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(As Passed by the House)

Reps. Goodman, Seitz, Gilb, Schmidt, Britton, Willamowski, Manning, Sulzer, Womer Benjamin, Coates, Barrett, Schneider, Salerno, McGregor, Reidelbach, Aslanides, Collier

BILL SUMMARY

- Exempts a general partner of a limited partnership from the requirement that every partner account to the partnership for any benefit and hold as trustee for it any profits derived by the partner without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by the partner of its property.

- Permits a domestic general partnership and one or more additional domestic general partnerships or other domestic or foreign entities to be merged into a *surviving domestic general partnership* pursuant to a written agreement of merger between the constituent entities and permits two or more domestic or foreign entities to be consolidated into a *new domestic general partnership* formed by such consolidation pursuant to a written agreement of consolidation between the constituent entities.

- Provides that pursuant to a written agreement of merger or consolidation between the constituent entities, a domestic general partnership and one or more additional domestic or foreign entities may be merged into a *surviving entity other than a domestic general partnership*, or a domestic general partnership together with one or more additional domestic or foreign entities may be consolidated into a *new entity other than a domestic general partnership* to be formed by that consolidation.

- Specifies for both types of merger or consolidation the requirements for the adoption and amendment of an agreement of merger or consolidation and the contents of such an agreement, and, upon certain conditions,

permits the abandonment of the merger or consolidation before the filing of the certificate of merger or consolidation.

- Requires that upon the adoption by each constituent entity of an agreement of merger or consolidation, a certificate of merger or consolidation must be filed with the Secretary of State that is signed by an authorized representative of each constituent entity, and specifies the types of information that the certificate must set forth and the types of documents that must accompany the certificate.

- Provides that a merger or consolidation is effective upon the filing of a certificate of merger or consolidation and other specified filings or at any later date that the certificate of merger or consolidation specifies, subject to the limitation that no conversion or substitution of interests or shares in the constituent entities may be effected if there are reasonable grounds to believe that the conversion or substitution would render the surviving or new domestic general partnership unable to pay its obligations, and prescribes the effects of a merger or consolidation.

- Specifies a fee of $25 to be collected by the Secretary of State to create and affix the Secretary of State's seal of office upon a certificate of merger or consolidation under the Uniform Partnership Law or the Limited Partnership Law.

- Provides that, generally, the following are entitled to relief as dissenting partners in a merger or consolidation: (1) partners of a domestic general partnership that is being merged or consolidated into a surviving or new domestic or foreign entity, and (2) in the case of a merger into a domestic general partnership, partners of the surviving domestic general partnership who are entitled to vote or act on the adoption of an agreement or merger, but only as to the interests so entitling them to vote or act.

- Requires a dissenting partner to make a written demand to the partnership for payment of the fair cash value of the interests as to which the dissenting partner seeks relief and establishes the procedures for making the demand and filing a complaint in court for the determination of the fair cash value.

- Specifies the circumstances in which the right and obligation of a dissenting partner to receive the fair cash value and to sell the interests as

to which the dissenting partner seeks relief and the right and obligation of the domestic general partnership to purchase the interests and to pay their fair cash value terminate.

- If a domestic general partnership is a constituent entity to a merger or consolidation that has become effective, and the domestic general partnership is *not* the surviving or resulting entity of the merger or consolidation, prevents a judgment creditor of a partner of that domestic general partnership from levying execution against the assets of the partner to satisfy a judgment based on a claim against the surviving or resulting entity of the merger or consolidation and prescribes certain exceptions.

- Specifically requires a general partner of a limited partnership to perform the duties of a general partner in good faith, in a manner the general partner reasonably believes to be in or not opposed to the best interests of the limited partnership, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

- Provides that no contract, action, or transaction is void or voidable with respect to a limited partnership for the reason that the contract, action, or transaction is among or affects the limited partnership and one or more of its partners, or that the contract, action, or transaction is among or affects the limited partnership and any other person in which one or more of the partners are directors, trustees, officers, or partners, or have a financial or personal interest, if any of specified conditions apply.

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CONTENT AND OPERATION

MODIFICATION OF UNIFORM PARTNERSHIP LAW

Accounting by a partner

The Uniform Partnership Law (R.C. Chapter 1775.) addresses the rights and liabilities of partners, and includes the requirement that *every partner* account to the *partnership* (see **COMMENT** 1) for any benefit and hold as trustee for it any profits derived by the partner without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by the partner of its property (R.C. 1775.20).

The bill exempts a *general partner of a limited partnership* (see **COMMENT** 2) from the above requirement (R.C. 1775.20).

Merger or consolidation into domestic general partnership

The bill permits a domestic general partnership and one or more additional domestic general partnerships or other domestic or foreign entities to be merged into a *surviving domestic general partnership* pursuant to a written agreement of merger between the constituent entities. It also permits two or more domestic or foreign entities to be consolidated into a *new domestic general partnership* formed by such consolidation pursuant to a written agreement of consolidation between the constituent entities. If any constituent entity is formed or organized under the laws of any state other than Ohio or under any Revised Code chapter other than R.C. Chapter 1775., the merger or consolidation also must be permitted by the Revised Code chapter under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists. (R.C. 1775.45(A).)

Agreement of merger or consolidation--required contents

The bill *requires* that a written agreement of merger or consolidation of constituent entities into a surviving or new domestic general partnership set forth all of the following (R.C. 1775.45(B)(1) to (7)):

(1) The name and the form of entity of each constituent entity, the state under the laws of which each constituent entity exists, and the name of the surviving or new domestic general partnership;

(2) In the case of a merger, that one or more specified constituent entities will be merged into a specified surviving domestic general partnership, and, in the case of a consolidation, that the constituent entities will be consolidated into a new domestic general partnership;

(3) All statements and matters required to be set forth in such an agreement of merger or consolidation by the laws under which each constituent entity exists;

(4) In the case of a consolidation, the partnership agreement of the new domestic general partnership *or* a provision that the attached written partnership agreement of a specified constituent general partnership with any specified amendments will be the partnership agreement of the new domestic general partnership;

(5) The name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity, the surviving domestic general partnership, or the new domestic general partnership may be served;

(6) In the case of a merger, any changes in the general partners of the surviving domestic general partnership and, in the case of a consolidation, the general partners of the new domestic general partnership *or* a provision specifying

the general partners of one or more specified constituent partnerships that will constitute the initial general partners of the new domestic general partnership;

(7)(a) The terms of the merger or consolidation, (b) the mode of carrying them into effect, and (c) the manner and basis of converting the interests or shares in the constituent entities into, or substituting the interests or shares in the constituent entities for, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of interests, evidences of indebtedness, securities, cash, rights, or any other property of the surviving domestic general partnership, of the new domestic general partnership, or of any other entity. No such conversion or substitution may be effected if there are reasonable grounds to believe that the conversion or substitution would render the surviving or new domestic general partnership unable to pay its obligations as they become due in the usual course of its affairs.

Agreement of merger or consolidation--permitted contents

The bill *permits* a written agreement of merger or consolidation of constituent entities into a surviving or new domestic general partnership to set forth any of the following (R.C. 1775.45(C)(1) to (6)):

(1) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate of merger or consolidation;

(2) A provision authorizing one or more of the constituent entities to abandon the proposed merger or consolidation prior to filing the certificate of merger or consolidation by action of the general partners of a constituent partnership, the directors of a constituent corporation, or the comparable representatives of any other constituent entity;

(3) In the case of a merger, any amendments to the agreement of general partnership of the surviving domestic general partnership, *or* a provision that the written partnership agreement of a specified constituent general partnership other than the surviving domestic general partnership, with any amendments that are set forth in the agreement of merger, will be the partnership agreement of the surviving domestic general partnership;

(4) A statement of, or a statement of the method of determining, the fair value of the assets to be owned by the surviving domestic general partnership;

(5) The parties to the agreement of merger or consolidation in addition to the constituent entities;

(6) Any additional provision necessary or desirable with respect to the proposed merger or consolidation.

Adoption of agreement of merger or consolidation

To effect the merger or consolidation, the general partners of each constituent domestic general partnership, including the surviving domestic general partnership in the case of a merger, must adopt the agreement of merger or consolidation. In addition, each other constituent entity must adopt or otherwise authorize the agreement in accordance with the laws under which it exists. (R.C. 1775.45(D).)

Meeting and notice. The bill requires that all partners, whether or not they are entitled to vote or act, be given written notice of any meeting of general partners of a constituent domestic general partnership or of any proposed action by general partners of a constituent domestic general partnership, which meeting or action is to adopt an agreement of merger or consolidation. The notice must be given to the partners either by mail at their addresses as they appear on the records of the partnership or in person. Unless the partnership agreement provides a shorter or longer period, the notice must be given not less than seven and not more than 60 days before the meeting or the effective date of the action. The notice must be accompanied by a copy or a summary of the material provisions of the agreement of merger or consolidation. (R.C. 1775.45(E).)

Vote or action. The vote or action of the general partners of a constituent domestic general partnership that is required to adopt an agreement of merger or consolidation is the unanimous vote or action of the general partners or such different number or proportion as provided in writing in the partnership agreement. If the agreement of merger or consolidation would have an effect or authorize any action that under any applicable provision of law or the partnership agreement could be effected or authorized only by or pursuant to a specified vote or action of the partners, or of any class or group of partners, the agreement of merger or consolidation *also* must be adopted or approved by the same vote or action as would be required to effect that change or authorize that action. Each person who will continue to be or who will become a general partner of a partnership that is the surviving or new entity in a merger or consolidation must specifically agree *in writing* to continue or to become, as the case may be, a general partner of the partnership that is the surviving or new entity. (R.C. 1775.45(F).)

Abandonment of merger or consolidation

Under the bill, at any time before the filing of the certificate of merger or consolidation, the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity may abandon the merger or consolidation if the general partners, directors, or other representatives are authorized to do so by the agreement of

merger or consolidation or by the same vote or action as was required to adopt the agreement of merger or consolidation (R.C. 1775.45(G)).

Amendment of agreement of merger or consolidation

The agreement of merger or consolidation generally may contain a provision authorizing *less than all* of the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity to amend the agreement of merger or consolidation at any time *before* the filing of the certificate of merger or consolidation. However, after the adoption of the agreement of merger or consolidation by the general partners of any constituent domestic general partnership, *less than all* of the general partners *may not be authorized* to amend the agreement of merger or consolidation to do any of the following (R.C. 1775.45(G)):

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by general partners of the constituent domestic general partnership in conversion of, or in substitution for, their interests;

(2) Alter or change any term of the partnership agreement of the surviving or new domestic general partnership, except for alterations or changes that could otherwise be adopted by the general partners of the surviving or new domestic general partnership;

(3) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the general partners or any class or group of general partners of the constituent domestic general partnership.

Merger or consolidation into entity other than domestic general partnership

The bill provides that pursuant to a written agreement of merger or consolidation between the constituent entities, a domestic general partnership and one or more additional domestic or foreign *entities* may be merged into a surviving entity other than a domestic general partnership, or a domestic general partnership together with one or more additional domestic or foreign *entities* may be consolidated into a new entity other than a domestic general partnership to be formed by that consolidation. The merger or consolidation must be permitted by the Revised Code chapter under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists. (R.C. 1775.46(A).)

Agreement of merger or consolidation--required contents

The bill requires the written agreement of merger or consolidation to set forth all of the following (R.C. 1775.46(B)(1) to (9)):

(1) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(2) In the case of a merger, that one or more specified constituent domestic general partnerships and other specified constituent entities will be merged into a specified surviving foreign entity or surviving domestic entity other than a domestic general partnership, or, in the case of a consolidation, that the constituent entities will be consolidated into a new foreign entity or a new domestic entity other than a domestic general partnership;

(3) If the surviving or new entity is a foreign general partnership, all statements and matters that would be required as described above in "***Merger or consolidation into domestic general partnership***" if the surviving or new entity were a domestic general partnership;

(4) The name and the form of entity of the surviving or new entity, the state under the laws of which the surviving entity exists or the new entity is to exist, and the location of the principal office of the surviving or new entity;

(5) All additional statements and matters required to be set forth in such an agreement of merger or consolidation by the laws under which each constituent entity exists and, in the case of a consolidation, the new entity is to exist;

(6) The consent of the surviving or new foreign entity to be sued and served with process in Ohio and the irrevocable appointment of the Secretary of State as its agent to accept service of process in any proceeding in Ohio to enforce against the surviving or new foreign entity any obligation of any constituent domestic general partnership or to enforce the rights of a dissenting partner of any constituent domestic general partnership;

(7) If the surviving or new entity is a foreign corporation that desires to transact business in Ohio as a foreign corporation, a statement to that effect, together with a statement regarding the appointment of a statutory agent and service of any process, notice, or demand upon that statutory agent or the Secretary of State, as required when a foreign corporation applies for a license to transact business in Ohio;

(8) If the surviving or new entity is a foreign limited partnership that desires to transact business in Ohio as a foreign limited partnership, a statement to that effect, together with all of the information required under the Foreign Limited

Partnerships Law (see **COMMENT** 3) when a foreign limited partnership registers to transact business in Ohio;

(9) If the surviving or new entity is a foreign limited liability company that desires to transact business in Ohio as a foreign limited liability company, a statement to that effect, together with all of the information required under the Foreign Limited Liability Company Law (see **COMMENT** 4) when a foreign limited liability company registers to transact business in Ohio.

Agreement of merger or consolidation--permitted contents

Under the bill, the written agreement of merger or consolidation also *may* set forth any additional provision permitted by the laws of any state under the laws of which any constituent entity exists, consistent with the laws under which the surviving entity exists or the new entity is to exist (R.C. 1775.46(C)).

Adoption of agreement of merger or consolidation

To effect the merger or consolidation, the general partners of each constituent domestic general partnership must adopt the agreement of merger or consolidation. They must do so in the same manner and with the same notice to and vote or action of partners or of a particular class or group of partners as is required as described above in "***Adoption of agreement of merger or consolidation***" under "***Merger or consolidation into domestic general partnership***." The agreement of merger or consolidation also must be approved or otherwise authorized by or on behalf of each constituent entity in accordance with the laws under which it exists. Each person who will continue to be or who will become a general partner of a partnership that is the surviving or new entity in a merger or consolidation must specifically agree *in writing* to continue or to become, as the case may be, a general partner of the surviving or new entity. (R.C. 1775.46(D).)

Abandonment of merger or consolidation

The bill provides that at any time before the filing of the certificate of merger or consolidation, the general partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity may abandon the merger or consolidation if the general partners, directors, or comparable representatives are authorized to do so by the agreement of merger or consolidation (R.C. 1775.46(E)).

Amendment of agreement of merger or consolidation

The agreement of merger or consolidation generally may contain a provision authorizing *less than all* of the general partners of any constituent

partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity to amend the agreement of merger or consolidation at any time *before* the filing of the certificate of merger or consolidation. However, after the adoption of the agreement of merger or consolidation by the general partners of any constituent domestic general partnership, *less than all* of the general partners *may not be authorized* to amend the agreement of merger or consolidation to do any of the following (R.C. 1775.46(E)):

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by general partners of the constituent domestic general partnership in conversion of or in substitution for their interests;

(2) If the surviving or new entity is a partnership, alter or change any term of the partnership agreement of the surviving or new partnership, except for alterations or changes that otherwise could be adopted by the general partners of the surviving or new partnership;

(3) If the surviving or new entity is a corporation or any other entity other than a partnership, alter or change any term of the articles or comparable instrument of the surviving or new corporation or entity, except for alterations or changes that otherwise could be adopted by the directors or comparable representatives of the surviving or new corporation or entity;

(4) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the general partners or any class or group of general partners of the constituent domestic general partnership.

Certificate of merger or consolidation

The bill requires that upon the adoption by each constituent entity of an agreement of merger or consolidation a certificate of merger or consolidation must be filed with the Secretary of State that is signed by an authorized representative of each constituent entity. The certificate must be on a form prescribed by the Secretary of State and must set forth only the information required as described below. Upon the filing of a certificate of merger or consolidation and other filings as described below *or* at any later date that the certificate of merger or consolidation specifies, the merger or consolidation is effective, subject to the limitation described in the second sentence of paragraph (7) in "***Agreement of merger or consolidation--required contents***" under "***Merger or consolidation into domestic general partnership***," above. (R.C. 1775.47(A) and (D).)

Contents of certificate of merger or consolidation

The certificate of merger or consolidation must set forth all of the following (R.C. 1775.47(B)(1)):

(1) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(2) A statement that each constituent entity has complied with all of the laws under which it exists and that the laws permit the merger or consolidation;

(3) The name and mailing address of the person or entity that is to provide, in response to any written request made by a shareholder, partner, or other equity holder of a constituent entity, a copy of the agreement of merger or consolidation;

(4) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate;

(5) The signature of the representative or representatives authorized to sign the certificate on behalf of each constituent entity and the office held or the capacity in which the representative is acting;

(6) A statement that the agreement of merger or consolidation is authorized on behalf of each constituent entity and that the persons who signed the certificate on behalf of each entity are authorized to do so;

(7) In the case of a merger, a statement that one or more specified constituent entities will be merged into a specified surviving entity or, in the case of a consolidation, a statement that the constituent entities will be consolidated into a new entity;

(8) The name and form of the surviving entity in the case of a merger or the name and form of the new entity in the case of a consolidation;

(9) In the case of a merger, if the surviving entity is a foreign entity not licensed to transact business in Ohio, the name and address of the statutory agent upon whom any process, notice, or demand may be served;

(10) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new entity may be served.

Documents accompanying certificate of merger or consolidation

In the case of a *consolidation* into a new domestic corporation, limited liability company, or limited partnership, the articles of incorporation, the articles of organization, or the certificate of limited partnership of the new domestic entity must be filed with the certificate of consolidation. In the case of a *merger* into a domestic corporation, limited liability company, or limited partnership, any amendments to the articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity must be filed with the certificate of merger. (R.C. 1775.47(B)(2) and (3).)

If the surviving or new entity is a foreign entity that desires to transact business in Ohio as a foreign corporation, limited liability company, or limited partnership, the certificate of merger or consolidation must be accompanied by the information as described above in paragraph (7), (8), or (9) in "***Agreement of merger or consolidation--required contents***" under "***Merger or consolidation into entity other than domestic general partnership***" (R.C. 1775.47(B)(4)).

If a *foreign or domestic corporation* licensed to transact business in Ohio is a constituent entity and the surviving or new entity resulting from the merger or consolidation is not a foreign or domestic corporation that is to be licensed to transact business in Ohio, the certificate of merger or consolidation must be accompanied by the affidavits, receipts, certificates, or other evidence required by the General Corporation Law provision on voluntary dissolution (see **COMMENT** 5) with respect to each domestic constituent corporation, and by the affidavits, receipts, certificates, or other evidence required by the Foreign Corporation Law (see **COMMENT** 6) with respect to each foreign constituent corporation licensed to transact business in Ohio (R.C. 1775.47(B)(5)).

If any constituent entity in a merger or consolidation is organized or formed under the laws of a state other than Ohio or under any chapter of the Revised Code other than R.C. Chapter 1775. (Uniform Partnership Law), there also must be filed in the proper office all documents that are required to be filed in connection with the merger or consolidation by the laws of that state or by that chapter (R.C. 1775.47(C)).

Secretary of State's certificate

The bill requires the Secretary of State to furnish, upon request and payment of a fee of $25, the Secretary of State's certificate setting forth:[1] (a) the

[1] *Under R.C. 111.16(K)(2), the Secretary of State must charge and collect $25 for creating and affixing the seal of the Office of the Secretary of State to the Secretary of State's certificate required by the bill, among other certificates.*

name and form of entity of each constituent entity and the states under the laws of which each constituent entity existed prior to the merger or consolidation, (b) the name and the form of entity of the surviving or new entity and the state under the laws of which the surviving entity exists or the new entity is to exist, (c) the date of filing of the certificate of merger or consolidation with the Secretary of State, and (d) the effective date of the merger or consolidation. The certificate of the Secretary of State, or a copy of the certificate of merger or consolidation certified by the Secretary of State, may be filed for record in the office of the recorder of any county in Ohio and, if filed, must be recorded in the records of deeds for that county. For that recording, the county recorder must charge and collect the same fee as in the case of deeds. (R.C. 1775.47(E).)

Effects of merger or consolidation

Generally

When a merger or consolidation becomes effective, all of the following apply (R.C. 1775.48(A)(1) to (6)):

(1) The separate existence of each constituent entity other than the surviving entity in a merger ceases, except that whenever a conveyance, assignment, transfer, deed, or other instrument or act is necessary to vest property or rights in the surviving or new entity, the general partners, officers, or other authorized representatives of the respective constituent entities must execute, acknowledge, and deliver those instruments and do those acts. For these purposes, the existence of the constituent entities and the authority of their respective general partners, officers, directors, or other representatives are continued notwithstanding the merger or consolidation.

(2) In the case of a consolidation, the new entity exists when the consolidation becomes effective and, if the new entity is a domestic general partnership, the written partnership agreement contained in or provided for in the agreement of consolidation must be its original partnership agreement.

(3) In the case of a merger in which the surviving entity is a general partnership, the written partnership agreement of the surviving general partnership in effect immediately prior to the time the merger becomes effective must be its partnership agreement after the merger except as otherwise provided in the agreement of merger.

(4) The surviving or new entity possesses all of the following, and all of the following are vested in the surviving or new entity without further act or deed:

(a) Except to the extent limited by the mandatory provisions of applicable law, the following:

(i) All assets and property of every description of each constituent entity, and every interest in the assets and property of each constituent entity, wherever the assets, property, and interests are located. Title to any real estate or any interest in real estate that was vested in any constituent entity cannot revert or in any way be impaired by reason of the merger or consolidation.

(ii) The rights, privileges, immunities, powers, franchises, and authority, whether of a public or private nature, of each constituent entity.

(b) All obligations belonging to or due to each constituent entity.

(5) The surviving or new entity is liable for all the obligations of each constituent entity, including liability to dissenting partners, dissenting shareholders, or other dissenting equity holders. Any claim existing or any action or proceeding pending by or against any constituent entity may be prosecuted to judgment with right of appeal, as if the merger or consolidation had not taken place, or the surviving or new entity may be substituted in place of any constituent entity.

(6) All the rights of creditors of each constituent entity are preserved unimpaired, and all liens upon the property of any constituent entity are preserved unimpaired, on only the property affected by those liens immediately before the effective date of the merger or consolidation. If a general partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, then 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 in which the former general partner was a general partner 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.

Other effects

If a general partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, then unless that general partner agrees otherwise in writing, the general partner must be indemnified by the surviving or new entity against all present or future liabilities of the constituent partnership of which the general partner was a general partner. Any amount payable pursuant to the bill's provisions pertaining to the fair cash value of interests as described below in "***Dissenting partners' relief***" to a

partner of the constituent partnership in which that general partner was a partner is a present liability of that constituent partnership. (R.C. 1774.48(B).)

In the case of a merger of a constituent domestic general partnership into a foreign surviving corporation, limited liability company, or general partnership that is not licensed or registered to transact business in Ohio or in the case of a consolidation of a constituent domestic limited partnership into a new foreign corporation, limited liability company, or limited partnership, if the surviving or new entity intends to transact business in Ohio and the certificate of merger or consolidation is accompanied by the information described in the second paragraph in "***Documents accompanying certificate of merger or consolidation***," above, then on the effective date of the merger or consolidation the surviving or new entity is considered to have complied with the requirements for procuring a license or for registration to transact business in Ohio as a foreign corporation, limited liability company, or limited partnership, as the case may be. In such a case, a copy of the certificate of merger or consolidation certified by the Secretary of State constitutes the license certificate prescribed for a foreign corporation or the application for registration prescribed for a foreign limited liability company or foreign limited partnership. (R.C. 1775.48(C).)

Limitation of action to set aside merger or consolidation

Any action to set aside any merger or consolidation on the ground that any section of the Revised Code applicable to the merger or consolidation has not been complied with must be brought within 90 days after the effective date of the merger or consolidation or forever be barred (R.C. 1775.48(D)).

Applicable law

In the case of an entity organized or existing under the laws of any state other than Ohio, the above provisions of the bill pertaining to the effects of merger or consolidation are subject to the laws of the state under the laws of which the entity exists or in which it has property (R.C. 1775.48(E)).

Dissenting partners' relief

Persons entitled to relief

The bill provides that unless otherwise provided in writing in the partnership agreement of a constituent domestic general partnership, the following are entitled to relief as dissenting partners (R.C. 1775.49(A)):

(1) Partners of a domestic general partnership that is being merged or consolidated into a surviving or new entity, domestic or foreign, pursuant to the bill;

(2) In the case of a merger into a domestic general partnership, partners of the surviving domestic general partnership who, as described above in "***Merger or consolidation into domestic general partnership***," are entitled to vote or act on the adoption of an agreement of merger, but only as to the interests so entitling them to vote or act.

Unless otherwise expressly agreed to in writing, a general partner of any constituent partnership is liable to the partners of the constituent partnership for any amount payable to them pursuant to the bill's provisions pertaining to the fair cash value of interests as described below as if the amount so payable were an existing liability of the constituent partnership at the time of the merger or consolidation (R.C. 1775.49(B)).

Demand for fair cash value of interests

A partner of a domestic general partnership is entitled to relief as a dissenting partner in respect of the above-described proposals only in compliance with the following provisions (R.C. 1775.50(A)):

If the proposal of merger or consolidation is to be submitted to the partners *at a meeting*, the dissenting partner must be a partner and a record holder of the partnership interests as to which the dissenting partner seeks relief as of the date fixed for the determination of partners entitled to notice of the meeting, and those interests must not have been voted in favor of the proposal. Not later than ten days after the date on which the vote on the proposal was taken at the meeting of the partners, the dissenting partner must deliver to the general partnership a *written demand for payment* to the dissenting partner of the fair cash value of the interests as to which the dissenting partner seeks relief that states the dissenting partner's address, the number and class of those interests, and the amount claimed by the dissenting partner as the fair cash value of the interests. (R.C. 1775.50(B).)

If the proposal of merger or consolidation is to be submitted to the partners for their written approval or other action *without a meeting*, the dissenting partner must be a partner and a record holder of the interests of the partnership as to which the dissenting partner seeks relief as of the date the request for approval or action was sent to the partners entitled to act or otherwise approve the proposal, and the dissenting partner must not have indicated approval of the proposal in the dissenting partner's capacity as a holder of such interests. Not later than 15 days after the date on which the request for approval of or action on the proposal was mailed to the partners, the dissenting partner must deliver to the partnership a *written demand for payment* to the dissenting partner of the fair cash value of the interests as to which the dissenting partner seeks relief. The demand must state the dissenting partner's address, the number and class of such interests, and the

amount claimed by the dissenting partner as the fair cash value of those interests. (R.C. 1775.50(C).)

In the case of a merger or consolidation, a demand served on the constituent domestic general partnership involved constitutes service on the surviving entity or the new entity, whether the demand is served before, on, or after the effective date of the merger or consolidation (R.C. 1775.50(D)).

Certificated and uncertificated interests

If the interests as to which a dissenting partner seeks relief are *represented by certificates* and if the domestic general partnership sends to the dissenting partner, at the address specified in the dissenting partner's demand, a request for certificates representing the interests as to which the dissenting partner seeks relief, the dissenting partner, within 15 days from the date on which the request was sent, must deliver to the general partnership the certificates requested so that the general partnership may endorse on them a legend to the effect that a demand for the fair cash value of such interests has been made. The general partnership promptly must return the endorsed certificates to the dissenting partner. The failure of a dissenting partner to deliver the certificates terminates rights as a dissenting partner, at the option of the general partnership, exercised by written notice sent to the dissenting partner within 20 days after the lapse of the 15-day period, unless a court for good cause shown otherwise directs. If interests represented by a certificate on which such a legend has been endorsed are transferred, each new certificate issued for them must bear a similar legend, together with the name of the original dissenting holder of such interests.

Upon receiving a demand for payment from a dissenting partner who is a record holder of *uncertificated interests*, the general partnership must make an appropriate notation of the demand for payment in its records. If uncertificated interests for which payment has been demanded are to be transferred, any writing sent to evidence the transfer must bear the legend required for certificated interests as described in the preceding paragraph.

A transferee of the interests receiving a certificate so endorsed, or of uncertificated interests where such a notation has been made, acquires only those rights in the general partnership as the original partner holding such interests had immediately after the service of a demand for payment of the fair cash value of the interests. A request by the general partnership as described above is not an admission by it that the holder of the interest is entitled to relief. (R.C. 1775.50(E).)

Complaint

Unless the partnership agreement of the constituent domestic general partnership in which the dissenting partner was a partner provides a reasonable basis for determining and paying the fair cash value of the interests as to which the dissenting partner seeks relief or unless that partnership and the dissenting partner have come to an agreement on the fair cash value of the interests as to which the dissenting partner seeks relief, the dissenting partner or the general partnership, which in the case of a merger or consolidation may be the surviving or new entity, within 90 days after the service of the demand by the dissenting partner, may file a complaint under the bill. The complaint must be filed in the court of common pleas of the county in which the principal office of the general partnership that issued the interests is located or was located when the proposal of merger or consolidation was adopted by the partners of the general partnership. Other dissenting partners, within that 90-day period, may join as plaintiffs or may be joined as defendants in any such proceeding, and any two or more such proceedings may be consolidated. (R.C. 1775.50(F).)

Procedure. When authorized as described in the preceding paragraph, a dissenting partner or general partnership may file a complaint demanding the relief described above. The complaint must contain a brief statement of the facts, including the vote or action by the partners and the facts entitling the dissenting partner to the relief demanded. No answer to such a complaint is required. Upon the filing of such a complaint, the court, on motion of the petitioner, must enter an order fixing a date for a hearing on the complaint and requiring that a copy of the complaint and a notice of the filing and of the date for the *hearing* be given to the respondent or defendant in the manner in which summons is required to be served or substituted service is required to be made in other cases. On the date fixed for the hearing on the complaint or any adjournment of it, the court must determine from the complaint and from such evidence as is submitted by either party whether the dissenting partner is entitled to be paid the fair cash value of any interests and, if so, the number and class of such interests. If the court finds that the dissenting partner is so entitled, it may appoint one or more persons as *appraisers* to receive evidence and to recommend a decision on the amount of the fair cash value. The appraisers have such power and authority as is specified in the order of their appointment. The court must make a *finding* as to the fair cash value of the interests and must render judgment against the general partnership for the payment of it, with interest at such rate and from such date as the court considers equitable. The court must assess or apportion, as is equitable, the *costs* of the proceeding, including reasonable compensation to the appraisers to be fixed by the court. The proceeding is a *special proceeding*, and final orders in it may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, the Appeals Law.

If, during the pendency of any proceeding as described in the preceding paragraph, a suit or proceeding is or has been instituted to enjoin or otherwise to prevent the carrying out of the action as to which the partner has dissented, the proceeding instituted as described above must be stayed until the final determination of the other suit or proceeding. Unless any provision as described below in "***Termination of right to relief***" is applicable, the fair cash value of the interests that is agreed upon by the parties or fixed as described above must be paid within 30 days after the date of final determination of the value or the consummation of the merger or consolidation, whichever occurs last. Upon the occurrence of the last such event, payment must be made immediately to a holder of uncertificated interests entitled to such payment. In the case of holders of interests represented by certificates, payment must be made only upon and simultaneously with the surrender to the domestic general partnership of the certificates representing the interests for which the payment is made. (R.C. 1775.51(A).)

Determination of fair cash value. If the proposal of merger or consolidation was submitted to the partners of the general partnership for a vote at a meeting, fair cash value as to those partners must be determined as of the day before the day on which the vote by the partners was taken. If the proposal was submitted to the partners for written approval or other action, fair cash value as to those partners must be determined as of the day before the day on which the request for the approval or action was sent. The fair cash value of an interest is the amount that a willing seller who is under no compulsion to sell would be willing to accept and that a willing buyer who is under no compulsion to purchase would be willing to pay, but the fair cash value paid to any partner cannot exceed the amount specified in the demand of that partner. In computing such fair cash value, any appreciation or depreciation in market value resulting from the merger or consolidation must be excluded. (R.C. 1775.51(B).)

Termination of right to relief

The right and obligation of a dissenting partner to receive such fair cash value and to sell such interests as to which the dissenting partner seeks relief and the right and obligation of the domestic general partnership to purchase such interests and to pay the fair cash value of them terminate if any of the following applies (R.C. 1775.50(G)):

(1) The dissenting partner has not complied with the provisions as described above in "***Demand for fair cash value of interests***," "***Certificated and uncertificated interests***," and "***Complaint***," unless the general partnership waives such failure.

(2) The general partnership abandons the merger or consolidation or is finally enjoined or prevented from carrying it out, or the partners rescind their adoption or approval of the merger or consolidation.

(3) The dissenting partner withdraws the dissenting partner's demand, with the consent of the general partnership.

(4) *All* of the following apply:

(a) The partnership agreement of the constituent domestic general partnership in which the dissenting partner was a partner does not provide a reasonable basis for determining and paying the dissenting partner the fair cash value of the dissenting partner's interest.

(b) The general partnership and the dissenting partner have not agreed upon the fair cash value of the interest.

(c) Neither the dissenting partner nor the general partnership has filed or joined in a complaint as described above within the required period.

Suspension of rights

Unless otherwise provided in the partnership agreement of the constituent domestic general partnership in which the dissenting partner was a partner, from the time the dissenting partner gives the demand until either the termination of the rights and obligations arising from it or the purchase of the interests by the general partnership, all other rights accruing from such interests, including voting or distribution rights, are suspended. If, during the suspension, any distribution is paid in money upon interests of such class or any dividend, distribution, or interest is paid in money upon any securities issued in extinguishment of, or in substitution for, such interest, an amount equal to the dividend, distribution, or interest that, except for the suspension, would have been payable upon such interests or securities must be paid to the holder of record as a credit upon the fair cash value of the interests. If the right to receive fair cash value is terminated other than by the purchase of the interests by the general partnership, all rights of the dissenting partner must be restored and all distributions that, except for the suspension, would have been made must be made to the holder of record of the interests at the time of termination. (R.C. 1775.50(H).)

Rights of partner's judgment creditors

If a domestic general partnership is a constituent entity to a merger or consolidation that has become effective, and the domestic general partnership is *not* the surviving or resulting entity of the merger or consolidation, a judgment creditor of a partner of that domestic general partnership may not levy execution

against the assets of the partner to satisfy a judgment based on a claim against the surviving or resulting entity of the merger or consolidation *unless* any of the following applies (R.C. 1775.52):

(1) The claim is for an obligation of the domestic general partnership for which the partner is liable as provided in the Uniform Partnership Law and *one* of the following applies:

(a) A judgment based on the same claim has been obtained against the surviving or resulting entity of the merger or consolidation, and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

(b) The surviving or resulting entity of the merger or consolidation is a debtor in bankruptcy.

(c) The partner has agreed that the creditor need not exhaust the assets of the domestic general partnership that was not the surviving or resulting entity of the merger or consolidation.

(d) The partner has agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation.

(2) A court grants permission to the judgment creditor to levy execution against the assets of the partner based on a finding that the assets of the surviving or resulting entity of the merger or consolidation that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity of the merger or consolidation is excessively burdensome, *or* that the grant of permission is an appropriate exercise of the court's equitable powers.

(3) Liability is imposed on the partner by law or contract independent of the existence of the surviving or resulting entity of the merger or consolidation.

MODIFICATIONS OF LIMITED PARTNERSHIP LAW

The bill modifies the Limited Partnership Law in the following manners.

Duties of general partner

A general partner must perform the duties of a general partner in good faith, in a manner the general partner reasonably believes to be in or not opposed to the best interests of the limited partnership, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In performing a general partner's duties, a general partner is entitled to rely on information, opinions, reports, or statements, including financial statements and

other financial data, that are prepared or presented by either of the following (R.C. 1782.241(A)):

(A) One or more general partners, employees of the limited partnership, or employees of a general partner, who the general partner reasonably believes are reliable and competent in the matters prepared or presented;

(B) Legal counsel, public accountants, or other persons as to matters that the general partner reasonably believes are within the person's professional or expert competence.

For purposes of the above provisions, the following apply (R.C. 1782.241(B)):

(1) A general partner may not be found to have violated the duties of a general partner as described above, unless it is proved by clear and convincing evidence that the general partner has not acted in good faith, in a manner the general partner reasonably believes to be in or not opposed to the best interests of the limited partnership, or with the care that an ordinarily prudent person in a like position would use under similar circumstances, in any action brought against the general partner, including actions involving or affecting the general partner's service in any other position or relationship with the limited partnership.

(2) A general partner is not considered to be acting in good faith if the general partner has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by the persons described above in paragraphs (A) and (B) to be unwarranted.

Contract not void or voidable

No contract, action, or transaction is void or voidable with respect to a limited partnership for the reason that the contract, action, or transaction is among or affects the limited partnership and one or more of its partners, or that the contract, action, or transaction is among or affects the limited partnership and any other person in which one or more of the partners are directors, trustees, officers, or partners, or have a financial or personal interest, if any of the following applies (R.C. 1782.242):

(1) The material facts as to the partner or partners and their relationship or interest and as to the contract, action, or transaction are disclosed in writing to every partner before that partner is admitted to the partnership.

(2)(a) The material facts as to the partner or partners and their relationship or interest and as to the contract, action, or transaction are disclosed in writing to

all partners, (b) the contract, action, or transaction is fair as to the limited partnership, and (c) the disinterested general partners acting in good faith reasonably justified by the facts, authorize the contract, action, or transaction by a majority vote, even though the disinterested general partners constitute less than a majority of the general partners.

(3) The contract, action, or transaction is fair as to the limited partnership as of the time the contract, action, or transaction is authorized and approved by a majority in interest of the disinterested limited partners.

Merger or consolidation--fee for Secretary of State's certificate

Existing law

Under the Limited Partnership Law, pursuant to an agreement of merger between the constituent entities, a domestic limited partnership and one or more additional domestic limited partnerships or other domestic or foreign entities may be merged into a surviving domestic limited partnership. Pursuant to an agreement of consolidation between the constituent entities, two or more domestic or foreign entities may be consolidated into a new domestic limited partnership formed by such consolidation. Pursuant to an agreement of merger or consolidation between the constituent entities, a domestic limited partnership and one or more additional domestic or foreign entities may be merged into a surviving entity *other than* a domestic limited partnership, or a domestic limited partnership together with one or more additional domestic or foreign entities may be consolidated into a new entity *other than* a domestic limited partnership to be formed by such consolidation. (R.C. 1782.431(A) and 1782.432(A)--not in the bill.)

Upon the adoption by each constituent entity of an agreement of merger or consolidation, a certificate of merger or consolidation must be filed with the Secretary of State that is signed by an authorized representative of each constituent entity. Existing law specifies the contents of the certificate of merger or consolidation. The Secretary of State must furnish, upon request and payment of a fee specified in *R.C. 111.16(D)*, the Secretary of State's certificate setting forth:[2] (1) the name and form of entity of each constituent entity and the states under the laws of which each constituent entity existed prior to the merger or consolidation, (2) the name and the form of entity of the surviving or new entity and the state under the laws of which the surviving entity exists or the new entity is to exist, (3) the date of filing of the certificate of merger or consolidation with the Secretary of

[2] *R.C. 111.16(D), specifies that the fee for filing and recording a certificate of merger or consolidation generally is $125.*

State; and (4) the effective date of the merger or consolidation. (R.C. 1782.433(A) and (E).)

Operation of the bill

The bill specifies that the fee for creating and affixing the seal of the office of the Secretary of State to the Secretary of State's certificate described in the preceding paragraph, upon the filing of the certificate of merger or consolidation, is *$25* (R.C. 111.16(K)(2) and 1782.433(E)).

COMMENT

1. A partnership is an association of two or more persons to carry on as co-owners a business for profit and includes such an association that has limited liability as provided in the Uniform Partnership Law and that is registered under that law as a limited liability partnership (R.C. 1775.05(A)--not in the bill).

2. A limited partnership is a partnership formed by two or more persons under the laws of Ohio, having as members one or more general partners and one or more limited partners. A general partner is a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner. (R.C. 1782.01(F) and (H)--not in the bill.)

Under the Limited Partnership Law, a limited partner generally is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. A general partner, however, generally has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners. (R.C. 1782.19 and 1782.24--not in the bill.)

3. R.C. 1782.49, not in the bill, provides as follows:

> Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state an application for registration as a foreign limited partnership. The application shall be on a form prescribed by the secretary of state, shall be signed by a general partner, and shall set forth all of the following:

(A) The name of the foreign limited partnership;

(B) The state and date of its formation;

(C) The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The agent shall be an individual who is a resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state.

(D) A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed under division (C) of this section, or, if an agent is appointed, the agent's authority has been revoked or the agent is not found or served after the exercise of reasonable diligence;

(E) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(F) The names and business or residence addresses of the general partners;

(G) The address of the office at which is kept a list of the names and business or residence addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the registration of the foreign limited partnership in this state is canceled or withdrawn.

4. R.C. 1705.54(A), not in the bill, provides as follows:

(A) Before transacting business in this state, a foreign limited liability company shall register with the secretary of state. The company shall register by submitting to the secretary of state an application for registration as a foreign limited liability company. The

application shall be on a form that is prescribed by the secretary of state, be signed by an authorized representative of the company, and set forth all of the following:

(1) The name of the company and, if different, the name under which it is registered or organized in the state of its organization;

(2) The state in which it was organized and the date of its formation;

(3) The name and address of an agent for service of any process, notice, or demand on the company. The appointed agent shall be an individual who is a resident of this state, a domestic corporation, or a foreign corporation that has a place of business and is authorized to do business in this state.

(4) A statement that the secretary of state is appointed the agent of the company for service of any process, notice, or demand on the company if an agent is not appointed as described in division (A)(3) of this section or if an agent is appointed pursuant to that division but the authority of that agent has been revoked or the agent cannot be found or served after the exercise of reasonable diligence;

(5) An address to which interested persons may direct requests for copies of the articles of organization, operating agreement, bylaws, or other charter documents of the company.

5. R.C. 1701.86(H), not in the bill, requires the following documents to accompany a certificate of dissolution:

(1) An affidavit of one or more of the persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the counties, if any, in this state in which the corporation has personal property or a statement that the corporation is of a type required to pay personal property taxes to state authorities only;

(2) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing, or that such payment has been adequately guaranteed;

(3) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing;

(4) A receipt, certificate, or other evidence from the director of job and family services showing that all contributions due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(5) A receipt, certificate, or other evidence from the bureau of workers' compensation showing that all premiums due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such premium payments;

(6) In lieu of the receipt, certificate, or other evidence described in division (H)(2), (3), (4), or (5) of this section, an affidavit of one or more persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled date of filing of the certificate of dissolution and was advised in writing of the acknowledgment by the corporation of the applicability of the provisions of section 1701.95 of the Revised Code.

6. R.C. 1703.17(C) and (D), not in the bill, provides as follows:

(C) A certificate of surrender [of license to transact business in Ohio], filed with the secretary of state, on a form prescribed by the secretary of state, shall be accompanied by:

(1) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing, or that such payment has been adequately guaranteed;

(2) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing;

(3) A receipt, certificate, or other evidence from the director of job and family services showing that all contributions due from the corporation as an employer have been paid, or that such payment has been adequately guaranteed, or that the corporation is not subject to such contributions;

(4) An affidavit of the officer, or other person permitted by law, executing the certificate of surrender, containing a statement of the counties, if any, in this state in which the corporation has personal property or a statement that the corporation is of a type required to pay personal property taxes to state authorities only.

(D) In lieu of the receipt, certificate, or other evidence described in divisions (C)(1), (2), and (3) of this section, a certificate of surrender may be accompanied by an affidavit of the person executing the certificate of surrender, or of an officer of the corporation, that contains a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled date of filing the certificate of surrender and was advised in writing of the acknowledgement by the corporation that the surrender of its license does not relieve it of liability, if any, for payment of the taxes and contributions described in divisions (C)(1), (2), and (3) of this section.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	08-30-01	p.	823
Reported, H. Civil & Commercial Law	01-30-02	pp.	1349-1350
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