Testimony of Russell R. Rosler

Regarding

SENATE BILL 179

Senate Government Oversight and Reform Committee

Wednesday, February 21, 2018, 9:45 a.m., Senate Finance Hearing Room

Chairman Coley, Ranking Member Schiavoni and members of the Senate Government Oversight and Reform Committee: Good morning, my name is Russ Rosler and I’m here today on behalf of the Ohio State Bar Association’s Corporation Law Committee to speak about Senate Bill 179. I am a corporate lawyer with the Vorys, Sater, Seymour and Pease LLP law firm in Columbus, with 30 years of experience with the law of business organizations.

Ohio’s limited liability company statute already requires a limited liability company to maintain on file with the Ohio Secretary of State’s office the current name and address of a “statutory agent” in Ohio for service of legal process on the company. (ORC Section 1705.06) If the named agent cannot be found by the person seeking to serve process, then service of process can be made on the Secretary of State, as the agent of the limited liability company. In those cases, the Secretary of State is required to forward the documents to the limited liability company at its principal office as shown on the Secretary of State’s records or in accordance with other procedures in the statute.

Senate Bill 179 would amend the statute to automatically *dissolve* a limited liability company if the company fails to maintain an updated statutory agent for service of process, following notice of noncompliance from the Secretary of State.

I note that Ohio’s *corporation* statute has a similar provision to provide for the dissolution of a corporation upon the failure to maintain a current statutory agent. Senate Bill 179 largely tracks the similar automatic dissolution language in the Ohio corporation statute, applying the language to limited liability companies.

However, there is an important difference: the corporation law also includes language that allows the corporation to be *reinstated*, if and when the corporation comes back into compliance with the statutory agent requirements, as if it had never been dissolved. Senate Bill 179 as currently proposed *does not* include similar reinstatement language.

Without this reinstatement language, the automatic dissolution provision would create, in our view, unfairly severe consequences for what typically is an administrative oversight by an ongoing business. If a limited liability company is dissolved automatically with no ability to be automatically reinstated, then questions are raised as to the validity of actions taken by the company and the limited liability of the owners of the company, which may be unclear and expensive to resolve, especially for smaller businesses.

Without this reinstatement language, Senate Bill 179 would create a substantial risk for persons forming limited liability companies in Ohio. In my view, this would discourage entrepreneurs from forming limited liability companies in Ohio when compared to Delaware or other jurisdictions without such risky language.

Allowing for automatic reinstatement of a limited liability company upon coming back into compliance would have the effect of encouraging the updating of the Secretary of State’s records while at the same time not creating havoc for Ohio business owners. That is why the corporation statute includes the reinstatement language, and why the reinstatement language ought to be included in the limited liability company statute.

For these reasons, the Ohio State Bar Association’s Corporation Law Committee has provided to Senator LaRose, the sponsor of the Bill, proposed amendatory language--taken practically verbatim from the reinstatement language that appears in the corporation statute--to provide that a limited liability company is reinstated if and when it comes back into compliance with the statutory agent requirements. We understand that Senator LaRose is in favor of the amended language. So long as this amended language is included in the final bill, the Corporation Law Committee could support Senate Bill 179. Without the reinstatement language, the Committee would not be able to support the bill.

I would be happy to address any questions.

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