



**STATEMENT OF THE OHIO STATE BAR ASSOCIATION  
IN SUPPORT OF HOUSE BILL 301**

Before the House Civil Justice Committee  
Representative Brett Hillyer, Chair

Chairman Hillyer, Vice Chair Mathews, Ranking Member Galonski, and members of the House Civil Justice Committee: On behalf of the Ohio State Bar Association (“OSBA”), I am pleased to offer proponent testimony in support of House Bill 301.

My name is Jeff Wahl. I am the founder and attorney at JRW Esquire LTD, a boutique corporate and commercial law practice, and I am the former chair of the OSBA Corporate Law Committee. I am pleased to testify in support of House Bill No. 301 on behalf of the Ohio State Bar Association. The Bill contains proposed amendments to Section 1701.86 of the Ohio General Corporation Law, relating to the filing requirements for the voluntary dissolution of a corporation.

**Ohio General Corporation Law – Section 1701.86**

When an Ohio corporation is to be voluntarily dissolved or merged or converted into an entity that is not registered in the State of Ohio, Section 1701.86 of the Ohio Revised Code addresses how to handle the corporation’s potential liabilities for personal property taxes, state taxes, unemployment taxes and workers’ compensation payments.

For approximately thirty-five years, from October 20, 1978 until September 29, 2013, Section 1701.86 permitted the dissolving or merging corporation to proceed to dissolve or merge by either (i) obtaining certifications of payment from the Ohio Department of Taxation and other state agencies or (ii) providing notice to those agencies of the date of dissolution along with an acknowledgment of the applicability of Section 1701.95 of the Ohio General Corporation Law and filing an affidavit with the Ohio Secretary of State to that effect. This second approach, the “notice and affidavit approach,” was commonly used over this period by Ohio businesses and attorneys to remove the uncertainty and delay created by the need to wait for receipts issued by various state agencies. While this approach permitted dissolution or merger without a final payment receipt in hand, the state had, and continues to have, adequate guarantees of payment of any outstanding obligations in the case of dissolutions as well as in mergers. In the case of a dissolution, Section 1701.95 of the Ohio General Corporation Law provides that the dissolving corporation’s directors are jointly and severally liable for obligations of the dissolving corporation that are not paid or adequately reserved for in the plan of liquidation of the corporation. In the case of a merger, or other conversion, with and into an entity that is not registered in the State of Ohio, the successor entity, by operation of law, remains liable for all the obligations and liabilities, including tax and other payment obligations to the state, following the merger or conversion.

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Unfortunately, via an amendment included in the 2013 budget bill, this long-standing process was changed to remove the notice and affidavit option with respect to the Ohio Department of Taxation – having the result that a dissolving or merging Ohio corporation must obtain a tax clearance certificate from the Ohio Department of Taxation before its dissolution or merger can become effective. This means that a process that previously was very streamlined and could be accomplished without regulatory delay can now be delayed as long as the Department of Taxation takes to process a tax clearance request and finally issue a tax clearance certificate. The Department of Taxation process is not quick and there is no required time period in which the Department of Taxation must complete its work. As a result, a dissolution or merger can be delayed for several weeks or longer, sometimes beyond a critical time deadline for those involved in the transaction. The Department of Taxation indicates that they will try to process requests within thirty days, but that is not required or assured.

The proposed amendments to Section 1701.86 will restore the long-standing notice and affidavit option used for dissolutions and mergers from 1978 to 2013. The amendments are a return to a thirty-five year practice, not a novel or new approach. The amendments have the potential to prevent unnecessary delays in time-sensitive corporate transactions, delays that can sometimes have a detrimental financial impact on the owners of Ohio corporations.

Additionally, at present, without the proposed amendments from House Bill No. 301, Ohio corporations and their owners are subjected by the State of Ohio to a longer and more costly dissolution or merger process than are out-of-state corporations (Section 1703.17) or even Ohio limited liability companies (Section 1705.43) or Ohio taxable nonprofit corporations (Section 1702.47), none of which are required to obtain tax clearance certificates prior to dissolution or merger. Similarly, the current approach is inconsistent in its treatment of Ohio state agencies, allowing the notice and affidavit approach for unemployment and workers' compensation, but making a special exception for the Department of Taxation. None of these inconsistencies match up with Ohio's pro-business approach. In fact, the current state of Ohio law in this area provides an incentive for new corporations to be formed in states other than Ohio.

## **Conclusion**

In conclusion, House Bill No. 301 restores a long-standing, streamlined option historically relied upon for transactions involving Ohio corporations. I want to thank Representative Swearingen for sponsoring this bill. This change has been on the top of the list for the OSBA Corporation Law Committee for many years. I am pleased to appear on behalf of the Ohio State Bar Association to give testimony in support of the Bill and would be glad to answer any questions any member of the Committee might have.

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