

SENATE BILL NO. 983

August 15, 2024, Introduced by Senators LAUWERS and SINGH and referred to the Committee on Regulatory Affairs.

A bill to amend 1993 PA 23, entitled
"Michigan limited liability company act,"
by amending section 705a (MCL 450.4705a), as amended by 2014 PA
559.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 705a. (1) As used in this section:
- 2 (a) "Business organization" means a domestic or foreign
- 3 corporation, domestic or foreign nonprofit corporation, limited
- 4 partnership, general partnership, **telephone corporation formed**
- 5 **under 1883 PA 129, MCL 484.1 to 484.10,** or any other type of

1 domestic or foreign business enterprise, incorporated or
2 unincorporated, except a domestic limited liability company.

3 (b) "Entity" means a business organization or a domestic
4 limited liability company.

5 (c) "Nonprofit corporation" means a corporation that, under
6 the laws of the jurisdiction in which it was formed, is a nonprofit
7 corporation, including, but not limited to, a corporation formed
8 under or subject to, in whole or in part, the nonprofit corporation
9 act, 1982 PA 162, MCL 450.2101 to 450.3192.

10 (d) "Obligated person" means a general partner of a limited
11 partnership, a partner of a general partnership, or a participant
12 in or an owner of an interest in any other type of business
13 enterprise that, under applicable law, is generally liable for the
14 obligations of the business enterprise.

15 (2) If all of the business organizations in a merger with 1 or
16 more domestic limited liability companies are foreign limited
17 liability companies, the merger ~~shall~~**must** comply with section 705
18 and not this section.

19 (3) Except as otherwise provided in subsection (2), 1 or more
20 domestic limited liability companies may merge with 1 or more
21 business organizations if all of the following requirements are
22 satisfied:

23 (a) The merger is permitted under the law of the jurisdiction
24 in which each constituent business organization is organized and
25 each constituent business organization complies with that law in
26 effecting the merger.

27 (b) Each foreign constituent business organization transacting
28 business in this state complies with the applicable laws of this
29 state.

1 (c) Each domestic limited liability company complies with this
2 section.

3 (4) If 1 or more domestic limited liability companies propose
4 to merge with 1 or more business organizations, each domestic
5 limited liability company shall prepare a plan of merger that
6 contains all of the following:

7 (a) The name of each constituent entity, the name of the
8 surviving entity, the street address of the surviving entity's
9 principal place of business, and the type of organization of the
10 surviving entity.

11 (b) The terms and conditions of the proposed merger, including
12 the manner and basis of converting the shares, partnership
13 interests, membership interests, or other ownership interests of
14 each constituent entity into ownership interests or obligations of
15 the surviving entity, or into cash or other consideration, which
16 may include ownership interests or obligations of an entity not a
17 party to the merger, or into a combination thereof.

18 (c) If the surviving entity is to be a domestic limited
19 liability company, a statement of the amendments to the articles of
20 organization of the surviving company if the articles are changed
21 by the merger, a restatement of the articles of organization, or a
22 statement that the articles of organization of the surviving
23 domestic limited liability company are unchanged.

24 (d) Any other provision that the domestic limited liability
25 company considers necessary or desirable.

26 (5) A constituent domestic limited liability company shall
27 submit a plan of merger to the members for approval. A unanimous
28 vote by the members entitled to vote in the constituent domestic
29 limited liability company is required to approve a plan of merger

1 unless an operating agreement of the constituent domestic limited
2 liability company provides otherwise.

3 (6) If an operating agreement of a constituent domestic
4 limited liability company provides for approval by less than
5 unanimous vote of members entitled to vote and the merger is
6 approved, a member that voted against the merger may withdraw from
7 the domestic limited liability company and receive, within a
8 reasonable time, the fair value of the member's interest in the
9 domestic limited liability company, based on the member's share of
10 distributions as determined under section 303.

11 (7) If a plan of merger is approved, a certificate of merger
12 ~~shall~~**must** be executed as provided in section 103 and filed on
13 behalf of each constituent domestic limited liability company. The
14 certificate of merger ~~shall~~**must** contain all of the following:

15 (a) The information required under subsection (4)(a) and the
16 statement required under subsection (4)(c).

17 (b) A statement that the plan of merger was approved by the
18 members of each constituent domestic limited liability company in
19 accordance with subsection (5).

20 (c) A statement of any assumed names of merging entities
21 transferred to the surviving entity in accordance with section
22 206(6), specifying each transferred assumed name and the name of
23 the entity from which ~~it~~**the assumed name** is transferred. If the
24 surviving entity is a domestic limited liability company or a
25 foreign limited liability company authorized to transact business
26 in this state, the certificate may include a statement of 1 or more
27 names or assumed names of merging entities that are to be treated
28 as new certificates of assumed names of the surviving company under
29 section 206(7).

1 (d) The effective date of the merger if later than the date
2 the certificate of merger is filed.

3 (8) A certificate of merger is effective in accordance with
4 section 104.

5 (9) When a merger is effective under this section, all of the
6 following apply:

7 (a) Every other constituent entity merges into the surviving
8 entity and the separate existence of every entity except the
9 surviving entity ceases.

10 (b) The title to all property, real, personal, and mixed, and
11 rights owned by each constituent entity are vested in the surviving
12 entity without reversion or impairment.

13 (c) A surviving company may use the name and the assumed names
14 of any merging entity if a filing required under section 206(6) or
15 (7) or other applicable statute is made.

16 (d) The surviving entity has all of the liabilities of each
17 constituent entity. This section does not affect liability, if any,
18 of a person that was an obligated person with respect to a merging
19 entity for acts or omissions that occurred before the merger.

20 (e) A proceeding pending against any constituent entity may be
21 continued as if the merger did not occur or the surviving entity
22 may be substituted in the proceeding for the entity whose existence
23 ceased.

24 (f) The articles of organization of a surviving domestic
25 limited liability company are amended to the extent provided in the
26 plan of merger.

27 (g) The ownership interests of each constituent entity that
28 are ~~to be~~ **being** converted into ownership interests or obligations
29 of the surviving entity or into cash or other property are

1 converted.

2 (10) If the surviving entity is a foreign business
3 organization, it is subject to the laws of this state pertaining to
4 the transaction of business in this state by a foreign business
5 organization if it transacts business in this state. The surviving
6 entity is liable for, and is subject to service of process in a
7 proceeding in this state for the enforcement of, any obligation of
8 a constituent domestic limited liability company, including an
9 obligation to a member of the constituent domestic limited
10 liability company that has dissented from the merger and withdrawn
11 in accordance with subsection (6).

12 Enacting section 1. This amendatory act does not take effect
13 unless all of the following bills of the 102nd Legislature are
14 enacted into law:

15 (a) Senate Bill No. 982.

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17 (b) Senate Bill No. 984.