

SENATE BILL No. 929

May 7, 2014, Introduced by Senators BIEDA and KOWALL and referred to the Committee on Economic Development.

A bill to amend 1993 PA 23, entitled "Michigan limited liability company act," by amending section 705a (MCL 450.4705a), as amended by 2002 PA 686.

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, or any other type of domestic or
5 foreign business enterprise, incorporated or unincorporated, except
6 a domestic limited liability company.

7 (b) "Entity" means a business organization or a domestic
8 limited liability company.

1 (C) "NONPROFIT CORPORATION" MEANS A CORPORATION THAT IS
2 INCORPORATED TO CARRY OUT ANY LAWFUL PURPOSE OR PURPOSES THAT DO
3 NOT INVOLVE PECUNIARY PROFIT OR GAIN FOR ITS DIRECTORS, OFFICERS,
4 SHAREHOLDERS, OR MEMBERS, INCLUDING, BUT NOT LIMITED TO, A
5 CORPORATION FORMED UNDER OR SUBJECT TO, IN WHOLE OR IN PART, THE
6 NONPROFIT CORPORATION ACT, 1982 PA 162, MCL 450.2101 TO 450.3192.

7 (D) ~~(e)~~ "Obligated person" means a general partner of a
8 limited partnership, a partner of a general partnership, or a
9 participant in or an owner of an interest in any other type of
10 business enterprise ~~who,~~ **THAT**, under applicable law, is generally
11 liable for the obligations of the business enterprise.

12 (2) If all of the business organizations in a merger with 1 or
13 more domestic limited liability companies are foreign limited
14 liability companies, the merger shall comply with section 705 and
15 not this section.

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

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

24 (b) Each foreign constituent business organization transacting
25 business in this state complies with the applicable laws of this
26 state.

27 (c) Each domestic limited liability company complies with this

1 section.

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

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

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

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

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

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

1 limited liability company is required to approve a plan of merger
2 unless an operating agreement of the constituent domestic limited
3 liability company provides otherwise.

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

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

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

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

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

1 names of merging entities that are to be treated as new
2 certificates of assumed names of the surviving company under
3 section 206(7).

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

6 (8) A certificate of merger is effective in accordance with
7 section 104.

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

10 (a) Every other constituent entity merges into the surviving
11 entity and the separate existence of every entity except the
12 surviving entity ceases.

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

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

19 (d) The surviving entity has all of the liabilities of each
20 constituent entity. This section does not affect liability, if any,
21 of a person ~~who~~ **THAT** was an obligated person with respect to a
22 merging entity for acts or omissions that occurred before the
23 merger.

24 (e) A proceeding pending against any constituent entity may be
25 continued as if the merger did not occur or the surviving entity
26 may be substituted in the proceeding for the entity whose existence
27 ceased.

1 (f) The articles of organization of a surviving domestic
2 limited liability company are amended to the extent provided in the
3 plan of merger.

4 (g) The ownership interests of each constituent entity that
5 are to be converted into ownership interests or obligations of the
6 surviving entity or into cash or other property are converted.

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

17 Enacting section 1. This amendatory act does not take effect
18 unless all of the following bills of the 97th Legislature are
19 enacted into law:

20 (a) Senate Bill No. 623.

21 (b) Senate Bill No. 624.