

Date of Hearing: July 10, 2017

**ASSEMBLY COMMITTEE ON BANKING AND FINANCE**

Matthew Dababneh, Chair

SB 340 (Hertzberg) – As Amended May 30, 2017

**SENATE VOTE:** 36-0

**SUBJECT:** Corporations: dissolution: bankruptcy

**SUMMARY:** Enables a court appointed trustee, liquidating agent, responsible officer or other representative, to sign and verify a certificate for dissolution when the corporation has been completely wound up under the terms of a Chapter 11 bankruptcy reorganization plan that was approved by the corporation's creditors and the court. The certificate of dissolution shall state the following:

- 1) The name of the corporation.
- 2) That an order for relief was entered in a case under Chapter 11 (commencing with Section 1101) of Title 11 of the United States Code with respect to the corporation.
- 3) The identification of the court in which the order for relief was entered and the court's file number for the matter.
- 4) That an order confirming a reorganization plan has been entered in that case.
- 5) That the undersigned has been appointed by the court as a trustee, liquidating agent, responsible officer, or other representative of the corporation.
- 6) That the shares of the corporation have been canceled pursuant to the terms of that plan.
- 7) That the assets of the corporation have been distributed pursuant to the terms of that plan.
- 8) That the corporation is dissolved.

**EXISTING FEDERAL LAW:**

- 1) Chapter 11 of the federal bankruptcy law provides for the regulation and parameters of bankruptcy proceedings, provides a debtor business with the opportunity to stay in business while declaring bankruptcy by restructuring its debt and equity interests, and allows a reorganization plan that provides for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests.

**EXISTING STATE LAW:**

- 1) Allows any domestic corporation to which a proceeding has been initiated under any applicable statutes of the United States relating to reorganization of corporations, to put into effect and carry out any reorganization plan confirmed by the court, without further action by its board or shareholders. (Corporations (Corp.) Code Section 1400(a))

- 2) Allows a corporation, through a reorganization proceeding, to do the following through a reorganization plan:
  - a) Alter, amend, or repeal its bylaws;
  - b) Constitute or reconstitute its board and name, constitute or appoint directors and officer in place of or in addition to all or some of the directors or officers then in office;
  - c) Amend its articles;
  - d) Make any change in its capital stock;
  - e) Make any other amendment, change, alteration, or provision authorized by this division;
  - f) Be dissolved, transfer all or part of its assets or merge as permitted by this division;
  - g) Change the location of its principal executive office or remove or appoint an agent to receive service or process;
  - h) Authorize and fix the terms, manner and conditions of the issuance of bonds, debentures, or other obligations; or
  - i) Lease its property and franchises to any corporation, if permitted by law. (Corp. Code Section 1400(b))
- 3) Requires that a certificate of any change made by a corporation undergoing reorganization be signed, verified, and filed. The certificate may be signed and verified as directed by the orders of the court, by the trustee appointed in the reorganization proceeding or by officers of the corporation. This applies to reorganization plans that result in the merger or dissolution of the corporation. (Corp. Code Section 1401)
- 4) Provides that the provisions of Chapter 14 shall cease to apply to a corporation once the case is closed and the final decree has been entered. (Corp. Code Section 1402)
- 5) Provides that any corporation may elect to voluntarily wind up and dissolve by the vote of shareholders representing 50% or more of the voting power or by approval of the board if one of the following descriptions is met:
  - a) A corporation as to which an order for relief has been entered under Chapter 7 of the federal bankruptcy law;
  - b) A corporation which has disposed all of its assets and has not conducted any business for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation; or
  - c) A corporation which has issued no shares. (Corp. Code Section 1900)
- 6) Allows an incorporator or a majority of incorporators to sign and verify a certificate of dissolution if the corporation has not issued shares, and does not have a majority of directors or if no directors were elected or named in the articles of incorporation. The certificate of

dissolution in this situation must contain a number of statements relating to the conditions that must be met for this to occur. (Corp. Code Section 1900.5)

- 7) Requires that whenever a corporation has elected to wind up and dissolve a certificate evidencing this dissolution must be filed. This certificate must be signed and verified by at least a majority of the directors then in office or by one or more shareholders authorized to do so by the vote of shareholders representing 50% or more of the voting power. The certificate must state that the corporation has elected to wind up and dissolve, and, among other things, how this election was made and who executed this certificate. (Corp. Code Section 1901)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:** This bill solves the problem of abandoned businesses that remain alive in legal terms but have ceased to function as corporations by allowing a court-appointed representative of a bankruptcy case to file a certificate of dissolution with the Secretary of State.

When a corporation files for bankruptcy, the case often results in an orderly liquidation. The shares of the corporation are canceled, and the board is replaced with a representative who is tasked with liquidating the assets and paying creditors. Once the liquidation plan is completed, however, state law does not authorize the court-appointed representative to execute and file a certificate of dissolution with the Secretary of State. Unlike a board of directors or shareholders, the liquidating agent has no clear statutory authority to complete these steps. This lack of clear authorization leaves a gap in the dissolution process, which this bill aims to fill.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

The Insolvency Law Committee of the Business Law Section of the State Bar of California

**Opposition**

None on file

**Analysis Prepared by:** William Herms / B. & F. / (916) 319-3081