



Ohio Legislative Service Commission

Bill Analysis

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Reps. Mecklenborg and Carney, Beck, Combs, DeGeeter, Dovilla, Garland, McGregor, Pillich, Stautberg, Stebelton, Stinziano

BILL SUMMARY

GENERAL CORPORATION LAW

Dissenting shareholders

- Provides the circumstances in which no relief is available to a dissenting shareholder if an amendment to the articles of incorporation makes certain changes or in the event of an authorization to dispose of all or substantially all of the assets of a corporation.
- Specifies the following are not entitled under certain circumstances to relief as dissenting shareholders: (1) shareholders of a domestic corporation being merged or consolidated, (2) shareholders of the surviving corporation in a merger into a domestic corporation, and (3) shareholders of an acquiring corporation.
- Permits shareholder notice before the vote on the proposal that relief is available as dissenting shareholders.
- Requires a shareholder receiving notice and electing to be a dissenting shareholder to deliver to the corporation before the vote a written demand for payment of the fair cash value of the shares as to which the shareholder seeks relief.
- Provides that any premium associated with control of the corporation or any discount for lack of marketability or minority status is excluded from the computation of the fair cash value of the shares of a dissenting shareholder.

- Provides that the fair cash value of a share that was listed on a National Securities Exchange at any of specified times must be the closing sale price on the Exchange as of the applicable date.

Recording of corporate mortgages

- Applies to electric cooperatives existing law's provisions on the recording of mortgages of corporate property with the county recorder and the filing with the Office of the Secretary of State of such mortgages that include rolling stock, movable equipment, or machines.

Voluntary dissolution

- Permits a resolution of dissolution to also include the date on which the certificate of dissolution is to be filed or the conditions or events that will result in the filing of the certificate, or authorization for the officers or directors to abandon the proposed dissolution before the filing of the certificate of dissolution.
- Requires the certificate of dissolution to provide the internet address of each domain name held or maintained by or on behalf of the corporation, instead of the names and addresses of its directors and officers or the incorporators, as applicable.
- Modifies current law's requirements pertaining to certain types of evidence that must accompany a certificate of dissolution filed with the Secretary of State.
- Generally replaces existing law's public notice requirements following the filing of a certificate of dissolution.
- Provides that for purposes of winding up its affairs a corporation that is dissolved voluntarily, had its articles of incorporation canceled, or its period of existence has expired, must continue for four years from the dissolution, expiration, or cancellation, subject to extension by a court.
- Provides that dissolution of a corporation does not eliminate or impair any remedy available to or against the corporation or its directors, officers, or shareholders for any existing right, claim, or liability, if the action is brought within the required limitations period.
- Authorizes the enforcement of any property right of a corporation that is discovered after the winding up of the corporation, the collection and division of the assets discovered among the persons entitled to those assets, and the prosecution of actions or proceedings in its corporate name.

- Enacts procedures for a corporation that has given notice of dissolution to reject any matured claim made by a claimant or to offer security to any claimant whose claim is contingent, conditional, or unmatured, including filing an application to the court with jurisdiction for a determination of the amount and form of security.
- Lists the duties of a dissolved corporation with respect to claims and offers of security.
- Specifies the circumstances in which a shareholder who has received a distribution of the assets may or may not be liable for a claim.

Judicial dissolution

- Modifies existing law that authorizes a corporation to be dissolved judicially by an order of the court of common pleas of the county in which the corporation has its principal office.

GENERAL CORPORATION LAW AND NONPROFIT CORPORATION LAW

- Modifies the General Corporation Law and the Nonprofit Corporation Law by providing that a right to indemnification or to advancement of expenses arising under a provision of the articles or the regulations cannot be eliminated or impaired in certain circumstances.

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CONTENT AND OPERATION

GENERAL CORPORATION LAW

Dissenting shareholders

Amendment of articles

The bill provides that no relief as a dissenting shareholder is available if either:

(1) The shares of the corporation for which the dissenting shareholder would otherwise be entitled to relief are listed on a National Securities Exchange (NSE) as of the day immediately preceding the date of the vote and no proceedings have been commenced to delist the shares from the NSE as of the time of the vote;

(2)(a) The amendment changes issued shares of a particular class that have preference in dividends or distributions or on liquidation over shares of any other class into shares of any other class, or changes any of the express terms of issued shares of such particular class, and the holders of the shares of such particular class are substantially prejudiced thereby and the articles do not expressly or by implication provide for or permit such amendment, and (b) the shares to be received are listed on a NSE and no proceedings are pending to delist the shares as of the effective time of the amendment.

Existing law provides that dissenting shareholders are entitled to relief, subject to specified exceptions, if an amendment to the articles of incorporation makes certain

changes to issued shares or to the corporation itself. Relief is payment for the fair cash value of the dissenting shareholders shares.¹

Sale or disposition of entire assets

The bill provides an exception to the ability of dissenting holders of shares to obtain relief when all or substantially all of the assets of the corporation are sold, if both of the following apply:

(1) The shares of the corporation for which the dissenting shareholder would otherwise be entitled to relief are listed on a NSE as of the day immediately preceding the date of the vote regarding the sale at a meeting of the shareholders; and

(2) The consideration to be received by the shareholders consists of shares or shares and cash in lieu of fractional shares that, immediately following the time of the vote of the shareholders regarding the sale, are listed on a NSE, and no proceedings are pending to delist the shares from the NSE as of the time of the vote.

Existing law provides that dissenting holders of shares of any class, whether or not entitled to vote, are entitled to relief in the event of an authorization to lease, sell, exchange, transfer, or otherwise dispose of all or substantially all of the assets of a corporation.²

Shareholders not entitled to relief

The bill provides that all of the following shareholders are not entitled to relief as dissenting shareholders:

(1) Shareholders of a domestic corporation that is being merged or consolidated into a surviving or new entity, domestic or foreign, shareholders of a domestic corporation that is being converted if both of the following apply:

(a) The shares of the corporation for which the dissenting shareholder would otherwise be entitled to relief are listed on a NSE as of the day immediately preceding the date on which the vote on the proposal is taken at the meeting of the shareholders.

(b) The consideration to be received by the shareholders consists of shares or shares and cash in lieu of fractional shares that, immediately following the effective time of a merger, consolidation, or conversion, as applicable, are listed on a NSE and for

¹ R.C. 1701.74(A)(1) and (B)(4).

² R.C. 1701.76(C).

which no proceedings are pending to delist the shares from the NSE as of the effective time of the merger, consolidation, or conversion.

(2) Shareholders of the surviving corporation, in the case of a merger into a domestic corporation, who are entitled to vote on the adoption of an agreement of merger, if the shares entitling them to vote are listed on a NSE both as of the day immediately preceding the date on which the vote on the proposal is taken at the meeting of the shareholders and immediately following the effective time of the merger and there are no proceedings pending to delist the shares from the NSE as of the effective time of the merger;

(3) Shareholders of the acquiring corporation, in the case of a combination or a majority share acquisition, who are entitled to vote on such transaction, if the shares entitling them to vote are listed on a NSE both as of the day immediately preceding the date on which the vote on the proposal is taken at the meeting of the shareholders and immediately following the effective time of the combination or majority share acquisition and there are no proceedings pending to delist the shares from the NSE as of the effective time of the combination or majority share acquisition.³

Relief for dissenting shareholders--demand for payment of fair cash value of shares

The bill modifies the requirements that apply to the relief sought by the above described dissenting shareholders. It provides that not later than 20 days before the date of the meeting at which the proposal affecting the corporation will be submitted to the shareholders, the corporation may notify the corporation's shareholders that relief is available. The notice must include or be accompanied by all of the following:

(1) A copy of R.C. 1701.85 (section regarding dissenting shareholders compliance requirements to receive fair cash value of shares);

(2) A statement that the proposal can give rise to rights under R.C. 1701.85 if the proposal is approved by the required vote of the shareholders; and

(3) A statement that the shareholder will be eligible as a dissenting shareholder only if the shareholder delivers to the corporation a written demand for relief described below before the vote on the proposal will be taken at the meeting of the shareholders and the shareholder does not vote in favor of the proposal.

The bill provides that if the corporation delivers such notice to its shareholders, a shareholder electing to be eligible as a dissenting shareholder must deliver to the

³ R.C. 1701.84(B).

corporation, before the vote on the proposal is taken, a written demand for payment of the fair cash value of the shares as to which the shareholder seeks relief. The demand for payment must include the shareholder's address, the number and class of such shares, and the amount claimed by the shareholder as the fair cash value of the shares.

The bill requires that if the corporation does not give the notice to shareholders as described above, not later than ten days after the date on which the vote on the proposal was taken at the meeting of the shareholders, the dissenting shareholder must deliver to the corporation a written demand for relief identical to pre-meeting demand described above. Under existing law, there is no requirement for a pre-meeting notice and the dissenting shareholder must deliver written demand no later than ten days after the meeting if relief is desired.

The bill provides that if a signatory, designated and approved by the dissenting shareholder, executes the demand, then at any time after receiving the demand, the corporation may make a written request that the dissenting shareholder provide evidence of the signatory's authority. The shareholder must provide the evidence within a reasonable time but not sooner than 20 days after the dissenting shareholder has received the corporation's written request for evidence.⁴

Computation of fair cash value

The bill provides that any premium associated with control of the corporation, or any discount for lack of marketability or minority status must be excluded from the computation of the fair cash value of the shares. The fair cash value of a share that was listed on a NSE at any of the following times must be the closing sale price on the NSE as of the applicable date:

- (1) Immediately before the effective time of a merger or consolidation;
- (2) Immediately before the filing of an amendment to the articles of incorporation; or
- (3) Immediately before the time of the vote of the shareholders for an authorization to lease, sell, exchange, transfer, or otherwise dispose of all or substantially all of the assets of the corporation.

Existing law provides that fair cash value of a share is generally the sale price a willing seller and willing buyer would agree to that does not exceed the dissenting shareholder's demand price. In computing fair cash value under existing law, only

⁴ R.C. 1701.85(A)(3) to (6).

appreciation or depreciation in market value resulting from the proposal submitted to the directors or to the shareholders must be excluded.⁵

Recording of corporate mortgages

The bill requires a mortgage of property of any description, or any interest in the property, made by an electric cooperative to be recorded in the county recorder's office of each Ohio county in which that property is situated or employed. If an electric cooperative would happen to make a mortgage that includes rolling stock or movable equipment such as cars, locomotives, or trolley buses, motor buses, or other vehicles, or machines for aerial transportation, that mortgage may be filed in the Office of the Secretary of State.⁶

An electric cooperative is a not-for-profit electric light company that both is or has been financed in whole or in part under the federal "Rural Electrification Act of 1936," and owns or operates facilities in Ohio to generate, transmit, or distribute electricity, or a not-for-profit successor of such company. Electric Cooperatives are owned by the consumers they serve.

Any such mortgage is a lien on the mortgaged property from the time of filing a lien.

If any mortgage by its terms creates a lien upon any property that may thereafter be acquired by the mortgagor, it is a lien upon all the interest of the mortgagor in that after-acquired property from the date of its acquisition, if the mortgage was or is recorded or filed as described above.

The Secretary of State must charge and collect, for every mortgage filed in the Secretary of State's office, a fee of \$10 and, for each page in excess of 25 pages an additional fee of \$1. The Secretary of State must endorse on the mortgage the time of its filing and keep a record of the filing in a book to be kept for that purpose, giving the names of all parties to the mortgage, alphabetically arranged, the date of the mortgage, and the time of its filing. The mortgage and the record of its filing is open to public inspection. When the mortgage is canceled, the date of cancellation must be entered on the margin of the record of the mortgage.

⁵ R.C. 1701.85(C)(1)(b) and (2).

⁶ R.C. 1701.66(A) and 4928.01.

The mortgages of the character described above need not be otherwise filed or refiled as security interests under Ohio law.⁷

Voluntary dissolution

Contents of resolution of dissolution

In addition to including a statement that the corporation elects to dissolve, the bill provides that a resolution for voluntary dissolution may include: (1) the date on which the certificate of dissolution is to be filed or the conditions or events that will result in the filing of the certificate, (2) authorization for the officers or directors to abandon the proposed dissolution before the filing of the certificate of dissolution, and (3) any additional provision considered necessary with respect to the proposed dissolution and winding up. Existing law *requires* such a resolution to set forth: (1) that the corporation elects to be dissolved and (2) any additional provision considered necessary with respect to the proposed dissolution and winding up.⁸

Adoption of resolution of dissolution

The bill establishes that the shareholders may adopt a resolution of dissolution at a meeting held for this purpose by the affirmative vote of the holders of shares entitling them to exercise 2/3 of the voting power of the corporation on such proposal or, if the articles of incorporation provide or permit, by the affirmative vote of a greater or lesser proportion, though not less than a majority, of such voting power, and by such affirmative vote of the holders of shares of any particular class as is required by the articles. Under existing law, the resolution for dissolution can be adopted by less than a majority of the voting power, if permitted by the articles.⁹

Certificate of dissolution

Content

The bill, with respect to a certificate of dissolution required to be prepared when a resolution of dissolution is adopted, requires the internet address of each domain name held or maintained by or on behalf of a corporation instead of the names and addresses of its directors and officers, or the incorporators, if they adopted the resolution of dissolution to be included in the certificate. The bill also provides that the

⁷ R.C. 1701.66(A) to (E).

⁸ R.C. 1701.86(B).

⁹ R.C. 1701.86(E).

dissolution date cannot be more than 90 days after the filing of the certificate of dissolution.

Existing law requires the certificate to set forth the following: (1) the name of the corporation, (2) a statement that a resolution of dissolution has been adopted, (3) a statement of the manner of adoption of such resolution, and, in the case of its adoption by the incorporators or directors, a statement of the basis for such adoption, (4) the place in Ohio where its principal office is or is to be located, (5) the names and addresses of the officers and directors, or the incorporators, if they adopted the resolution of dissolution, (6) the name and address of its statutory agent, and (7) the date of dissolution, if other than the filing date.¹⁰

Execution

When a resolution of dissolution is adopted by directors or shareholders (that is, anybody other than the incorporators), the bill provides that if the authorized officer fails to execute and file the certificate of dissolution within 30 days after the date the certificate must be filed then it may be signed and filed by three shareholders, or if there are less than three shareholders, all of the shareholders.

This is a departure from existing law, which provides only three shareholders may sign the certificate, and that they may sign only if the authorized officer failed to sign the certificate within 30 days after the later of the following to occur:

- The adoption of the resolution or upon any date specified in the resolution as the date the certificate must be filed; or
- On the expiration of the filing period specified in the resolution.¹¹

Filing

The bill, with respect to the filing of a certificate of dissolution with the Secretary of State, makes some changes to the information required to be filed with the certificate. Although current law requires a number of information items to be filed, the chart below shows only the changes made by the bill to that required information:¹²

¹⁰ R.C. 1701.86(F)(5) and (7).

¹¹ R.C. 1701.86(G).

¹² R.C. 1701.86(H)(2) and (3).

Information required to be filed	Current law	Bill
Evidence of franchise, sales, use, and highway use tax payment	Requires evidence showing (1) payment of all franchise, sales, use, or highway use taxes up to filing date or date of dissolution, or (2) that payment is adequately guaranteed.	Requires (1) evidence from the Tax Department showing the payment of the same taxes up to the date of dissolution or showing that payment is adequately guaranteed, or (2) an affidavit of one or more persons executing the certificate or a corporation officer containing a statement that the corporation is not required to pay those taxes.
Evidence of personal property tax payment	Requires evidence showing (1) payment of all personal property taxes up to filing date or date of dissolution, or (2) that payment is adequately guaranteed.	Requires (1) evidence showing the payment of the same taxes up to the date of dissolution or showing that payment is adequately guaranteed, or (2) an affidavit of one or more persons executing the certificate or a corporation officer containing a statement that the corporation is not required to pay those taxes.
Evidence of commercial activity tax (CAT) payment	No provision.	Requires (1) evidence from the Tax Department showing the payment of the CAT up to the date of dissolution or showing that payment is adequately guaranteed, or (2) an affidavit of one or more persons executing the certificate or a corporation officer containing a statement that the corporation is not required to pay the CAT.

Notice of voluntary dissolution

The bill changes the way a corporation must give notice following the dissolution. A corporation must give notice of a dissolution by certified or registered mail, return receipt requested, to each known creditor and to each person that has a claim against the corporation, including claims that are conditional, unmatured, or contingent upon the occurrence or nonoccurrence of future events. The notice must state all of the following:

(1) That all claims must be presented in writing and must identify the claimant and contain sufficient information to reasonably inform the corporation of the substance of the claim;

(2) The mailing address to which the person must send the claim;

(3) The deadline, which must be not less than 60 days after the date the notice is given, by which the corporation must receive the claim;

(4) That the claim will be barred if the corporation does not receive the claim by the deadline;

(5) That the corporation may make distributions to other creditors or claimants, including distributions to shareholders of the corporation, without further notice to the claimant.

Giving any notice or making any offer under the General Corporation Law does not revive any claim then barred or constitute acknowledgment by the corporation that any person to whom the corporation sent notice under the bill is a proper claimant and does not operate as a waiver of any defense or counterclaim. A claim is barred if a claimant that was given written notice does not deliver the claim to the dissolved corporation by the deadline stated in the notice.

The corporation must post the notice on any web site the corporation maintains in the corporation's name and provide a copy of the notice to the Secretary of State to be posted on the web site maintained by the Secretary of State as required by the bill. Generally, the Secretary of State must make both of the following available to the public in a format that is searchable, viewable, and accessible through the internet: (1) a list of any domestic corporations that have filed a certificate of dissolution, and (2) for each corporation on that list, a copy of both the certificate of dissolution and the notice delivered as described above. After the materials relating to any dissolved corporation have been posted for four years, the Secretary of State may remove from the web site the information that the Secretary posted that relates to that corporation.

If the certificate of dissolution is filed five years or less after the effective date of the bill, the corporation must publish the above notice at least once a week for two successive weeks, in a newspaper published and of general circulation in the county in which the principal office of the corporation was to be or is located.

Existing law provides that following the filing of the certificate of dissolution, the directors or the incorporators must cause a notice of voluntary dissolution to be published once a week on the same day of each week for two successive weeks, in a newspaper published and of general circulation in the county in which the principal

office of the corporation was to be or is located. The directors or incorporators must also cause written notice of dissolution to be given either personally or by mail to all known creditors of, and to all known claimants against, the dissolved corporation.¹³

Winding up affairs

Continuation of the corporation

The bill provides that if the corporation is dissolved voluntarily, when the articles of a corporation have been canceled, or when the period of existence of the corporation specified in its articles has expired, the corporation must continue as a corporation to carry on business and do acts permitted under existing law for a period of four years from the dissolution, expiration, or cancellation, and a court may extend such four-year period. Existing law provides that when the above actions take place, the corporation must cease to carry on business and do only such acts as are required to wind up its affairs, to obtain reinstatement of the articles, or are permitted upon reinstatement, and for such purposes it must continue as a corporation.¹⁴

Claims preserved

The bill further provides that the voluntary dissolution of a corporation, cancellation of the articles of a corporation, expiration of the period of existence of a corporation, appointment of a receiver to wind up the affairs of the corporation, or other action to dissolve a corporation does not eliminate or impair any remedy available to or against the corporation or its directors, officers, or shareholders for any right or claim existing, or liability incurred, prior to the dissolution, if either of the following brings such an action: (1) the corporation, within the time limits otherwise permitted by law, or (2) any other person, before four years after the date of the dissolution or within the time limits established in the bill regarding claims against the dissolved corporation or any other provision of law, whichever is less.¹⁵

The bill provides that any action, suit, or proceeding begun by or against the corporation within the time limits described in (1) and (2) above does not abate, and the corporation must, solely for the purpose of such action, suit, or proceeding, be continued as a body corporate beyond the four-year period and until any judgments, orders, or decrees are fully executed, without the necessity for any court order. The bill repeals the provision in existing law that provides that any process, notice, or demand against the corporation may be served by delivering a copy to an officer, director,

¹³ R.C. 1701.87.

¹⁴ R.C. 1701.88(A).

¹⁵ R.C. 1701.88(B).

liquidator, or person having charge of its assets or, if no such person can be found, to the statutory agent.¹⁶

Board authority while winding up

The bill requires the corporation directors and their successors to act as the board of directors under the articles and regulations until the corporation affairs are completely wound up. Existing law also imposed the duty on the directors' survivors and required them to act under the regulations and "bylaws."¹⁷

The bill appears to clarify that all director activities in winding up the corporation are under the jurisdiction of the common pleas court as described below under "**Jurisdiction of court.**"¹⁸

The bill does expand the authority of the winding-up directors by permitting them, with regard to the winding-up duties, to appoint agents, liquidators, or other persons. Additionally, the directors may distribute assets to shareholders after paying or adequately providing for the payment of (1) all known corporation obligations (see "**Duties of dissolved corporation,**" below) or (2) claims unknown to the corporation that have not yet arisen, but that are likely to arise and become known to the corporation within five years after the date of dissolution or such longer period as the directors or the court determines, not to exceed ten years after the dissolution.¹⁹

Finally, the bill provides that if any property right of a corporation is discovered after the winding up of the corporation, any member or members of the board of directors that wound up the affairs of the corporation, or a receiver appointed by the court may do the following:

- Enforce the property right;
- Collect and divide the assets discovered among the persons entitled to those assets; and

¹⁶ R.C. 1701.88(C).

¹⁷ R.C. 1701.88(D).

¹⁸ R.C. 1701.88(D) and (G).

¹⁹ R.C. 1701.88(D).

- Prosecute actions or proceedings in the corporate name of the corporation. Any assets so collected must be distributed and disposed of in accordance with any applicable court order or, the above requirements.²⁰

Miscellaneous repeals of winding up duties

The bill eliminates language that makes certain actions of the board of directors conclusive regarding the distribution of 2/3 of assets to entitled share holders when winding up the corporation. The bill also repeals a requirement in the winding up law requiring the corporation's deeds and instruments be executed, acknowledged, and delivered by officers appointed by the directors.²¹

Corporation's actions regarding claims

The bill provides that a corporation that has given the notice of dissolution (as described above in "**Notice of dissolution**") may do the following:

(1) Reject, in whole or in part, any matured claim made by a claimant by sending notice of the rejection by certified or registered mail, return receipt requested, to the claimant within 90 days after receipt of the claim and at least 30 days before the expiration of the four-year period for the continuance of a corporation (as described above in "**Winding up affairs**"). Such a notice sent must include or be accompanied by a copy of this authority to reject matured claims and of the Revised Code section regarding jurisdiction of a court over winding up of affairs of voluntarily dissolved corporations. A claim against a corporation is barred if a claimant whose claim is rejected by the corporation does not commence an action to enforce the claim within 30 days after the corporation mails the rejection notice.

(2) Offer security to any claimant whose claim is contingent, conditional, or unmatured as the corporation determines is sufficient to provide compensation to the claimant if the claim matures. The corporation must send the corporation's offer to the claimant by certified or registered mail, return receipt requested, within 90 days after receipt of the claim and at least 30 days before the expiration of the four-year period for the continuance of a corporation (as described above in "**Winding up affairs**"). Such a notice sent must include or be accompanied by the copies described in (1) above. If the claimant offered the security does not deliver to the corporation a written notice rejecting the offer within 30 days after the corporation mails the offer for security, the claimant is deemed to have accepted the security as the sole source from which to satisfy the claimant's claim against the corporation.

²⁰ R.C. 1701.88(F).

²¹ R.C. 1701.88.

A corporation that has given a notice of dissolution may file an application with the court having jurisdiction for a determination of the amount and form of insurance or other security that satisfies both of the following requirements: (a) the insurance or other security will be sufficient to provide compensation to any claimant who has rejected the offer for security, and (b) the insurance or other security will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that are likely to arise or to become known to the corporation within five years after the date of dissolution or such longer period of time as the directors or a court may determine, not to exceed ten years after the date of dissolution.²²

Duties of dissolved corporation

The bill requires a dissolved corporation to do all of the following:

- (1) Pay the matured claims made and not rejected;
- (2) Post the security offered for contingent, conditional, or unmatured claims and not rejected;
- (3) Post security ordered for contingent, conditional, or unmatured claims by the court;
- (4) Make any payment required by a court with jurisdiction over the corporation's winding up;
- (5) Pay or make provision by insurance or otherwise for all other claims that are mature, known, and uncontested or that have been finally determined to be owing by the corporation and any other claims that are not known or arisen and that are likely to become known or arise with five years, but no later than ten years after the dissolution. In the absence of fraud, the judgment of the board of directors of the dissolved corporation as to the provision the corporation made for the payment of all such claims is conclusive.²³

The bill requires a corporation to pay in full any claims and liabilities or provide for those payments in full by insurance or otherwise if the corporation has sufficient assets. If the corporation does not have sufficient assets, a corporation must pay claims and liabilities or provide for those payments by insurance or otherwise in order of their priority. Among claims of equal priority, the corporation must apportion those

²² R.C. 1701.881.

²³ R.C. 1701.882(A) and (C).

payments to the extent of funds legally available therefore. Any remaining assets must be distributed to the shareholders of the corporation according to their respective rights and preferences.²⁴

Effect of dissolution on liability of shareholder

The bill provides that the dissolution of a corporation does not affect the limited liability of a shareholder with respect to transactions occurring or acts or omissions done or omitted in the name of or by the corporation. A shareholder who receives a distribution of assets from a dissolved corporation is not liable for any claim against the corporation in an amount in excess of the amount of shareholder's pro rata share of the claim or the amount distributed to the shareholder, whichever is less. The aggregate liability of any shareholder for claims against a dissolved corporation cannot exceed the amount distributed to that stockholder after the dissolution. A shareholder of a dissolved corporation, the assets of which were distributed, may be liable for a claim against the corporation only if an action on that claim is commenced before expiration of the period of four years after the date of the dissolution or within the time limits otherwise required (as described above in "**Corporation's actions regarding claims**"), whichever is less.²⁵

Jurisdiction of court

The bill appears to clarify court jurisdiction regarding a voluntarily dissolved corporation. The bill states that a common pleas court of the county in which the principal office of the corporation was to be located has jurisdiction over the various matters regarding dissolution established in existing law. Existing law already provides that a common pleas court of the county in which is located the principle office of the corporation voluntarily dissolved, whose articles have been cancelled, or whose period of existence has expired, has such jurisdiction.

The bill also alters the matters over which a common pleas court may exercise jurisdiction. Although there are a number of these matters, the following chart only lists the differences introduced by the bill.²⁶

²⁴ R.C. 1701.882(B).

²⁵ R.C. 1701.883.

²⁶ R.C. 1701.89.

Jurisdictional matters	Current law	Bill
Determination of insurance/security for certain claims	No provision.	Grants jurisdiction to determine sufficiency of security/insurance for claims.
Proof of claims against corporate property	Grants jurisdiction over the presentation and proof of (1) claims against the corporation and (2) rights, interests, or liens in or on corporation property.	Same, but also includes claims against property rights discovered after winding up is complete.
Obtaining insurance to pay claims	No provision.	Grants jurisdiction to determine the insurance to be obtained to pay claims.
Appointment of guardian ad litem	No provision.	Grants jurisdiction to appoint a guardian ad litem to hear and determine matters the court considers proper. Requires the applicant in the proceeding to pay the reasonable fees and expenses of the guardian ad litem, including reasonable witness fees, unless the court orders otherwise.
Appointment of special master commissioner	Grants jurisdiction to appoint a special master commissioner to hear and determine matters the court considers proper.	Same, but requires the applicant in the proceeding to pay the reasonable fees and expenses of the special master commissioner, including reasonable witness fees, unless the court orders otherwise.
Payment of liquidators, receivers, and complainant attorney	Grants jurisdiction over the allowance and payment of compensation to liquidators, receivers, and complainant's attorney.	Repeal the provision.
Judgment or decree to appoint guardian ad litem to execute a deed/instrument	No provision.	Grants jurisdiction to enter a decree or judgment providing for the appointment of a guardian ad litem to execute a deed or instrument in the name of the corporation when (1) no corporation officer/agent is authorized to do so, (2) the corporation/officers do not perform or comply with a court decree or order, or (3) the court considers it proper.

Receiver for winding up affairs

The bill provides that whenever, after a corporation is dissolved voluntarily or the articles of a corporation have been cancelled or the period of existence of a corporation has expired, a receiver is appointed to wind up the affairs of the corporation, all the claims, demands, rights, interests, or liens of creditors, claimants, and shareholders must be determined as of the day on which the receiver was appointed unless those claims, demands, rights, interests, or liens have already been determined (as described above under "**Corporation's actions regarding claims**").

Existing law does not provide an exception to the requirement that all claims, demands, rights, interests, or liens must be determined on the day the receiver is appointed. The bill also provides that unless otherwise ordered, the receiver has the authority as in existing law.²⁷

Judicial dissolution

The bill alters the law governing how a court may dissolve and order the affairs of a corporation to be wound up. The bill eliminates the requirement that the order to dissolve the corporation be necessary to protect the shareholders in situations in which the articles of incorporation have been cancelled or its period of existence has expired.

The bill changes the option permitting a court, when it is found to be beneficial to the shareholders, to issue an order dissolving and winding up a corporation in an action brought by shareholders (1) with the majority of the voting power or (2) who have such proportion of voting power entitling them to dissolve the corporation voluntarily. First, the bill changes the majority requirement to "at least two-thirds." Second, the bill appears to permit a court to order dissolution and winding up when an action is brought by the holders or such lesser proportion as are entitled to dissolve the corporation voluntarily.

The bill changes the option permitting a court to dissolve and wind up a corporation when it is determined that (1) the directors, of which there are an even number, are deadlocked in the management of the corporation's affairs and the shareholders cannot break the deadlock, or (2) there is an uneven number of directors but the shareholders are deadlocked in voting power and unable to agree on successor directors for those with expiring terms. The bill requires the action, when brought by shareholders, to be brought by shareholders with at least two-thirds of the voting power. Existing law only requires one-half of the voting power.²⁸

²⁷ R.C. 1701.90.

²⁸ R.C. 1701.91.

Appointment of provisional director

Under the bill, if shareholders with one-fifth of the voting power prove that continued operation of the corporation has been substantially impeded or made impossible because there are no directors and the shareholders are unable to elect any directors, a court may appoint a provisional director for the corporation. Under existing law, the articles of incorporation must provide for a provisional director in order for the court to issue such order. A hearing must be held with notice provided to each director and the corporation's secretary. The bill also provides that if the court directs, the notice must also be given to each of the shareholders. If a provisional director is appointed, the director shall have all the rights and duties of a director of the corporation and shall serve until removed by the court or by the appropriate shareholder vote, or until resignation or death.²⁹

GENERAL CORPORATION LAW AND NONPROFIT CORPORATION LAW

The bill extends the provisions of existing law described below to the advancement of expenses authorized by the General Corporation Law and the Nonprofit Corporation Law (see **COMMENT 1**). The bill further provides in the General Corporation Law and the Nonprofit Corporation Law that a right to indemnification or to advancement of expenses arising under a provision of the articles or the regulations cannot be eliminated or impaired by an amendment to that provision after the occurrence of the act or omission that becomes the subject of the civil, criminal, administrative, or investigative action, suit, or proceeding for which the indemnification or advancement of expenses is sought, unless the provision in effect at the time of that act or omission explicitly authorizes that elimination or impairment after the act or omission has occurred.

Under current law, the indemnification authorized by the General Corporation Law and the Nonprofit Corporation Law is not exclusive of, and is in addition to, any other rights granted to those seeking indemnification under the articles, the regulations, any agreement, a vote of shareholders (or members in the case of a nonprofit corporation) or disinterested directors, or otherwise, both as to action in their official capacities and as to action in another capacity while holding their offices or positions, and continues as to a person who has ceased to be a director, trustee, officer, employee, member, manager, or agent (or a director, officer, employee, member, manager, agent, or volunteer in the case of a nonprofit corporation) and inures to the benefit of the heirs, executors, and administrators of that person. (See **COMMENT 2**.)³⁰

²⁹ R.C. 1701.911.

³⁰ R.C. 1701.13(E)(6) and 1702.12(E)(6).

Authority of directors

The bill adds to the General Corporation Law and the Nonprofit Corporation Law a provision stating that a director serving on a committee of directors is acting as a director.³¹ Those laws require a director to perform the director's duties as a director, including the duties as a member of any committee of the directors upon which the director may serve, in good faith, in a manner the director reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

LIMITED LIABILITY COMPANY

Persons performing services to limited liability company or members

The bill establishes that absent an express agreement to the contrary, a person providing goods to or performing services for a member or group of members of a limited liability company owes no duty to, incurs no liability or obligation to, and is not in privity with the limited liability company, any other members of the limited liability company, or the creditors of the limited liability company by reason of providing goods to or performing services for the member or group of members of the limited liability company. Existing law specifies that the person is not liable or in privity with the limited liability company as described above by providing goods or performing services for the limited liability company.³²

TECHNICAL CHANGES

The bill makes grammatical, gender neutralizing, and other technical changes in the sections that it amends.

COMMENT

1. The General Corporation Law provides that, generally, expenses, including attorney's fees, incurred by a director in defending the action, suit, or proceeding described in **COMMENT 2** must be paid by the corporation as they are incurred, in advance of the final disposition of the action, suit, or proceeding, upon receipt of an undertaking by or on behalf of the director in which the director agrees to repay that amount if it is proved by clear and convincing evidence in a court of competent jurisdiction that the director's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the corporation or undertaken with

³¹ R.C. 1701.59(B) and 1702.30(B).

³² R.C. 1705.61(B).

reckless disregard for the best interests of the corporation, and to reasonably cooperate with the corporation concerning the action, suit, or proceeding.

Expenses, including attorney's fees, incurred by a director, trustee, officer, employee, member, manager, or agent in defending any action, suit, or proceeding described in **COMMENT 2**, may be paid by the corporation as they are incurred, in advance of the final disposition of the action, suit, or proceeding, as authorized by the directors in the specific case, upon receipt of an undertaking by or on behalf of the director, trustee, officer, employee, member, manager, or agent to repay such amount, if it ultimately is determined that the person is not entitled to be indemnified by the corporation.³³

The Nonprofit Corporation Law provides that, generally, the expenses incurred by the director or volunteer in defending the action, suit, or proceeding described in **COMMENT 2**, including attorney's fees, must be paid by the corporation. Upon the request of the director or volunteer, those expenses must be paid as they are incurred, in advance of the final disposition of the action, suit, or proceeding. Notwithstanding this provision, the expenses incurred by a director or volunteer in defending such an action, suit, or proceeding, including attorney's fees, may not be paid by the corporation upon the final disposition of the action, suit, or proceeding, or, if paid in advance of the final disposition of the action, suit, or proceeding, must be repaid to the corporation by the director or volunteer, if it is proved, by clear and convincing evidence, in a court with jurisdiction that the act or omission of the director or volunteer was one undertaken with a deliberate intent to cause injury to the corporation or was one undertaken with a reckless disregard for the best interests of the corporation.

Expenses, including attorney's fees, incurred by a director, officer, employee, member, manager, agent, or volunteer in defending any action, suit, or proceeding described in **COMMENT 2** may be paid by the corporation as they are incurred, in advance of the final disposition of the action, suit, or proceeding, as authorized by the directors in the specific case, upon receipt of an undertaking by or on behalf of the director, officer, employee, member, manager, agent, or volunteer to repay the amount if it ultimately is determined that the person is not entitled to be indemnified by the corporation.³⁴

2. The General Corporation Law and the Nonprofit Corporation Law authorize a corporation to indemnify or agree to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal,

³³ R.C. 1701.13(E)(5).

³⁴ R.C. 1702.12(E)(5).

administrative, or investigative action, suit, or proceeding, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation (or a director, officer, employee, agent, or volunteer of the nonprofit corporation), or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager, or agent of another domestic or foreign, nonprofit or for profit corporation (or at the request of the nonprofit corporation as a director, officer, employee, member, manager, agent, or volunteer of another domestic or foreign, nonprofit or business corporation), a limited liability company, or a partnership, joint venture, trust, or other enterprise, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit, or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if the person had no reasonable cause to believe the person's conduct was unlawful.

With certain exceptions, a corporation also may indemnify or agree to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor, by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation (or a director, officer, employee, agent, or volunteer of the nonprofit corporation), or is or was serving at the request of the corporation as a director, trustee, officer, employee, member, manager, or agent of another domestic or foreign, nonprofit or for profit corporation (or at the request of the nonprofit corporation as a director, officer, employee, member, manager, agent, or volunteer of another domestic or foreign, nonprofit or business corporation), a limited liability company, or a partnership, joint venture, trust, or other enterprise, against expenses, including attorney's fees, actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation.³⁵

HISTORY

ACTION

Introduced

DATE

01-26-11

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³⁵ R.C. 1701.13(E)(1) and (2) and 1702.12(E)(1) and (2).