

Act No. 528  
Public Acts of 1996  
Approved by the Governor  
January 12, 1997  
Filed with the Secretary of State  
January 13, 1997

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Rep. Randall

# **ENROLLED HOUSE BILL No. 6181**

AN ACT to amend Act No. 213 of the Public Acts of 1982, entitled "An act to authorize the formation of limited partnerships; to define the rights and liabilities of the partners, the relation of partners to each other, and to persons dealing with limited partnerships; to provide for the dissolution and winding up of limited partnerships; to provide for registration of foreign limited partnerships; to provide certain causes of action; to impose certain duties on certain state departments; to make uniform the law relating to limited partnerships; and to repeal certain acts and parts of acts," as amended, being sections 449.1101 to 449.2108 of the Michigan Compiled Laws, by adding section 210.

*The People of the State of Michigan enact:*

Section 1. Act No. 213 of the Public Acts of 1982, as amended, being sections 449.1101 to 449.2108 of the Michigan Compiled Laws, is amended by adding section 210 to read as follows:

Sec. 210. (1) A domestic limited partnership may merge or consolidate with 1 or more other domestic limited partnerships under a plan of merger or consolidation as provided in subsection (2) and approved as provided in subsection (3).

(2) One or more general partners of each limited partnership that is a participant in the merger or consolidation shall propose a plan of merger or consolidation which includes all of the following:

(a) The name of the surviving or new limited partnership.

(b) The name of each other constituent limited partnership.

(c) The terms and conditions of the merger or consolidation, including the manner and basis of converting the partnership interests in each constituent limited partnership into partnership interests in the surviving or new limited partnership, into cash, other consideration, or a combination thereof.

(d) In the case of a merger, if any amendment to the certificate of limited partnership of the surviving limited partnership is required on account of the merger, a copy of a restated certificate of limited partnership of the surviving limited partnership reflecting the amendment and containing the information required by section 202(f). In the case of a consolidation, a copy of the certificate of limited partnership of the new limited partnership, containing the information required by section 201(a).

(e) Any other provisions considered necessary or desirable regarding the merger or consolidation.

(3) The plan of merger or consolidation shall be submitted to the partners of each constituent limited partnership for approval. Approval shall be by unanimous consent of the partners of each constituent limited partnership, unless the partnership agreement of a constituent limited partnership provides otherwise, in which event approval by the partners of that limited partnership shall be as provided in the partnership agreement.

(4) After a plan of merger or consolidation is approved by the partners of each constituent limited partnership, a certificate of merger or consolidation for each constituent limited partnership shall be filed by 1 or more general partners with the administrator. The certificate shall contain all of the following:

- (a) The information required by subsection (2)(a) and (b).
- (b) The original signed copy of the restated certificate of limited partnership or the certificate of limited partnership if required by subsection (2)(d).
- (c) A statement that the plan of merger or consolidation has been approved by the partners of each constituent limited partnership as required by subsection (3).
- (d) The effective date of the certificate of merger or consolidation.
- (5) The merger or consolidation is effective on the effective date of the certificate of merger or consolidation as provided in section 206.
- (6) All of the following apply to a merged or consolidated domestic limited partnership:
- (a) The constituent limited partnerships become a single limited partnership, that in the case of a merger, is the limited partnership designated in the plan of merger as the surviving limited partnership and, in the case of a consolidation is the new limited partnership provided for in the plan of consolidation.
- (b) Title to all real, personal, and other property, including all accounts and debts receivable, promises to make contributions, other choses in action, and any other right or interest of, owned by, belonging to, or due to each constituent limited partnership is vested in the surviving or new limited partnership, without further act or deed and without reversion or impairment.
- (c) Upon complying with section 104, the surviving or new limited partnership may use the name and the assumed names of any other constituent limited partnership.
- (d) The surviving or new limited partnership has all liabilities of each constituent limited partnership.
- (e) A proceeding pending against any constituent limited partnership may be continued as if the merger or consolidation had not occurred or the surviving or new limited partnership may be substituted in the proceeding for any constituent limited partnership.
- (f) In the case of a merger, the certificate of limited partnership of the surviving limited partnership is amended by any restated certificate of limited partnership attached to the certificate of merger. In the case of a consolidation, the certificate of limited partnership of the new limited partnership shall be attached to the certificate of consolidation and a separate additional filing of a restated certificate of limited partnership is not required.
- (g) The partnership interests in each constituent limited partnership are converted into partnership interests in the surviving or new limited partnership, into cash, other consideration, or a combination thereof as provided in the plan of merger or consolidation.
- (h) A general partner of the surviving limited partnership in a merger or a general partner of the new limited partnership in a consolidation is not liable as a general partner for any obligations of any other constituent limited partnership unless the general partner was also a general partner of another constituent limited partnership, the general partner was liable for the obligations, and the obligations were outstanding on the effective date of the merger or consolidation or arise after the effective date of the merger or consolidation on account of acts or omissions before the effective date of the merger or consolidation.
- (i) A general partner of a constituent limited partnership in a merger or consolidation shall continue to be liable as a general partner for all obligations of the constituent limited partnership outstanding on the effective date of the merger or consolidation or which arise after the effective date of the merger or consolidation on account of acts or omissions before the effective date of the merger or consolidation, to the extent that the general partner would have been liable for the obligations had the merger or consolidation not occurred.
- (7) Before the effective date of the certificate of merger or consolidation, the merger or consolidation may be abandoned as provided in the plan of merger or consolidation or, if no provisions exist, by the unanimous consent of the partners of each constituent limited partnership. If the partnership agreement of a constituent limited partnership requires or permits a different abandonment procedure, the procedure required or permitted in the partnership agreement shall be followed. If the certificate of merger or consolidation has been filed, then in order for the abandonment to be effective, each constituent limited partnership shall file a certificate of abandonment within 10 days after the abandonment, but not later than the effective date of the certificate of merger or consolidation.
- (8) One or more domestic limited partnerships may merge or consolidate with 1 or more foreign limited partnerships if all of the following requirements are satisfied:
- (a) The merger or consolidation is permitted by the laws of the jurisdiction in which each constituent foreign limited partnership is organized, each constituent foreign limited partnership complies with those laws, each constituent foreign limited partnership complies with the laws of this state, and each constituent foreign limited partnership complies with subsection (4). If the surviving or new limited partnership is a foreign limited partnership, subsection (4)(b) does not apply. In the case of a merger, a copy of the certificate of limited partnership or similar document of the surviving foreign limited partnership shall be attached to the certificate of merger with any changes to the certificate of limited partnership or similar document has required on account of the merger. In the case of a consolidation, a copy of the certificate of limited partnership or similar document of the new foreign limited partnership containing the information

required by the laws of the jurisdiction in which the foreign limited partnership is organized shall be attached to the certificate of consolidation. Each constituent foreign limited partnership shall attach to the plan of merger or consolidation a statement that the plan of merger or consolidation has been approved in accordance with the laws of the jurisdiction in which each constituent foreign limited partnership is organized.

(b) Each domestic limited partnership has complied with subsections (1) to (4). The merger or consolidation is effective on the effective date of the certificate of merger or consolidation as provided in section 206.

(9) If the surviving or new limited partnership is a domestic limited partnership, all of subsection (6) shall apply. If the surviving or new limited partnership is a foreign limited partnership, all of subsection (6), except subdivision (f), shall apply. In the case of a merger, if the certificate of merger contains a statement of changes to the surviving foreign limited partnership's certificate of limited partnership or similar document as provided in subsection (8)(a), the certificate of limited partnership or similar document shall be amended to reflect the changes in the manner provided under the laws of the jurisdiction in which the foreign limited partnership is organized. In the case of a consolidation, a copy of the certificate of limited partnership or similar document of the new foreign limited partnership shall be attached to the certificate of consolidation as provided in subsection (8)(a) and filed as provided under the laws of the jurisdiction in which the foreign limited partnership is organized.

(10) Before the effective date of the certificate of merger or consolidation, the merger or consolidation may be abandoned as provided in the plan of merger or consolidation or, if no provisions exist, by the unanimous consent of the partners of each constituent limited partnership. If the partnership agreement of a constituent domestic limited partnership requires or permits a different abandonment procedure, the procedure required or permitted in the partnership agreement shall be followed. If the laws of the jurisdiction in which a constituent foreign limited partnership is organized require or permit a different abandonment procedure, the procedure required or permitted by the laws of the jurisdiction shall be followed. If the certificate of merger or consolidation has been filed, in order for the abandonment to be effective, each constituent domestic limited partnership and each constituent foreign limited partnership shall file a certificate of abandonment within 10 days after the abandonment, but not later than the effective date of the certificate of merger or consolidation.

(11) If the surviving or new limited partnership is a foreign limited partnership, it shall be subject to article 9 if it transacts business in this state and is subject to service of process in any proceeding in this state for the enforcement of any obligation of any constituent domestic limited partnership or any obligation of the surviving or new limited partnership arising from the merger or consolidation. The administrator is the agent for service of process in any proceeding.

(12) As used in subsections (13) to (17):

(a) "Business organization" means a domestic or foreign corporation, limited liability company, general partnership, registered limited liability partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic or foreign limited partnership.

(b) "Entity" means a domestic limited partnership or a business organization.

(13) One or more domestic limited partnerships may merge or consolidate with 1 or more business organizations if all of the following requirements are satisfied:

(a) The merger or consolidation is permitted by the laws of this state and the laws of the jurisdiction in which each constituent foreign business organization is organized, each constituent business organization complies with those laws, each constituent foreign business organization transacting business in this state complies with the applicable laws of this state, and each domestic limited partnership complies with this section.

(b) One or more general partners of each domestic limited partnership that is a participant in the merger or consolidation, and the appropriate person or persons under applicable law with respect to each business organization that is a participant in the merger or consolidation, propose a plan of merger or consolidation which includes all of the following:

(i) The name of the surviving or new entity.

(ii) The name of each other constituent entity.

(iii) The terms and conditions of the merger or consolidation, including the manner and basis of converting the partnership interests, shares, membership interests, or other ownership interests in each constituent entity into partnership interests, shares, membership interests, or other interests in the surviving or new entity, into cash, other consideration, or a combination thereof.

(iv) In the case of a merger, if the surviving entity is to be a domestic limited partnership and if any amendment to the certificate of limited partnership of the surviving domestic limited partnership is required on account of the merger, a copy of a restated certificate of limited partnership of the surviving domestic limited partnership and containing the information required by section 202(f). If the surviving entity is to be a domestic business organization and if any changes to its articles of incorporation, articles of organization, or other organizing or governing documents are required on account of the merger, a statement of the changes. If the surviving entity is to be a foreign business organization, a

copy of the articles or certificate of incorporation, articles of organization, or other organizing or governing documents of the surviving business organization, and a statement of any changes to the articles or certificate of incorporation, articles of organization, or other organizing or governing documents required on account of the merger.

(v) In the case of a consolidation, if the new entity is to be a domestic limited partnership, a copy of a certificate of limited partnership of the new domestic limited partnership, containing the information required by section 201(a), and if the new entity is to be a business organization, a copy of the articles or certificate of incorporation, articles of organization, or other organizing or governing documents of the new business organization, containing the information required by the laws of the jurisdiction in which the new business organization is organized.

(vi) Any other provisions considered necessary or desirable to the merger or consolidation.

(c) The plan of merger or consolidation is approved with respect to each constituent domestic limited partnership in accordance with subsection (3), and with respect to each constituent business organization in a manner provided by the laws of the jurisdiction in which the business organization is organized.

(d) After the plan of merger or consolidation is approved as provided in subdivision (c), a certificate of merger or consolidation is executed on behalf of each constituent domestic limited partnership by 1 or more general partners and on behalf of each constituent business organization by the appropriate person or persons under applicable law and filed in the office of the administrator. The certificate shall contain all of the following:

(i) The information required by subdivision (b)(i) and (ii).

(ii) The original signed copy of any restated certificate of limited partnership or certificate of limited partnership required by subdivision (b)(iv) or (v).

(iii) A copy of any articles or certificate of incorporation, articles of organization, or other applicable organizing or governing documents required by subdivision (b)(iv) or (v).

(iv) A statement of any changes to the articles or certificate of incorporation, articles of organization, or other applicable organizing or governing documents required by subdivision (b)(iv).

(v) A statement that the plan of merger or consolidation has been approved with respect to each constituent entity in accordance with subdivision (c).

(vi) The effective date of the certificate of merger or consolidation, if the effective date is to be later than the date on which the certificate is filed.

(14) The merger or consolidation is effective on the effective date of the certificate of merger or consolidation as provided in section 206.

(15) All of the following apply when a merger or consolidation of 1 or more domestic limited partnerships and 1 or more business organizations is effective:

(a) The constituent entities become a single entity, which, in the case of a merger, is the entity designated in the plan of merger as the surviving entity, and, in the case of a consolidation, is the new entity provided for in the plan of consolidation.

(b) Title to all real, personal, and other property, including all accounts and debts receivable, promises to make contributions, other choses in action, and every other right or interest of, owned by, belonging to, or due to each constituent entity, is vested in the surviving or new entity, without further act or deed and without reversion or impairment.

(c) Upon complying with applicable law, the surviving or new entity may use the name and the assumed names of any other constituent entity.

(d) The surviving or new entity has all liabilities of each constituent entity.

(e) A proceeding pending against any constituent entity may be continued as if the merger or consolidation had not occurred or the surviving or new entity may be substituted in the proceeding for any constituent entity.

(f) In the case of a merger if the surviving entity is a domestic limited partnership, the certificate of limited partnership of the surviving domestic limited partnership is amended by any restated certificate of limited partnership attached to the certificate of merger, and a separate additional filing of a restated certificate of limited partnership is not required. If the surviving entity is a business organization and if the certificate of merger contains a statement of changes to the surviving business organization's articles or certificate of incorporation, articles of organization, or other applicable organizing or governing documents as provided in subsection (13)(d)(iv), the documents shall be amended to reflect the changes in the manner provided under the laws of the jurisdiction in which the business organization is organized.

(g) In the case of a consolidation, if the new entity is a domestic limited partnership, the certificate of limited partnership of the new domestic limited partnership shall be the certificate of limited partnership attached to the certificate of consolidation, and a separate additional filing of a certificate of limited partnership is not required. If the new entity is a business organization, the articles or certificate of incorporation, articles of organization, or other organizing or governing documents of the new business organization, copies of which are attached to the certificate of

consolidation as provided in subsection (13)(d)(iii), shall be filed or recorded as provided under the laws of the jurisdiction in which the new business organization is organized.

(h) The partnership interest, shares, membership interests, or other ownership interests in each constituent entity are converted into partnership interests, shares, membership interests, or other ownership interests in the surviving or new entity, into cash, other consideration, or a combination thereof as provided in the plan of merger or consolidation.

(i) As used in this subdivision and subdivision (j), "obligated person" means a general partner of a domestic limited partnership, a partner of a domestic or foreign general partnership or registered limited liability partnership, and any member of, owner of an ownership interest in, or participant in any other type of business enterprise who, under applicable law, is generally liable for the obligations of the business enterprise. An obligated person with respect to the surviving entity in a merger or an obligated person with respect to a new entity in a consolidation is not liable as an obligated person for any obligations of any other constituent entity, unless the obligated person was also an obligated person of the other constituent entity, the obligated person was liable for the obligations, and the obligations were outstanding on the effective date of the merger or consolidation or arise after the effective date of the merger or consolidation on account of acts or omissions before the effective date of the merger or consolidation.

(j) An obligated person with respect to a constituent entity in a merger or consolidation shall continue to be liable as an obligated person for all obligations of the constituent entity outstanding on the effective date of the merger or consolidation or which arise after the effective date of the merger or consolidation on account of acts or omissions before the effective date of the merger or consolidation, if the obligated person would have been liable for the obligations had the merger or consolidation not occurred.

(16) At any time before the effective date of the certificate of merger or consolidation, the merger or consolidation may be abandoned as provided in the plan of merger or consolidation or, if no provisions exist, by the unanimous consent of the partners of each constituent domestic limited partnership. If the partnership agreement of a constituent domestic limited partnership requires or permits a different abandonment procedure, the procedure required or permitted in the partnership agreement shall be followed. Any abandonment procedure required or permitted by the laws of the jurisdiction under which a constituent business organization was organized shall be followed by that business organization. If a certificate of merger or consolidation of 1 or more domestic limited partnerships and 1 or more business organizations has been filed, in order for the abandonment to be effective, each constituent domestic limited partnership and each constituent business organization shall file a certificate of abandonment within 10 days after the abandonment, but not later than the effective date of the certificate of merger or consolidation.

(17) If the surviving or new entity is a foreign business organization, it shall be subject to the laws of this state if it transacts business in this state and is subject to service of process in any proceeding in this state for the enforcement of any obligation of any constituent domestic limited partnership or domestic business organization or any obligation of the surviving or new business organization arising from the merger or consolidation. The administrator is the agent for services of process in any proceeding.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved \_\_\_\_\_

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Governor.