



Ohio Revised Code

Section 1702.41 Merger or consolidation into domestic corporation.

Effective: May 22, 2012

Legislation: House Bill 267 - 129th General Assembly

(A)(1) Pursuant to an agreement of merger, a domestic corporation and one or more additional domestic or foreign entities may be merged into a surviving domestic corporation. Pursuant to an agreement of consolidation, one or more domestic or foreign entities may be consolidated into a new domestic corporation. If any constituent entity is formed or organized under the laws of any state other than this state or under any chapter of the Revised Code other than this chapter, the merger or consolidation also must be permitted by the chapter of the Revised Code under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists.

(2) To effect a merger or consolidation under this section, the directors of each constituent domestic corporation shall approve an agreement of merger or consolidation to be signed by the chairperson of the board of directors, the president, or a vice-president and by the secretary or an assistant secretary. The agreement of merger or consolidation shall be approved or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists.

(3) The agreement of merger or consolidation shall set forth all of the following:

(a) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(b) That the named constituent entities have agreed to merge into a specified constituent corporation, designated in this section as the surviving corporation, or that the named constituent entities have agreed to consolidate into a new corporation to be formed by the consolidation, designated in this section as the new corporation;

(c) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists;

(d) The name of the surviving or new corporation, which may be the same as or similar to that of



any constituent corporation;

(e) The place in this state where the principal office of the surviving or new corporation is to be located;

(f) The names and addresses of the first directors and officers of the surviving or new corporation, and, if desired, their term or terms of office;

(g) The name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the surviving or new corporation may be served;

(h) The terms of the merger or consolidation and the mode of carrying those terms into effect;

(i) The regulations of the surviving or new corporation or a provision to the effect that the regulations of a specified constituent corporation shall be the regulations of the surviving or new corporation or to the effect that the voting members or the directors of the surviving or new corporation may adopt regulations, or any combination of them.

(4) The agreement of merger or consolidation may also set forth any of the following:

(a) The specification of a date, which may be the date of the filing of the agreement or a date subsequent to that date of filing, upon which the merger or consolidation shall become effective;

(b) A provision conferring upon the directors of one or more of the constituent corporations or the comparable representatives of any other constituent entity the power to abandon the merger or consolidation prior to the filing of the agreement;

(c) Any additional provision permitted to be included in the articles of a newly formed corporation;

(d) Any additional provision considered necessary or desirable with respect to the proposed merger or consolidation.

(B)(1) A merger or consolidation in which a domestic public benefit corporation is one of the



constituent entities shall be approved by the court of common pleas of the county in this state in which the principal office of the public benefit corporation is located, in a proceeding of which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right. No approval by the court under division (B)(1) of this section is required if either of the following applies:

(a) A domestic public benefit corporation is the surviving entity in the case of a merger and continues to be a public benefit corporation or is the new corporation in the case of a consolidation and continues to be a public benefit corporation.

(b) A domestic public benefit corporation is not the surviving entity in the case of a merger or is not the new corporation in the case of a consolidation, and all of the following apply:

(i) On or prior to the effective date of the merger or consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the domestic public benefit corporation or the fair market value of the domestic public benefit corporation if it is to be operated as a business concern, are transferred or conveyed to one or more persons that would have received its assets under section 1702.49 of the Revised Code had it voluntarily dissolved.

(ii) The domestic public benefit corporation returns, transfers, or conveys any assets held by it upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger or consolidation, in accordance with that condition.

(iii) The merger or consolidation is approved by a majority of directors of the domestic public benefit corporation who will not receive any financial or other benefit, directly or indirectly, as a result of the merger or consolidation or by agreement, and who are not and will not as a result of the merger or consolidation become members, partners, or other owners, however denominated, of, shareholders in, directors, officers, managers, employees, agents, or other representatives of, or consultants to, the surviving or new entity.

(2) At least twenty days before consummation of any merger or consolidation of a domestic public



benefit corporation pursuant to division (B)(1)(b) of this section, written notice, including a copy of the proposed plan of merger or consolidation, shall be delivered to the attorney general's charitable law section. The attorney general's charitable law section may review a proposed merger or consolidation of a domestic public benefit corporation under division (B)(1)(b) of this section. The attorney general may require, pursuant to section 109.24 of the Revised Code, the production of the documents necessary for review of a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may retain, at the expense of the domestic public benefit corporation, one or more experts, including an investment banker, actuary, appraiser, certified public accountant, or other expert, that the attorney general considers reasonably necessary to provide assistance in reviewing a proposed merger or consolidation under division (B)(1)(b) of this section. The attorney general may extend the date of any merger or consolidation of a domestic public benefit corporation under division (B)(1)(b) of this section for a period not to exceed sixty days and shall provide notice of that extension to the domestic public benefit corporation. The notice shall set forth the reasons necessitating the extension.

(3) No member, other than a member that is a public benefit entity, or director of a domestic public benefit corporation in that person's capacity as a member or director may receive or keep anything as a result of a merger or consolidation other than membership or directorship in the surviving or new public benefit corporation, without the prior written consent of the attorney general or of the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located, in a proceeding in which the attorney general's charitable law section has been given written notice by certified mail within three days of the initiation of the proceeding, and in which proceeding the attorney general may intervene as of right. The court shall approve the transaction if it is in the public interest.

(4) The attorney general may institute a civil action to enforce the requirements of divisions (B)(1), (2), and (3) of this section in the court of common pleas of the county in this state in which the principal office of the domestic public benefit corporation is located or in the Franklin county court of common pleas. In addition to any civil remedies that may exist under common law or the Revised Code, a court may rescind the transaction or grant injunctive relief or impose any combination of these remedies.