



Ohio Legislative Service Commission

Final Analysis

Nicholas A. Keller

Sub. H.B. 267

129th General Assembly
(As Passed by the General Assembly)

Reps. McKenney, Combs, Letson, Stebelton, Murray, R. Adams, Barnes, Beck, Blair, Blessing, Carney, Dovilla, Duffey, Gardner, Garland, Gonzales, Grossman, Hackett, Hayes, Huffman, Luckie, O'Brien, Patmon, Pillich, Sears, Slaby, Sprague, Terhar, Weddington, Winburn, Young, Batchelder

Sens. Beagle, Bacon, Coley, Eklund, Faber, Hite, Hughes, Jones, Obhof, Oelslager, Patton, Sawyer, Wagoner

Effective date: May 22, 2012

ACT SUMMARY

- Adopts the Revised Uniform Unincorporated Nonprofit Association Act.
- Permits Ohio nonprofit corporations to merge and consolidate with other types of domestic and foreign entities in a manner generally similar to mergers and consolidations currently authorized for limited liability companies.

CONTENT AND OPERATION

Uniform Unincorporated Nonprofit Association Act

The act adopts the Revised Uniform Unincorporated Nonprofit Association Act and eliminates the former three-section R.C. Chapter 1745. governing unincorporated associations.¹ The new provisions of Chapter 1745. generally follow the provisions of the Nonprofit Corporation Law (R.C. Chapter 1702.) generally unchanged by the act, that are intended to protect charitable interests in cases of mergers, consolidations, dissolutions, and other matters. The act permits unincorporated nonprofit associations to merge and consolidate with various types of entities, including other associations, for-profit corporations, nonprofit corporations, and limited liability companies, domestic or foreign, in a manner similar to mergers and consolidations of limited

¹ R.C. 1745.01, 1745.02, and 1745.04.

liability companies under continuing Limited Liability Company Law (R.C. Chapter 1705.). The act supplements the Uniform Act by providing additional "default" mechanisms, similar to those in the Nonprofit Corporation Law, relating to voting procedures, meeting requirements, and other matters relating to internal governance. These defaults apply when an association fails to establish its own rules of governance.

The act defines an unincorporated nonprofit association as an unincorporated organization consisting of two or more members joined by mutual consent pursuant to an agreement, written, oral, or inferred from conduct, for one or more common, nonprofit purposes.² The definition excludes all of the following:

- (1) A trust;
- (2) A marriage, domestic partnership, common law relationship, or other domestic living arrangement;
- (3) An organization that is formed under any other statute that governs the organization and operation of unincorporated associations;
- (4) A joint tenancy, tenancy in common, or tenancy by the entireties notwithstanding that the co-owners share use of the property for a nonprofit purpose;
- (5) A religious organization that operates according to the rules, regulations, canons, discipline, or customs established by the organization, including any ministry, apostolate, committee, or group within that organization.

The act sets forth the law governing unincorporated nonprofit associations; the powers, duties, and liabilities of such associations; the rights, powers, obligations, and liabilities of members and officers; the methods of giving notices, holding meetings of members, and voting; the methods of selecting managers and the powers, duties, and liabilities of managers; the conduct of meetings of managers; the creation and powers of committees of managers; the indemnification of managers, officers, members, or other persons acting for the association in a representative capacity; special provisions related to public benefit associations or entities (unincorporated nonprofit associations or other entities that are exempt from federal taxation under § 501(c)(3) of the Internal Revenue Code or are organized for public or charitable purposes and required on dissolution to distribute their assets to similar associations or entities or the government); and

² R.C. 1745.05(M).

methods of and procedures for the sale or other disposition of assets, merger, consolidation, and dissolution.³

Merger and consolidation of nonprofit entities

The act modifies the law governing mergers and consolidations of nonprofit corporations. Previously, the Nonprofit Corporation Law provided for the merger or consolidation of two or more corporations, whether nonprofit or business corporations, if the resulting corporation would be nonprofit.⁴ The act authorizes mergers and consolidations that also include unincorporated business or for-profit organizations (including partnerships), limited liability partnerships, and unincorporated nonprofit associations.⁵

The act provides that if a domestic public benefit corporation is one of the constituent entities of a merger or consolidation that leaves a *domestic nonprofit corporation* as the surviving entity, the court of common pleas of the county in which the public benefit corporation has its principal office must approve the merger or consolidation. However, no court approval is necessary if (1) the surviving entity or new corporation is a public benefit corporation or (2) the surviving entity or new corporation is not a public benefit corporation, but the domestic public benefit corporation transfers assets as if it were being voluntarily dissolved, returns assets that are required to be returned upon the merger or consolidation, and receives approval of the merger or consolidation by a majority of the directors of the domestic public benefit corporation who have no financial interest in the merger or consolidation. Continuing law authorizes the Attorney General's charitable law section to review a proposed merger or consolidation involving a domestic public benefit corporation that does not leave a *domestic public benefit corporation* as the surviving or new entity and to enforce the merger and consolidation provisions of the law.⁶

If the entity resulting from a merger or consolidation involving a domestic nonprofit corporation is not a domestic nonprofit corporation, the agreement of merger or consolidation must include the terms specified in the act. The act contains special requirements relating to the name of the surviving entity, the appointment of statutory agents, and registration to do business in Ohio if the surviving entity is a foreign entity. The act also requires court approval as described in the preceding paragraph, but the

³ R.C. 1745.05 through 1745.57.

⁴ Former R.C. 1702.41.

⁵ R.C. 1702.01(R) and 1702.41(A)(1).

⁶ R.C. 1702.41(B).

exemption from court approval applies if the surviving organization is a *public benefit entity*. The act extends the authority of the Attorney General described in the preceding paragraph to mergers and consolidations that do not leave a *public benefit entity* as the surviving or new entity.⁷

Under the act, if the surviving entity of a merger is a domestic nonprofit corporation, the articles of the domestic surviving corporation in effect immediately before the merger takes effect continue as its articles except as otherwise provided in the agreement of merger. In a consolidation, the new entity exists when the consolidation becomes effective, and, if it is a domestic corporation, the articles contained in or provided for in the agreement of consolidation are its original articles.⁸

If a general partner of a constituent partnership is not a general partner of the surviving entity or the new entity resulting from a merger or consolidation, the former general partner has no liability for any obligation incurred after the merger or consolidation except to the extent that a former creditor of the constituent partnership extends credit to the surviving or new entity reasonably believing that the former general partner continued as a general partner of the surviving or new entity. In addition, R.C. 1782.434 governing liabilities and rights to indemnification under the Limited Partnership Law applies.⁹

If a merger yields an entity other than a domestic corporation, and if any constituent entity was formed under the laws of a state other than Ohio, or under any section of Ohio law other than the Nonprofit Corporation Law, then the act requires an entity to file all necessary documents as dictated by that other law.¹⁰

Under the act, any action to set aside a merger or consolidation on the ground that any applicable section of the Revised Code has not been complied with must be brought within 90 days after the effective date of the merger or consolidation.¹¹

Service of process

The act authorizes an unincorporated, nonprofit association to appoint an agent to receive service of process on its behalf and prescribes how such an appointment is to

⁷ R.C. 1702.411.

⁸ R.C. 1702.44(A)(2).

⁹ R.C. 1702.44(A)(5) and (B).

¹⁰ R.C. 1702.43(A)(3).

¹¹ R.C. 1702.44(D).

be made. An agent is required to be either a natural person who is a resident of Ohio, a for-profit domestic corporation, or a for-profit foreign corporation that has a license to do business in Ohio and an address in Ohio. The Secretary of State is required to keep a record of the names of all unincorporated nonprofit associations that have appointed an agent to receive service of process and the names and addresses of their respective agents.¹² If an agent resigns, the resignation must be filed with the Secretary and takes effect 30 days after it is filed.¹³

The act prescribes how service of process is to be made when the Secretary of State acts as the agent of an entity that is the result of a merger between a domestic, unincorporated, nonprofit association and some other entity into something other than a domestic, unincorporated, nonprofit association.¹⁴

Dissolutions

The act prescribes the manner through which a nonprofit association is dissolved, either voluntarily or by court order.¹⁵ When a dissolution is initiated, the act requires a copy of either the resolution of dissolution or the court order to be filed with the Secretary of State if there is any document on file with the Secretary with regard to that association.¹⁶

Definitions

The act adds to the definition of the term "entity" for the purposes of the Nonprofit Corporation Law. Under the act, "entity" also includes a business corporation existing under the laws of Ohio or any other state, an unincorporated business, a for-profit organization, a limited liability partnership, and an unincorporated, nonprofit association.¹⁷

The act also defines "public benefit entity" and "unincorporated, nonprofit association."¹⁸

¹² R.C. 1745.13(A).

¹³ R.C. 1745.13(B).

¹⁴ R.C. 1745.461(A)(3)(g).

¹⁵ R.C. 1745.50 and 1745.55.

¹⁶ R.C. 1745.51(B) and 1745.55(D).

¹⁷ R.C. 1702.01(R)(2) and (3).

¹⁸ R.C. 1702.01(S) and (T).

Conforming changes

The act amends several Revised Code sections to conform to the provisions described above.¹⁹

HISTORY

ACTION	DATE
Introduced	06-15-11
Reported, H. Judiciary and Ethics	09-21-11
Passed House (94-0)	09-27-11
Reported, S. Insurance, Commerce & Labor	01-26-12
Passed Senate (31-0)	01-31-12
House concurred in Senate amendments (97-0)	02-08-12

12-hb267-129.docx/ks

¹⁹ R.C. 9.231, 169.01, 2901.23, 3955.06, 3956.06, 4121.70, 4303.201, 4303.204, 4303.207, 5111.151, and 5701.13.

