

HOUSE BILL NO. 6311

October 14, 2020, Introduced by Reps. Bolden, Greig, Ellison, Sowerby, Hood, Koleszar, Pohutsky, Kuppa, Chirkun, Vaupel, Brixie, Sheppard and Hoadley and referred to the Committee on Government Operations.

A bill to amend 1972 PA 284, entitled "Business corporation act," by amending sections 105, 106, 131, 202, 211, 745, 746, and 762 (MCL 450.1105, 450.1106, 450.1131, 450.1202, 450.1211, 450.1745, 450.1746, and 450.1762), sections 105, 106, and 211 as amended by 2012 PA 569, sections 131, 202, 746, and 762 as amended by 2018 PA 85, and section 745 as added by 2008 PA 402.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 105. (1) "Administrator" means the chief officer of the



1 department or of any other agency or department authorized by law
2 to administer this act, or his or her designated representative.

3 (2) "Articles of incorporation" includes any of the following:

4 (a) The original articles of incorporation or any other
5 instrument filed or issued under any statute to organize a domestic
6 or foreign corporation, as amended, supplemented, or restated by
7 certificates of amendment, merger, conversion, or consolidation or
8 other certificates or instruments filed or issued under any
9 statute.

10 (b) A special act or charter creating a domestic or foreign
11 corporation, as amended, supplemented, or restated.

12 (3) "Authorized shares" means shares of all classes that a
13 corporation is authorized to issue.

14 (4) **"Benefit corporation" means a domestic corporation that**
15 **meets the requirements for being a benefit corporation under**
16 **chapter 9A and has not terminated its status as a benefit**
17 **corporation under that chapter.**

18 (5) ~~(4)~~—"Board" means board of directors or other governing
19 board of a corporation.

20 (6) ~~(5)~~—"Bonds" includes secured and unsecured bonds,
21 debentures, and notes.

22 Sec. 106. (1) "Corporation" or "domestic corporation" means a
23 corporation formed under this act, or existing on January 1, 1973
24 and formed under any other statute of this state for a purpose for
25 which a corporation may be formed under this act. **The term includes**
26 **a benefit corporation.**

27 (2) "Department" means the department of licensing and
28 regulatory affairs.

29 (3) "Director" means a member of the board of a corporation.



1 (4) "Distribution" means a direct or indirect transfer of
2 money or other property, except the corporation's shares, or the
3 incurrence of indebtedness by the corporation to or for the benefit
4 of its shareholders in respect to the corporation's shares. A
5 distribution may be in the form of a dividend, a purchase,
6 redemption or other acquisition of shares, an issuance of
7 indebtedness, or any other declaration or payment to or for the
8 benefit of the shareholders.

9 (5) "Electronic transmission" or "electronically transmitted"
10 means any form of communication that meets all of the following:

11 (a) It does not directly involve the physical transmission of
12 paper.

13 (b) It creates a record that may be retained and retrieved by
14 the recipient.

15 (c) It may be directly reproduced in paper form by the
16 recipient through an automated process.

17 Sec. 131. (1) A document **that is** required or permitted to be
18 filed under this act ~~shall~~**must** be submitted by delivering the
19 document to the administrator together with the fees and
20 accompanying documents required by law. The administrator may
21 establish a procedure for accepting delivery of a document
22 submitted under this subsection by facsimile or other electronic
23 transmission. However, by December 31, 2006, the administrator
24 shall establish a procedure for accepting delivery of a document
25 submitted under this subsection by electronic mail or over the
26 internet. Beginning January 1, 2007, the administrator shall accept
27 delivery of documents submitted by electronic mail or over the
28 internet.

29 (2) If a document submitted under subsection (1), **other than**



1 **an annual benefit report submitted under section 961**, substantially
2 conforms to the requirements of this act, the administrator shall
3 endorse upon it the word "filed" with his or her official title and
4 the date of receipt and of filing and shall file and index the
5 document or a photostatic, micrographic, photographic, optical disc
6 media, or other reproduced copy in his or her office. If requested
7 at the time of the delivery of the document to his or her office,
8 the administrator shall include the hour of filing in the
9 endorsement on the document.

10 (3) The administrator may return the original or a copy of a
11 document filed under subsection (2) to the person that submitted it
12 for filing. The administrator shall mark the filing date on the
13 copy or original before returning it or may provide proof of the
14 filing date to the person that submitted the document for filing in
15 another manner determined by the administrator.

16 (4) The records and files of the administrator relating to
17 domestic and foreign corporations ~~shall~~**must** be open to reasonable
18 inspection by the public. The administrator may maintain records or
19 files in their original form or may maintain records or files in
20 the form of reproductions pursuant to the records reproduction act,
21 1992 PA 116, MCL 24.401 to 24.406, and may destroy the originals of
22 the reproduced documents.

23 (5) The administrator may make reproductions of any documents
24 filed under this act or any predecessor act pursuant to the records
25 reproduction act, 1992 PA 116, MCL 24.401 to 24.406, and may
26 destroy the originals of the reproduced documents. A reproduced
27 copy of a document certified by the administrator, including a copy
28 sent by facsimile or other electronic transmission, is considered
29 an original document for all purposes and is admissible in evidence



1 in like manner as an original document.

2 (6) Except as provided in section 806, a document filed under
3 subsection (2) is effective at the time it is endorsed unless a
4 subsequent effective time, not later than 90 days after the date of
5 delivery, is ~~set forth~~**stated** in the document.

6 (7) The administrator shall charge 1 of the following
7 nonrefundable fees if expedited filing of a document by the
8 administrator is requested and the administrator shall retain the
9 revenue collected under this subsection and the department shall
10 use it to carry out its duties required by law:

11 (a) For any filing that a person requests the administrator to
12 complete within 1 hour on the same day as the day of the request,
13 \$1,000.00. The department may establish a deadline by which a
14 person must submit a request for filing under this subdivision.

15 (b) For any filing that a person requests the administrator to
16 complete within 2 hours on the same day as the day of the request,
17 \$500.00. The department may establish a deadline by which a person
18 must submit a request for filing under this subdivision.

19 (c) Except for a filing request under subdivision (a) or (b),
20 for the filing of any formation or qualification document that a
21 person requests the administrator to complete on the same day as
22 the day of the request, \$100.00. The department may establish a
23 deadline by which a person must submit a request for filing under
24 this subdivision.

25 (d) Except for a filing request under subdivision (a) or (b),
26 for the filing of any other document concerning an existing
27 domestic corporation or a qualified foreign corporation that a
28 person requests the administrator to complete on the same day as
29 the day of the request, \$200.00. The department may establish a



1 deadline by which a person must submit a request for filing under
2 this subdivision.

3 (e) For the filing of any formation or qualification document
4 that a person requests the administrator to complete within 24
5 hours of the time the administrator receives the request, \$50.00.

6 (f) For the filing of any other document concerning an
7 existing domestic corporation or a qualified foreign corporation
8 that a person requests the administrator to complete within 24
9 hours of the time the administrator receives the request, \$100.00.

10 Sec. 202. The articles of incorporation ~~shall~~**must** contain all
11 of the following:

12 (a) The name of the corporation.

13 (b) The purposes for which the corporation is formed. All of
14 the following apply for purposes of this subdivision:

15 (i) Except as otherwise provided in subparagraph (ii) or (iii),
16 it is a sufficient compliance with this subdivision to state
17 substantially, alone or with specifically enumerated purposes, that
18 the corporation may engage in any activity within the purposes for
19 which corporations may be formed under the business corporation
20 act, and all activities ~~shall~~**must** by the statement be considered
21 within the purposes of the corporation, subject to expressed
22 limitations.

23 (ii) Any corporation that proposes to conduct educational
24 purposes shall state the purposes and shall comply with all
25 requirements of sections 170 to 177 of 1931 PA 327, MCL 450.170 to
26 450.177.

27 (iii) A professional corporation shall comply with section
28 283(2) and (3).

29 (iv) **The purposes of a benefit corporation must be in**



1 compliance with section 953, but a benefit corporation is not
2 required to state its general public benefit purpose in the
3 articles of incorporation.

4 (c) The aggregate number of shares that the corporation has
5 authority to issue.

6 (d) If the shares are, or are to be, divided into classes, or
7 into classes and series, the designation of each class and series,
8 the number of shares in each class and series, and a statement of
9 the relative rights, preferences and limitations of the shares of
10 each class and series, to the extent that the designations,
11 numbers, relative rights, preferences, and limitations have been
12 determined.

13 (e) If the shares are to be designated and issued in 1 or more
14 classes or series, a statement of any authority vested in the board
15 to designate and issue shares in 1 or more classes or series, and
16 to determine or change for any class or series its designation,
17 number of shares, relative rights, preferences and limitations.

18 (f) Except as otherwise provided in section 611(2)(c), the
19 street address, and the mailing address if different from the
20 street address, of the corporation's initial registered office and
21 the name of the corporation's initial resident agent at that
22 address.

23 (g) The names and addresses of the incorporators.

24 (h) The duration of the corporation if other than perpetual.

25 Sec. 211. **(1)** Except as provided in chapter 2A for a
26 professional corporation **and in subsection (2) for a benefit**
27 **corporation**, the corporate name of a domestic corporation ~~shall~~
28 **must** contain the word "corporation", "company", "incorporated", or
29 "limited" or ~~shall~~ **must** contain 1 of the following abbreviations:



1 corp., co., inc., or ltd., with or without periods.

2 (2) **The corporate name of a benefit corporation must contain**
3 **the words "benefit corporation" or "benefit company" or contain the**
4 **initials "B.C.", with or without periods.**

5 Sec. 745. (1) A domestic corporation, **except a benefit**
6 **corporation**, may convert into a business organization if all of the
7 following requirements are satisfied:

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

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

15 (i) The name of the domestic corporation, the name of the
16 business organization into which the domestic corporation is
17 converting, the type of business organization into which the
18 domestic corporation is converting, identification of the statute
19 that will govern the internal affairs of the surviving business
20 organization, the street address of the surviving business
21 organization, the street address of the domestic corporation if
22 different from the street address of the surviving business
23 organization, and the principal place of business of the surviving
24 business organization.

25 (ii) For the domestic corporation, the designation and number
26 of outstanding shares of each class and series, specifying the
27 classes and series entitled to vote, each class and series entitled
28 to vote as a class, and, if the number of shares is subject to
29 change before the effective date of the conversion, the manner in



1 which the change may occur.

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

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

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

13 (c) If the board adopts the plan of conversion under
14 subdivision (b), the plan of conversion is submitted for approval
15 in the same manner required for a merger under section 703a(2),
16 including the procedures pertaining to dissenters' rights if any
17 shareholder has the right to dissent under section 762.

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

25 (e) After the plan of conversion is approved under
26 subdivisions (b) and (c) or the conversion is approved under
27 subdivision (d), the domestic corporation files any formation
28 documents required to be filed under the laws governing the
29 internal affairs of the surviving business organization, in the



1 manner prescribed by those laws, and files a certificate of
2 conversion with the administrator. The certificate of conversion
3 ~~shall~~**must** include all of the following:

4 (i) Unless subdivision (d) applies, all of the information
5 described in subdivision (b) (i) and (ii) and the manner and basis of
6 converting the shares of the domestic corporation contained in the
7 plan of conversion.

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

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

18 (iv) If approval of the shareholders of the domestic
19 corporation was required, a statement that the plan was approved by
20 the shareholders under subdivision (c).

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

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

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

28 (a) The domestic corporation converts into the surviving
29 business organization, and the articles of incorporation of the



1 domestic corporation are canceled. Except as otherwise provided in
2 this section, the surviving business organization is organized
3 under and subject to the organizational laws of the jurisdiction of
4 the surviving business organization as stated in the certificate of
5 conversion.

6 (b) The surviving business organization has all of the
7 liabilities of the domestic corporation. The conversion of the
8 domestic corporation into a business organization under this
9 section ~~shall~~**must** not be considered to affect any obligations or
10 liabilities of the domestic corporation incurred before the
11 conversion or the personal liability of any person incurred before
12 the conversion, and the conversion ~~shall~~**must** not be considered to
13 affect the choice of law applicable to the domestic corporation
14 with respect to matters arising before the conversion.

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

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

28 (e) A proceeding pending against the domestic corporation may
29 be continued as if the conversion had not occurred, or the



1 surviving business organization may be substituted in the
2 proceeding for the domestic corporation.

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

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

10 (h) Unless otherwise provided in a plan of conversion adopted
11 in accordance with this section, the domestic corporation is not
12 required to wind up its affairs or pay its liabilities and
13 distribute its assets on account of the conversion, and the
14 conversion does not constitute a dissolution of the domestic
15 corporation.

16 (4) If the surviving business organization of a conversion
17 under this section is a foreign business organization, it is
18 subject to the laws of this state pertaining to the transaction of
19 business in this state if it transacts business in this state. The
20 surviving business organization is liable, and is subject to
21 service of process in a proceeding in this state, for the
22 enforcement of an obligation of the domestic corporation, and in a
23 proceeding for the enforcement of a right of a dissenting
24 shareholder of the domestic corporation against the surviving
25 business organization.

26 (5) As used in this section and section 746, "business
27 organization" and "entity" mean those terms as defined in section
28 736(1).

29 Sec. 746. (1) A business organization may convert into a



1 domestic corporation, **except a benefit corporation**, if all of the
 2 following requirements are satisfied:

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

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

10 (c) After the conversion is approved in accordance with the
 11 law that governs the internal affairs of the business organization,
 12 the business organization files a certificate of conversion with
 13 the administrator. The certificate of conversion ~~shall~~**must** include
 14 all of the following:

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

22 (ii) A statement that the business organization has, in
 23 connection with the conversion, complied with the law that governs
 24 the internal affairs of the business organization.

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

28 (iv) Articles of incorporation for the surviving domestic
 29 corporation that meet all of the requirements of this act



1 applicable to articles of incorporation.

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

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

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

10 (b) The surviving domestic corporation has all of the
11 liabilities of the business organization. The conversion of the
12 business organization into a domestic corporation under this
13 section ~~shall~~**must** not be considered to affect any obligations or
14 liabilities of the business organization incurred before the
15 conversion or the personal liability of any person incurred before
16 the conversion, and the conversion ~~shall~~**must** not be considered to
17 affect the choice of law applicable to the business organization
18 with respect to matters arising before the conversion.

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

28 (d) The surviving domestic corporation may use the name and
29 the assumed names of the business organization if the filings



1 required under section 217(6) or any other applicable statute are
2 made and the laws regarding use and form of names are followed.

3 (e) A proceeding pending against the business organization may
4 be continued as if the conversion had not occurred, or the
5 surviving domestic corporation may be substituted in the proceeding
6 for the business organization.

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

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

14 (h) Unless otherwise provided under the law that governs the
15 internal affairs of the business organization, the business
16 organization is not required to wind up its affairs or pay its
17 liabilities and distribute its assets on account of the conversion,
18 and the conversion does not constitute a dissolution of the
19 business organization.

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

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

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

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



1 the offer under section 703a(3).

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

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

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

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

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

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

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

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



1 **(g) An amendment to the articles of incorporation of a benefit**
2 **corporation giving rise to a right to dissent under section 953.**

3 **(h) Consummation of a plan of merger or share exchange giving**
4 **rise to a right to dissent under section 955.**

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

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

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

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

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



1 combination of cash and those shares.

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

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

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

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

24 Enacting section 1. This amendatory act takes effect 90 days
25 after the date it is enacted into law.

26 Enacting section 2. This amendatory act does not take effect
27 unless all of the following bills of the 100th Legislature are
28 enacted into law:

29 (a) Senate Bill No. ____ or House Bill No. 6309(request no.

1 00862'19).

2 (b) Senate Bill No. _____ or House Bill No. 6312 (request no.

3 00864'19).

4 (c) Senate Bill No. _____ or House Bill No. 6310 (request no.

5 00865'19).

