law governing such business organization permits conversion. The basic structure and organizational approach for this section is taken from section 736 (MCL 450.1736 - Merger of domestic corporation with business organization). The conversion concepts embodied in this section represent a middle ground between the very broad conversion provisions embodied in statutes such as the Delaware General Corporation Law Section 265 (Conversion of other entities to a domestic corporation) and the more detailed and narrow provisions found in the Model Business Corporation Act Chapter 9 (Domestication and Conversion). It should be noted that even though Section 746(4)(f) provides that the surviving domestic corporation "is deemed to be organized on the date that the business organization was originally organized", the Michigan Department of Labor and Economic Growth (the "DLEG") will not be able to certify as to this original date since certain business organizations, like partnerships, do not require any state filing that establishes a date of organization. Establishing such date of organization will therefore be left to the proofs of a party seeking to establish such date. The DLEG will only be expected to certify the date of conversion.

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 or her 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 shareholder approval is required for the merger by section 703a or 736(5) or the articles of incorporation and the shareholder is entitled to vote on the merger, or 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 the shareholder is entitled to vote on the plan.

(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; EXCEPT THAT ANY RIGHTS PROVIDED BY THIS SECTION SHALL NOT BE AVAILABLE IF SUCH CORPORATION IS CONVERTED INTO A FOREIGN CORPORATION AND SUCH 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 giving rise to a right to dissent pursuant to section 621.

(ef) A transaction giving rise to a right to dissent pursuant to section 754.

(fg) 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.

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

(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 (eF) as to shares that are listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, 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 not requiring shareholder vote under section 713.

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

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

(d) A transaction described in subsection (1)(c) that is conducted pursuant to a plan of dissolution providing 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, where the transaction is for cash or shares that satisfy the requirements of subdivision (a) on the date of closing or any combination thereof.

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

~~(4) A shareholder who exercises his or her right to dissent and seek payment for his or her shares pursuant to subsection (1)(E) A TRANSACTION DESCRIBED IN SUBSECTION (1)(D) IN WHICH SHAREHOLDERS RECEIVE CASH OR SHARES THAT SATISFY THE REQUIREMENTS OF SUBDIVISION (A) ON THE EFFECTIVE DATE OF THE CONVERSION OR ANY COMBINATION THEREOF.~~

(3) A SHAREHOLDER ENTITLED TO DISSENT AND OBTAIN PAYMENT FOR HIS OR HER SHARES PURSUANT TO SUBSECTION (1)(A) TO (f) may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(4) A SHAREHOLDER WHO EXERCISES HIS OR HER RIGHT TO DISSENT AND SEEK PAYMENT FOR HIS OR HER SHARES PURSUANT TO SUBSECTION (1)(G) MAY NOT CHALLENGE THE CORPORATE ACTION CREATING HIS OR HER ENTITLEMENT UNLESS THE ACTION IS UNLAWFUL OR FRAUDULENT WITH RESPECT TO THE SHAREHOLDER OR THE CORPORATION.

COMMENT: The amendment permits the addition of new section 745 allowing the conversion of a domestic corporation into a business organization, specifically section 745(2)(d) which provides for dissenters' rights.

CHAPTER 7B
CONTROL SHARE ACQUISITIONS
Section 790 (MCL 450.1790) through Section 799 (MCL 450.1799)

Chapter 7B of the business corporation act, 1972 PA 284, MCL 450.1790 to 450.1799, is repealed.

COMMENT: The Michigan Control Share Act has proved to be a “trap for the unwary” because of its broad applicability. It is also no longer an important tool to protect corporations and shareholders from takeovers as there are more effective tools now available, such as Chapter 7A and shareholder rights plans. Many experienced lawyers recommend that corporations opt out of its coverage on the ground that, despite its intended purpose as takeover defense, the Act is more helpful to bidders than defenders. An amendment to the Act in 2003 dealt only with the formation of a group and did not address other ambiguities or the effectiveness of the Act. Accordingly, given its lack of helpfulness as a takeover defense, and its potential for deployment in unintended fashions, its repeal is appropriate.

450.2002 Foreign corporation with certificate of authority.

Sec. 1002. (1) A foreign corporation which receives a certificate of authority under this act, until a certificate of revocation or of withdrawal is issued as provided in this act, has the same rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which the certificate of authority is issued. Except as otherwise provided in this act, the corporation is subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

(2) THIS ACT DOES NOT AUTHORIZE THIS STATE TO REGULATE THE ORGANIZATION OR INTERNAL AFFAIRS OF A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE.

COMMENT: The amendment is adopted from Model Act Section 15.05(c). Model Act Official Comment states that “Section 15.05(c) preserves the judicially developed doctrine that internal corporate affairs are governed by the state of incorporation even when the corporation’s business and assets are located primarily in other states.” The amendment is intended as a clarification and does not represent a change in the doctrine generally believed to be available in Michigan.

450.2060 Fees.

Sec. 1060. (1) The fees a person shall pay to the administrator when the documents described in this subsection are delivered to him or her for filing are as follows:

- (a) Articles of a domestic corporation, \$10.00.
- (b) Application of a foreign corporation for a certificate of authority to transact business in this state, \$10.00.
- (c) Amendment to the articles of a domestic corporation, \$10.00.
- (d) Amended application for a certificate of authority to transact business in this state, \$10.00.
- (e) Certificate of merger, CONVERSION or share exchange under chapter 7, \$50.00.
- (f) Certificate attesting to the occurrence of a merger of a foreign corporation under section 1021, \$10.00.

- (g) Certificate of dissolution, \$10.00.
 - (h) Application for withdrawal and issuance of a certificate of withdrawal of a foreign corporation, \$10.00.
 - (i) Application for reservation of corporate name, \$10.00.
 - (j) Certificate of assumed name or a certificate of termination of assumed name, \$10.00.
 - (k) Statement of change of registered office or resident agent, \$5.00.
 - (l) Restated articles of domestic corporations, \$10.00.
 - (m) Certificate of abandonment, \$10.00.
 - (n) Certificate of correction, \$10.00.
 - (o) Certificate of revocation of dissolution proceedings, \$10.00.
 - (p) Certificate of renewal of corporate existence, \$10.00.
 - (q) For examining a special report required by law, \$2.00.
 - (r) Certificate of registration of corporate name of a foreign corporation, \$50.00.
 - (s) Certificate of renewal of registration of corporate name of a foreign corporation, \$50.00.
 - (t) Certificate of termination of registration of corporate name of a foreign corporation, \$10.00.
 - (u) Report required under section 911, \$15.00 if paid before October 1, 2003 or after September 30, 2007. After September 30, 2003 and before October 1, 2007, the fee is \$25.00.
- (2) The fees described in subsection (1) are in addition to any franchise fees prescribed in this act. The administrator shall not refund all or any part of a fee described in this section.
- (3) Except as provided in subsection (9), the administrator shall deposit all fees received and collected under this section in the state treasury to the credit of the administrator, who may only use the money credited pursuant to legislative appropriation and only in carrying out those duties of the department required by law.
- (4) The fees described in this section apply to documents filed by a domestic or foreign regulated investment company as defined in section 1064.
- (5) If any money received by the administrator from fees paid under subsection (1)(u) is not appropriated to the department in that fiscal year, the money remaining from those fees shall revert to the general fund of this state.

(6) A minimum charge of \$1.00 for each certificate and 50 cents per folio shall be paid to the administrator for certifying a part of a file or record pertaining to a corporation if a fee for that service is not described in subsection (1). The administrator may furnish copies of documents, reports, and papers required or permitted by law to be filed with the administrator, and shall charge for those copies the fee established in a schedule of fees adopted by the administrator with the approval of the state administrative board. The administrator shall retain the revenue collected under this subsection, and the department shall use it to defray the costs for its copying and certifying services.

(7) If a domestic or foreign corporation pays fees or penalties by check and the check is dishonored, the fee is unpaid and the administrator shall rescind the filing of all related documents.

(8) The administrator may accept a credit card in lieu of cash or check as payment of a fee under this act. The administrator shall determine which credit cards he or she shall accept for payment.

(9) The administrator may charge a nonrefundable fee of up to \$50.00 for any document submitted or certificate sent by facsimile or electronic transmission. The administrator shall retain the revenue collected under this subsection and the department shall use it to carry out its duties required by law.

COMMENT: The amendment permits the addition of new section 745 allowing the conversion of a domestic corporation into a business organization and new section 746 allowing the conversion of a business organization into a domestic corporation.

PROFESSIONAL SERVICE CORPORATION ACT
Act 192 of 1962

A bill to amend 1962 PA 192, entitled
"Professional service corporation act,"
by amending sections 2 (MCL 450.222), 3 (MCL 450.223), 4 (MCL 450.224), and 13 (MCL
450.233).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

450.222 Definitions.

Sec. 2. As used in this act:

(a) "Licensed person" means an individual who is duly licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, an agency of this state or another jurisdiction, or any corporation all of whose shareholders are licensed persons.

(b) "Professional corporation" means a corporation that is organized under this act for the sole and specific purpose of rendering 1 or more professional services and has as its shareholders only licensed persons, the personal representatives or estates of individuals, or other persons as provided in section 10.

(c) "Professional service" means a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. ~~Professional service includes, but is not limited to, services rendered by certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiroprodists, architects, professional engineers, land surveyors, and attorneys-at-law.~~

(D) "SERVICES IN A LEARNED PROFESSION" MEANS SERVICES RENDERED BY A DENTIST, AN OSTEOPATHIC PHYSICIAN, A PHYSICIAN, A SURGEON, A DOCTOR OF DIVINITY OR OTHER CLERGY, OR AN ATTORNEY-AT-LAW."

COMMENT: The amendment, together with other proposed amendments, will make the definition of "professional service" uniform across the Business Corporation Act, Limited Liability Company Act and Professional Service Corporation Act. It is part of the amendments that are meant to clarify which professions are required to form professional corporations under the Professional Service Corporation Act.

450.223 Application of act.

Sec. 3. (1) This act shall not apply to any corporation organized within this state prior to the passage of this act to perform professional services to the public. Any such corporation may bring itself within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the

amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

(2) THIS ACT SHALL NOT APPLY TO ANY CORPORATION PROVIDING PROFESSIONAL SERVICES ORGANIZED UNDER THE BUSINESS CORPORATION ACT, 1972 PA 284, MCL 450.1101 TO 450.2098, AS AMENDED, PRIOR TO THE EFFECTIVE DATE OF THE ACT THAT ADDED THIS SUBSECTION, IF NONE OF THE PROFESSIONAL SERVICES PROVIDED BY THE CORPORATION ARE SERVICES IN A LEARNED PROFESSION. ANY SUCH CORPORATION MAY BRING ITSELF WITHIN THE PROVISIONS OF THIS ACT BY AMENDING THE ARTICLES OF INCORPORATION IN SUCH A MANNER SO AS TO BE CONSISTENT WITH ALL THE PROVISIONS OF THIS ACT AND BY AFFIRMATIVELY STATING IN THE AMENDED ARTICLES OF INCORPORATION THAT THE SHAREHOLDERS HAVE ELECTED TO BRING THE CORPORATION WITHIN THE PROVISIONS OF THIS ACT.

COMMENT: The amendment is intended to make clear that the Professional Service Corporation Act does not apply to corporations that were previously organized under the Business Corporation Act and that provide professional services, if such corporations would not be required to organize under the Professional Service Corporation Act following adoption of the amendment. The purpose of this savings clause is to prevent claims that such corporations are not duly incorporated or duly organized because they were not initially incorporated or organized under the Professional Service Corporation Act.

450.224 Professional corporation for pecuniary profit; organization; shareholders to be licensed; rendering of professional services; legal authorization; licensed person of another jurisdiction.

Sec. 4. (1) One or more licensed persons may organize under this act to become a shareholder or shareholders of a professional corporation for pecuniary profit. A CORPORATION FOR PECUNIARY PROFIT THAT PROVIDES ONE OR MORE PROFESSIONAL SERVICES THAT ARE SERVICES IN A LEARNED PROFESSION MAY ONLY INCORPORATE UNDER THIS ACT AND MAY NOT ELECT TO INCORPORATE UNDER THE BUSINESS CORPORATION ACT. A CORPORATION THAT PROVIDES ONE OR MORE PROFESSIONAL SERVICES MAY ELECT TO INCORPORATE UNDER THIS ACT OR THE BUSINESS CORPORATION ACT IF IT PROVIDES NO PROFESSIONAL SERVICES THAT ARE SERVICES IN A LEARNED PROFESSION.

(2) Except as otherwise provided in subsection (3) or otherwise prohibited, a professional corporation may render 1 or more professional services, except that each shareholder must be a licensed person in 1 or more of the professional services rendered by the corporation.

(3) Except as otherwise provided in this subsection, if the professional corporation renders a professional service that is included within the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, then all shareholders of the corporation shall be licensed or legally authorized in this state to render the same professional service. One or more physicians and surgeons licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, may organize a

professional corporation under this act with 1 or more physicians and surgeons licensed under different provisions of the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(4) A licensed person of another jurisdiction may become an officer, director, shareholder, employee, or agent of the corporation but shall not render any professional service in this state until the person is licensed or otherwise legally authorized to render the professional service in this state.

COMMENT: The amendment is intended to provide the specific permission required by Business Corporation Act Section 251(1) to allow corporations to choose to form under the Business Corporation Act to provide a professional service that is not a "service in a learned profession".

450.233 Applicability of business corporation act; consolidation or merger.

Sec. 13. The LAW OF THIS STATE GOVERNING THE FORMATION AND INTERNAL AFFAIRS OF ~~business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098,~~corporations is applicable to a corporation organized under this act except to the extent that a provision of this act is in conflict with the provisions of that ~~act~~LAW. If there is a conflict between a provision of this act and that ~~act~~LAW, the provision of this act applies with respect to a corporation organized under this act. A professional corporation organized under this act shall not consolidate or merge with another corporation whose shareholders are not licensed persons who may be shareholders under this act.

COMMENT: The amendment is intended to make clear that the law applicable to professional service corporations is the Business Corporations Act including not only such law as is in force at the date of the adopting of this section, but also the law in force when action is taken or proceedings are resorted to regardless of whether such action or proceedings are prior to or after the date of adoption. Specifically this amendment addresses Attorney General opinion number 6592 (July 10, 1989) and is intended to conform to the interpretation of law described in *Public Schools of the City of Battle Creek v. Kennedy*, 245 Mich 585 (1929) regarding adopting statutes that make no reference to any particular act by its title or otherwise but refer to the general law regulating the subject in hand.

**MICHIGAN LIMITED LIABILITY COMPANY ACT
Act 23 of 1993**

A bill to amend 1993 PA 23, entitled
"Limited liability company act,"
by amending section 902 (MCL 450.4902).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

450.4902 Definitions.

Sec. 902. As used in this article:

(a) "Licensed person" means an individual who is licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or an agency of this state or another jurisdiction, any corporation or professional services corporation all of whose shareholders are licensed persons, any partnership all of whose partners are licensed persons, or any limited liability company all of whose members and managers are licensed persons.

(b) "Professional service" means a type of personal service to the public that requires as a condition precedent to the rendering of the service the obtaining of a license or other legal authorization. ~~Professional service includes, but is not limited to, services rendered by a certified or other public accountant, chiropractor, dentist, optometrist, veterinarian, osteopathic physician, physician, surgeon, podiatrist, chiroprapist, architect, professional engineer, land surveyor, and attorney at law.~~

(c) "Professional services corporation" means a corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

COMMENT: The amendment, together with other proposed amendments, will make the definition of "professional service" uniform across the Business Corporation Act, Limited Liability Company Act and Professional Service Corporation Act. It is part of the amendments that are meant to clarify which professions are required to form professional corporations under the Professional Service Corporation Act.