

BUSINESS CORPORATION ACT (EXCERPT)

Act 284 of 1972

CHAPTER 8

DISSOLUTION

450.1801 Methods of dissolution.

Sec. 801. (1) A corporation may be dissolved in any of the following ways:

(a) Automatically by expiration of a period of duration to which the corporation is limited by its articles of incorporation.

(b) By action of the incorporators or directors under section 803.

(c) By action of the board and the shareholders under section 804.

(d) Pursuant to an agreement under section 488, effected by filing a certificate under section 805.

(e) By a judgment of the circuit court in an action brought under this act or otherwise.

(f) Automatically, under section 922, for failure to file an annual report or pay the filing fee.

(2) A corporation whose assets have been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of the proceedings. A copy of the order shall be filed by the clerk of the court with the administrator.

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

450.1803 Conditions to dissolution by incorporators or directors; certificate of dissolution.

Sec. 803. (1) A corporation may be dissolved by action of its incorporators or directors, if the corporation complies with all of the following conditions:

(a) Has not commenced business.

(b) Has not issued any shares.

(c) Has no debts or other liabilities.

(d) Has received no payments on subscriptions for its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(2) The dissolution of the corporation shall be effected by a majority of the incorporators or directors, executing and filing a certificate of dissolution stating:

(a) The name of the corporation.

(b) That the corporation has not commenced business and has issued no shares, and has no debts or other liabilities.

(c) That the corporation has received no payments on subscriptions to its shares, or, if it has received payments, has returned them to those entitled thereto, less any part thereof disbursed for expenses.

(d) That a majority of the incorporators or directors have elected that the corporation be dissolved.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1804 Dissolution by action of board and shareholders; certificate of dissolution.

Sec. 804. (1) A corporation may be dissolved by action of its board and shareholders as provided in this section.

(2) A corporation's board may propose dissolution of a corporation for action by the shareholders.

(3) If it proposes a dissolution, the board must recommend the dissolution to the shareholders unless section 529 applies or the board determines that because of conflict of interest or other special circumstances it should make no recommendation. If the board does not recommend the dissolution to the shareholders, or recommends against the dissolution, in either case because 1 or more of the exceptions described in this subsection apply, the board must communicate to the shareholders the basis for its decision.

(4) A board may condition its submission of the proposal for dissolution of a corporation to the shareholders on any basis.

(5) A proposed dissolution of a corporation shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record whether or not entitled to vote at the meeting within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the corporation.

(6) At the meeting described in subsection (5), the shareholders shall vote on the proposed dissolution. The dissolution is approved if it receives the affirmative vote of the holders of a majority of the outstanding shares of the corporation entitled to vote on the dissolution.

(7) If the dissolution of a corporation is approved, it shall be effected by the execution and filing of a certificate of dissolution on behalf of the corporation that states all of the following:

- (a) The name of the corporation.
- (b) The date and place of the meeting of shareholders at which the dissolution was approved.
- (c) A statement that dissolution was proposed and approved by the requisite vote of the board and shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1805 Dissolution; execution and filing certificate.

Sec. 805. Dissolution pursuant to an agreement under section 488 is effected by executing and filing a certificate of dissolution on behalf of the corporation, stating the name of the corporation and that the corporation is dissolved pursuant to an agreement under section 488.

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

450.1806 Certificate of dissolution; filing; time of effectiveness; conditions; date stamp as evidence.

Sec. 806. (1) A certificate of dissolution filed with the administrator is effective at the time the certificate is first received by the administrator, not the date of filing, if all of the following are met:

- (a) The dissolution is pursuant to an agreement under section 488 or is commenced under section 804.
- (b) The administrator receives the certificate of dissolution after June 21, 2003 and before June 30, 2003.
- (c) The corporation published notice of dissolution of the corporation under section 842a after June 21, 2003 and before June 30, 2003.
- (d) The certificate does not set forth a subsequent effective time, not later than 90 days after the date the certificate is received by the administrator.

(2) For purposes of subsection (1), the administrator's date stamp on the certificate of dissolution is evidence of the date the administrator received the certificate. If there are multiple date stamps on the certificate, the earliest date stamp is evidence of the date the administrator first received the certificate.

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

450.1811 Revocation of dissolution proceedings; certificate of revocations.

Sec. 811. (1) Dissolution proceedings commenced pursuant to section 488 or 804 may be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, by filing a certificate of revocation executed, in person or by proxy, by all the shareholders, stating that revocation is effective pursuant to this section and that all the shareholders of the corporation have executed the certificate in person or by proxy.

(2) Dissolution proceedings commenced pursuant to section 804 may also be revoked before complete distribution of assets, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board of directors shall adopt a resolution revoking the dissolution. The proposed revocation shall be submitted for approval at a meeting of shareholders. The shareholders shall be given the same notice of the meeting and the revocation shall be approved by the same vote as required by section 804 for the approval of dissolution.

(b) A certificate of revocation, stating that dissolution is revoked pursuant to this section, and giving the information required by section 804(7), shall be executed and filed on behalf of the corporation.

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

450.1815 Renewal of corporate existence; manner.

Sec. 815. A corporation whose term has expired may renew its corporate existence, if a proceeding pursuant to section 851 is not pending, in the following manner:

(a) The board shall adopt a resolution that the corporate existence be renewed. The proposed renewal shall be submitted for approval at a meeting of shareholders. Notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on the renewal of corporate existence.

(b) At the meeting a vote of shareholders entitled to vote on the renewal shall be taken on the proposed renewal which shall be adopted upon receiving the affirmative vote of holders of a majority of the outstanding shares.

(c) If renewal of the corporate existence is approved, a certificate of renewal shall be executed and filed on behalf of the corporation, setting forth all of the following:

- (i) The name of the corporation.

- (ii) The date and place of the meeting of shareholders approving the renewal of existence.
- (iii) A statement that renewal was approved by the requisite vote of directors and shareholders.
- (iv) The duration of the corporation if other than perpetual.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1817 Effective date of revocation of dissolution or renewal of corporate existence; accrued penalty or liability unaffected; adoption of corporate name; rights of corporation.

Sec. 817. (1) When the certificate of revocation of dissolution or of renewal of existence is filed, the revocation of the dissolution proceedings or the renewal of the corporate existence becomes effective, and the corporation may again transact its business.

(2) Revocation of dissolution or renewal of corporate existence does not relieve the corporation of any penalty or liability accrued against it under any law of this state, and the corporation shall file any report and pay any fee required under this act for any year for which a report was not filed or a fee was not paid.

(3) Upon filing a certificate of revocation of dissolution or renewal of existence, the administrator may require the corporation to adopt a corporate name that conforms to the requirements of section 212.

(4) Upon compliance with the provisions of this section, the rights of the corporation are the same as though a dissolution or expiration of term had not occurred, and all contracts entered into and other rights acquired during the interval are valid and enforceable.

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

450.1821 Action by attorney general for dissolution; grounds.

Sec. 821. (1) The attorney general may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located for dissolution of a corporation upon the ground that the corporation has committed any of the following acts:

- (a) Procured its organization through fraud.
- (b) Repeatedly and willfully exceeded the authority conferred upon it by law.
- (c) Repeatedly and willfully conducted its business in an unlawful manner.

(2) The enumeration in this section of grounds for dissolution does not exclude any other statutory or common law action by the attorney general for dissolution of a corporation or revocation or forfeiture of its corporate franchises.

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

450.1823 Action by director or shareholder for dissolution; judgment; proof.

Sec. 823. A corporation may be dissolved by a judgment entered in an action brought in the circuit court of the county in which the principal place of business or registered office of the corporation is located by 1 or more directors or by 1 or more shareholders entitled to vote in an election of directors of the corporation, upon proof of both of the following:

(a) The directors of the corporation, or its shareholders if an agreement among the shareholders authorized by section 488 is in effect, are unable to agree by the requisite vote on material matters respecting management of the corporation's affairs, or the shareholders of the corporation are so divided in voting power that they have failed to elect successors to any director whose term has expired or would have expired upon the election and qualification of his or her successor.

(b) As a result of a condition stated in subdivision (a), the corporation is unable to function effectively in the best interests of its creditors and shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2006, Act 63, Imd. Eff. Mar. 20, 2006.

450.1825 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to action by shareholder for dissolution and liquidation.

450.1831 Occurrences dissolving corporation.

Sec. 831. A corporation is dissolved when any of the following occurs:

- (a) The period of duration stated in the corporation's articles of incorporation expires.
- (b) A certificate of dissolution is filed pursuant to sections 803 to 805.
- (c) A judgment of forfeiture of corporate franchises or of dissolution is entered by a court of competent jurisdiction and a copy of a judicial order of dissolution shall be forwarded promptly to the administrator by the receiver or other person designated by the court.
- (d) Failure to file an annual report or pay an annual filing fee as provided in section 922.

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

450.1833 Corporate existence continued for purpose of winding up affairs.

Sec. 833. Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall not carry on business except for the purpose of winding up its affairs by:

- (a) Collecting its assets.
- (b) Selling or otherwise transferring, with or without security, assets which are not to be distributed in kind to its shareholders.
- (c) Paying its debts and other liabilities.
- (d) Doing all other acts incident to liquidation of its business and affairs.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1834 Functions of dissolved corporation and its officers, directors, and shareholders continued.

Sec. 834. Subject to section 833 and except as otherwise provided by court order, a dissolved corporation, its officers, directors and shareholders shall continue to function in the same manner as if dissolution had not occurred. Without limiting the generality of this section:

- (a) The directors of the corporation are not deemed to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 541a.
- (b) Title to the corporation's assets remains in the corporation until transferred by it in the corporate name.
- (c) The dissolution does not change quorum or voting requirements for the board or shareholders, and does not alter provisions regarding election, appointment, resignation or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws.
- (d) Shares may be transferred.
- (e) The corporation may sue and be sued in its corporate name and process may issue by and against the corporation in the same manner as if dissolution had not occurred.
- (f) An action brought against the corporation before its dissolution does not abate because of the dissolution.

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

450.1841 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to notice to creditors of dissolved corporation.

450.1841a Notice to existing claimants of dissolution; contents; notice as recognition of validity of claim; conditions barring claim; "existing claim" defined; effective date of notice.

Sec. 841a. (1) The dissolved corporation may notify its existing claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice shall include all of the following:

- (a) A description of the information that must be included in a claim. The corporation may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.
- (b) A mailing address where a claim may be sent.
- (c) The deadline, which may not be less than 6 months from the effective date of the written notice, by which the dissolved corporation must receive the claim.
- (d) A statement that the claim will be barred if not received by the deadline.
- (2) The giving of notice described above does not constitute recognition that a person to whom the notice is directed has a valid claim against the corporation.
- (3) A claim against the dissolved corporation is barred if either of the following applies:
 - (a) If a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline.
 - (b) If a claimant whose claim was rejected by a written notice of rejection by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the written notice of rejection.
- (4) For purposes of this section and section 842a, "existing claim" means any claim or right against the corporation, liquidated or unliquidated. It does not mean a contingent liability or a claim based on an event occurring after the effective date of dissolution.
- (5) For purposes of this section, the effective date of the written notice is the earliest of the following:
 - (a) The date it is received.
 - (b) Five days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed

postpaid and correctly addressed.

(c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1842 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to notice to creditors of dissolved corporation.

450.1842a Publication of notice of dissolution; requirements; claimants commencing proceedings within 1 year of notice.

Sec. 842a. (1) A dissolved corporation may also publish notice of dissolution at any time after the effective date of dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must be in accord with both of the following:

(a) Be published 1 time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or if there is no principal office in this state, its registered office, is or was last located.

(b) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within 1 year after the publication date of the newspaper notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 1 year after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under section 841a.

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on.

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) Notwithstanding subsection (3), a claimant having an existing claim known to the corporation at the time of publication in accordance with subsection (2) and who did not receive written notice under section 841a is not barred from commencing a proceeding until 6 months after the claimant has actual notice of the dissolution.

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

450.1843 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to rejection of creditor's claim.

450.1851 Judicial supervision of corporate affairs and liquidation of assets; permitting creditor to file claim or commence proceeding.

Sec. 851. (1) After a corporation has been dissolved in any manner, the corporation, a creditor, or a shareholder may apply at any time to the circuit court of the county in which the principal place of business or registered office of the corporation is located for a judgment that the affairs of the corporation and the liquidation of its assets continue under supervision of the court. The court shall make orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the corporation's assets by its officers and directors under supervision of the court, or the appointment of a receiver of the corporation to be vested with powers as the court designates to liquidate the affairs of the corporation.

(2) For good cause shown, and so long as a corporation has not made complete distribution of its assets, the court may permit a creditor who has not delivered his or her claim or commenced a proceeding to enforce his or her claim within the time limits provided in sections 841a and 842a to file the claim or to commence a proceeding within the time as the court directs.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1973, Act 98, Imd. Eff. Aug. 8, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1855 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to distribution of assets to shareholders.

450.1855a Provision for debts, obligations, and liabilities; distribution of remaining assets.

Sec. 855a. Before making a distribution of assets to shareholders in dissolution, a corporation shall pay or make provision for its debts, obligations, and liabilities. Compliance with this section requires that, to the extent that a reasonable estimate is possible, provision be made for those debts, obligations, and liabilities anticipated to arise after the effective date of dissolution. Provision need not be made for any debt, obligation,

or liability that is or is reasonably anticipated to be barred under section 841a or 842a. The fact that corporate assets are insufficient to satisfy claims arising after a dissolution does not create a presumption that the corporation has failed to comply with this section. Adequate provision is deemed to have been made for any debt, obligation, or liability of the corporation if payment has been assumed or guaranteed in good faith by 1 or more financially responsible corporations, persons, or the United States government or agency of the United States government, and the provision, including the financial responsibility of the corporations or other persons, was determined in good faith and with reasonable care by the board to be adequate. After payment or adequate provision has been made for the corporation's debts, obligations, or liabilities, the remaining assets shall be distributed, except as otherwise provided in this section, in cash, in kind, or both in cash and in kind, to shareholders according to their respective rights and interests. A shareholder beneficially owning less than 5% of the outstanding shares may be paid in cash only, even if a shareholder beneficially owning 5% or more of the outstanding shares receives a distribution in kind, if the ownership of all shareholders receiving cash instead of distributions in kind without their written consent does not exceed 10% of all outstanding shares.

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

450.1861 Implementation of judicially confirmed plan of reorganization.

Sec. 861. A corporation for which a plan of reorganization has been confirmed by the judgment of a court of competent jurisdiction pursuant to any applicable law of this state or the United States may put into effect and carry out the plan without action by its directors or shareholders. Such action may be taken, as directed in the judgment, by the receiver or trustee of the corporation appointed in the reorganization proceedings, or by any other person designated by the court.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1862 Powers of corporation under judicially confirmed plan of reorganization.

Sec. 862. (1) The corporation, in the manner provided in section 861 but without limiting the generality or effect of that section, may amend or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of, or in addition to any director or officer then in office; amend its articles of incorporation, and make any change in its capital or capital stock, or any other amendment, change or alteration, or provision, authorized by this act; be dissolved, transfer any part of its assets, and merge or consolidate as permitted by this act, but in any of these cases a shareholder does not have a statutory right of appraisal of his shares; change the location of its registered office and remove or appoint a resident agent; authorize and fix the terms, manner and conditions of the issuance of bonds, debentures or other obligations, whether or not convertible into shares of its capital stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of its capital stock of any class; and lease its property and franchises.

(2) Irrespective of any other provision of this act, the corporation may issue its shares of capital stock and its bonds for the consideration specified in the plan of reorganization after confirmation of the plan.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1863 Certificate or document filed or recorded pursuant to plan of reorganization.

Sec. 863. A certificate or other document required or permitted by law to be filed or recorded to accomplish any corporate purpose, sought to be accomplished pursuant to the plan of reorganization, shall be made, executed and acknowledged, as may be directed by such judgment by the persons designated in section 861. The certificate or document shall certify that provision for the making of the certificate or document is contained in the plan of reorganization or in a judgment of a court having jurisdiction of the proceeding, under such applicable statute of this state or of the United States for the reorganization of the corporation, and that the plan has been confirmed, as provided by such applicable statute, with the title and venue of the proceeding and the date of the judgment confirming the plan. The certificate or other document shall be filed as provided in section 131 and upon such filing becomes effective in accordance with the terms thereof and the provisions of sections 861 to 864.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1864 Additional certificate or document filed to conform to plan of reorganization as finally confirmed; effect of filing; fees.

Sec. 864. (1) If after the filing of a certificate or other document the order of confirmation of the plan of reorganization is reversed or vacated or the plan is modified, other or further certificates or documents shall be filed as required to conform to the plan of reorganization as finally confirmed or to the judgment of the

court.

(2) Except as otherwise provided in sections 861 to 864, a certificate or other document filed pursuant to this section or section 863 is not deemed to confer on a corporation any power, privilege or franchise, except those permitted to be conferred on a corporation formed or existing under this act.

(3) On the filing of a certificate or other document pursuant to this section or any other section of this act, the same fees shall be paid to the administrator as are payable by a corporation not in reorganization upon filing like certificates or documents.

History: 1972, Act 284, Eff. Jan. 1, 1973.