

SENATE BILL REPORT

SB 6596

As Passed Senate, February 11, 2006

Title: An act relating to the dissolution of Washington corporations.

Brief Description: Revising the dissolution of Washington corporations.

Sponsors: Senators Kline, Johnson, Weinstein and Esser.

Brief History:

Committee Activity: Judiciary: 1/18/06, 1/31/06 [DP].

Passed Senate: 2/11/06, 41-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Cindy Fazio (786-7405)

Background: The provisions of the Washington Business Corporations Act (WBCA) were adopted in 1989 and have been revised in various respects on ten occasions between 1990 and 2004. One area of the act that has not been revised since 1989, and that has been the subject of several lawsuits, is that provision dealing with dissolution of a corporation, specifically, the area of creditors' rights once a corporation has been dissolved. For example, under current law, it has been argued that claims arising after dissolution of the corporation are barred from remedy.

Summary of Bill: Assets of a corporation transferred to a liquidity trust or other successor are not considered to be distributed for purposes of measuring their legality, until the trust or other successor distributes the assets to the shareholders.

A shareholder is personally liable for distributions he or she received while knowing the distribution, or a portion thereof, was made in violation of the WBCA's provisions for distribution, or made in violation of the corporation's articles of incorporation. The shareholder in violation is entitled to contribution from every other shareholder also in violation. A proceeding against the shareholder for the violation must begin within two years of the effective date of the distribution, or within three years after the date of dissolution of the corporation, whichever is earlier.

The board of directors of a corporation may dedicate the corporation's assets to the repayment of its creditors by way of assignment for the benefit of creditors, or receivership.

A majority of initial directors or incorporators may authorize dissolution of the corporation if shares have not been issued. If not prohibited by the articles of incorporation, a majority of the board of directors may authorize dissolution of the corporation without approval of the

shareholders if the corporation is not able to pay its liabilities as they become due, the corporation's assets are less than the sum of its liabilities, and if ten or more days have passed since the board gave notice to all shareholders of its intention to dissolve the corporation.

Within thirty days of a voluntary dissolution, the corporation must publish notice of the dissolution and request that persons with claims present them to the corporation in a format prescribed in the initial published notice. The notice must also state that claims not filed in a timely manner may be barred. The corporation's failure to publish its dissolution does not change the effective date of the dissolution.

The corporation may give written notice of dissolution to the holders for claims known to the corporation, stating a general description of the claims or liabilities and stating that the claim may be barred if the claim holder does not respond, and stating that the claim may be rejected, in which case the claim holder will have a limited period of time in which to commence an action to enforce the claim.

As a dissolved corporation winds up its affairs, it may dispose of properties and apply the proceeds to the payment of liabilities, or dispose of the properties with the applicable liens and security interests attached, and within the applicable contractual restrictions. Once dissolved, the board of directors may determine that the payment of outstanding liabilities is provided for by an insurance policy reasonably calculated to provide for payment of the liabilities. Once that determination is made, the board may consider the liabilities satisfied and may make a subsequent distribution of remaining assets to the shareholders.

If the board of directors turns over control of the dissolved corporation to a court or receiver, the directors are relieved from any further duties of liquidating the corporation's assets and satisfying the liabilities.

Directors or shareholders may make decisions necessary to authorize the activities of dissolution.

A dissolved corporation may apply to a superior court for a determination that its proposed satisfaction of a claim or liability is reasonable. The corporation must give notice to the claim holder of such a proceeding. The superior court's determination of the amount and form of satisfaction of a claim satisfies the corporation's obligation with respect to that particular claim and further claims on the same facts are barred.

The holder of an unpaid claim may begin a proceeding against the corporation to collect on the claim. The proceeding may include a petition to collect assets that have already been distributed to shareholders, and those shareholders may become parties to the proceeding, but the claim holder may not proceed directly against the directors, officers, or shareholders, except in limited circumstances. Claims that are barred by any of the circumstances in this act cannot be enforced against the corporation.

A dissolved corporation may seek supervision by a superior court over its winding up and liquidation. The action must occur in the county where the corporation's registered office is, or was, located. The shareholders or directors need not be made party to the proceeding unless relief is sought against them.

Survival provisions are clarified to make clear that claims arising after filing for dissolution can be asserted against the corporation, and extending the survival period to three rather than two years.

Technical changes are made to various provisions of the WBCA to comport with the new provisions. Grammatical changes are made to various provisions of the WBCA to clarify the law.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: These changes are long overdue and will provide welcome relief and certainty to practicing attorneys. The changes are good business practice and will help Washington remain consistent with the model code. It will help solve the repeated problems in interpretation. The main areas addressed are: survival of claims - the term to file a claim is extended from two to three years; creditors' rights are clarified; board of directors' activities in distribution are clarified; and notice of the dissolution is now required.

Testimony Against: None.

Who Testified: PRO: John Reed, Washington State Bar Association.