

Senate Study Bill 2109

Bill Text

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1 1 Section 1. NEW SECTION. 487.1201 MERGER.
1 2 1. Any one or more limited partnerships may merge with or
1 3 into any one or more limited partnerships, limited liability
1 4 companies, or corporations, provided that no limited partner
1 5 of a limited partnership that is a party to the merger will,
1 6 as a result of the merger, become personally liable for the
1 7 liabilities or obligations of any other person or entity
1 8 unless that limited partner approves the plan of merger or
1 9 otherwise consents to becoming personally liable.
1 10 2. Unless otherwise provided in the partnership agreement,
1 11 each domestic limited partnership which is to merge must
1 12 approve the merger by approval of all general partners, and by
1 13 limited partners who own more than fifty percent of the then
1 14 current percentage or other interest in the profits of the
1 15 domestic limited partnership owned by all of the limited
1 16 partners. If more than one class or group of limited partners
1 17 exists, the merger must be approved by the limited partners in
1 18 each class or group who own more than fifty percent of the
1 19 then current percentage or other interest in the profits of
1 20 the domestic limited partnership.
1 21 3. In connection with a merger under this section, rights
1 22 or securities of, or interests in, a limited partnership,
1 23 limited liability company, or corporation which is a
1 24 constituent party to the merger may be exchanged for or
1 25 converted into cash, property, rights, or securities of, or
1 26 interest in, a limited partnership, limited liability company,
1 27 or corporation which is the surviving entity or, in addition
1 28 to or in lieu of such cash, property, rights, securities, or
1 29 interests, may be exchanged for or converted into cash,
1 30 property, rights, or securities of, or interest in, a limited
1 31 partnership, limited liability company, or corporation other
1 32 than the surviving entity.
1 33 Sec. 2. NEW SECTION. 487.1202 PLAN OF MERGER.
1 34 1. Each constituent party to the merger must enter into a
1 35 written plan of merger, which must be approved in accordance
2 1 with section 487.1203.
2 2 2. The plan of merger must set forth all of the following:
2 3 a. The name of each constituent party to the merger and
2 4 the name of the surviving entity into which each other
2 5 constituent party proposes to merge.
2 6 b. The terms and conditions of the proposed merger.
2 7 c. The manner and basis of converting the interests in
2 8 each constituent party to the merger into interests, shares,
2 9 or other securities or obligations of the surviving entity, or
2 10 of any other entity, or, in whole or in part, into cash or
2 11 other property.
2 12 d. Such amendments to the certificate of limited
2 13 partnership of a limited partnership, articles of organization
2 14 of a limited liability company, or articles or certificate of
2 15 incorporation of a corporation, as the case may be, of the
2 16 surviving entity as are desired to be effected by the merger,
2 17 or that such changes are not desired.
2 18 e. Other provisions relating to the proposed merger as are
2 19 deemed necessary or desirable.
2 20 Sec. 3. NEW SECTION. 487.1203 ACTION ON PLAN.
2 21 1. A proposed plan of merger complying with the

2 22 requirements of section 487.1202 shall be approved in the
2 23 manner provided by this section:

2 24 a. A limited partnership which is a party to a proposed
2 25 merger shall have the plan of merger authorized and approved
2 26 in the manner and by the vote required in section 487.1201.

2 27 b. A limited liability company which is a party to a
2 28 proposed merger shall have the plan of merger authorized and
2 29 approved as required by chapter 490A.

2 30 c. A corporation which is a party to a proposed merger
2 31 shall have the plan of merger authorized and approved in the
2 32 manner and by the vote required by chapter 490.

2 33 2. After a merger is authorized, unless the plan of merger
2 34 provides otherwise, and at any time before articles of merger
2 35 as provided for in section 487.1204 are filed, the plan of
3 1 merger may be abandoned subject to any contractual rights, in
3 2 accordance with the procedure set forth in the plan of merger
3 3 or, if none is set forth, in one of the following ways:

3 4 a. By the limited partners of any limited partnership that
3 5 is a constituent party as provided in section 487.1201.

3 6 b. By the majority consent of the members of each limited
3 7 liability company that is a constituent party, unless the
3 8 articles of organization or an operating agreement of such
3 9 limited liability company provides otherwise.

3 10 c. In the manner determined by the board of directors of
3 11 any corporation that is a constituent entity.

3 12 Sec. 4. NEW SECTION. 487.1204 ARTICLES OF MERGER.

3 13 1. After a plan of merger is approved as provided in
3 14 section 487.1203, the surviving entity shall deliver to the
3 15 secretary of state for filing articles of merger duly executed
3 16 by each constituent party setting forth all of the following:

3 17 a. The name of each constituent party.

3 18 b. The plan of merger.

3 19 c. The effective date of the merger if later than the date
3 20 of filing of the articles of merger.

3 21 d. The name of the surviving entity.

3 22 e. A statement that the plan of merger was duly authorized
3 23 and approved by each constituent party as provided in section
3 24 487.1203.

3 25 2. A merger takes effect upon the later of the effective
3 26 date of the filing of the articles of merger or the date set
3 27 forth in the plan of merger.

3 28 Sec. 5. NEW SECTION. 487.1205 EFFECT OF MERGER.

3 29 When a merger takes effect all of the following apply:

3 30 1. Every other constituent party merges into the surviving
3 31 entity and the separate existence of every constituent party
3 32 except the surviving entity ceases.

3 33 2. The title to all real estate and other property owned
3 34 by each constituent party is vested in the surviving entity
3 35 without reversion or impairment.

4 1 3. The surviving entity has all liabilities of each
4 2 constituent party.

4 3 4. A proceeding pending against any constituent party may
4 4 be continued as if the merger did not occur or the surviving
4 5 entity may be substituted in the proceeding for the
4 6 constituent party whose existence ceased.

4 7 5. The articles or limited partnership agreement of the
4 8 surviving entity are amended to the extent provided in the
4 9 plan of merger.

4 10 6. The shares or interests of each constituent party that
4 11 are to be converted into shares, obligations, or other
4 12 securities of the surviving or any other entity or into cash
4 13 or other property are converted, and the former holders of the
4 14 shares or interests are entitled only to the rights provided
4 15 in the articles of merger except for dissenters' rights
4 16 provided by law.

4 17 7. Except as provided by agreement with a person to whom a
4 18 general partner of a limited partnership is obligated, a

4 19 merger of a limited partnership that has become effective
4 20 shall not affect any obligation of liability existing at the
4 21 time of such merger of a general partner of a limited
4 22 partnership which is merging.

4 23 8. If a limited partnership is a constituent party to a
4 24 merger that becomes effective, but the limited partnership is
4 25 not the surviving entity of the merger, a judgment creditor of
4 26 a general partner of such limited partnership may not levy on
4 27 a claim against the surviving entity of the merger unless any
4 28 of the following applies:

4 29 a. A judgment based on the same claim has been obtained
4 30 against the surviving entity of the merger and a writ of
4 31 execution on the judgment is returned unsatisfied in whole or
4 32 in part.

4 33 b. The surviving entity of the merger is a debtor in
4 34 bankruptcy.

4 35 c. The general partner agrees that the creditor need not
5 1 exhaust the assets of the limited partnership that was not the
5 2 surviving entity of the merger.

5 3 d. The general partner agrees that the creditor need not
5 4 exhaust the assets of the surviving entity of the merger.

5 5 e. A court grants permission to the judgment creditor to
5 6 levy execution against the assets of the general partner based
5 7 on a finding that the assets of the surviving entity of the
5 8 merger that are subject to execution are clearly insufficient
5 9 to satisfy the judgment, that exhaustion of the assets of the
5 10 surviving entity of the merger is excessively burdensome, or
5 11 that the grant of permission is an appropriate exercise of the
5 12 court's equitable powers.

5 13 f. Liability is imposed on the general partner by law or
5 14 contract independent of the existence of the surviving entity
5 15 of the merger.

5 16 Sec. 6. NEW SECTION. 487.1206 MERGER WITH FOREIGN
5 17 ENTITY.

5 18 1. Any one or more limited partnerships of this state may
5 19 merge with or into one or more foreign limited partnerships,
5 20 foreign limited liability companies, or foreign corporations,
5 21 or any one or more foreign limited partnerships, foreign
5 22 limited liability companies, or foreign corporations may merge
5 23 with or into any one or more limited partnerships of this
5 24 state, if all of the following apply:

5 25 a. The merger is permitted by the law of the state or
5 26 jurisdiction under whose law each foreign constituent party is
5 27 organized or formed and each foreign constituent party
5 28 complies with that law in effecting the merger.

5 29 b. The foreign constituent party complies with section
5 30 487.1204 if it is the surviving entity.

5 31 c. Each domestic constituent party complies with the
5 32 applicable provisions of sections 487.1202 and 487.1203 and,
5 33 if it is the surviving entity, with section 487.1204.

5 34 2. Upon a merger involving one or more domestic limited
5 35 partnerships taking effect, if the surviving entity is to be
6 1 governed by the law of any state other than this state or of
6 2 any foreign country, the surviving entity shall agree to both
6 3 of the following:

6 4 a. That it may be served with process in this state in any
6 5 proceeding for enforcement of any obligation of any
6 6 constituent party to the merger that was organized under the
6 7 law of this state, as well as for enforcement of any
6 8 obligation of the surviving entity arising from the merger.

6 9 b. To irrevocably appoint the secretary of state as its
6 10 agent for service of process in any such proceeding, and the
6 11 surviving entity shall specify the address to which a copy of
6 12 the process shall be mailed to it by the secretary of state.

6 13 3. The effect of the merger shall be as provided in
6 14 section 487.1205, if the surviving entity is to be governed by
6 15 the law of this state. If the surviving entity is to be

6 16 governed by the law of any jurisdiction other than this state,
6 17 the effect of the merger shall be the same as provided in
6 18 section 487.1205, except insofar as the law of the other
6 19 jurisdiction provides otherwise.

6 20 EXPLANATION

6 21 This bill provides provisions relating to the merger of
6 22 limited partnerships with and into other limited partnerships,
6 23 limited liability companies, and corporations.

6 24 New Code section 487.1201 establishes basic authority for a
6 25 limited partnership to merger into one or more limited
6 26 partnerships, limited liability companies, or corporations.

6 27 New Code section 487.1202 establishes the requirements for
6 28 a plan of merger.

6 29 New Code section 487.1203 establishes the manner in which a
6 30 merger is to be approved by the various entities to a merger
6 31 with a limited partnership.

6 32 New Code section 487.1204 provides that after a plan of
6 33 merger is approved, the surviving entity must deliver the
6 34 articles of merger to the secretary of state for filing.

6 35 New Code section 487.1205 sets forth the effects of a
7 1 merger with respect to the assets and liabilities of the
7 2 parties to the merger and the surviving entity.

7 3 New Code section 487.1206 establishes the manner in which a
7 4 limited partnership may merge with a foreign entity.

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