

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1708

SPONSOR: Senator Mitchell

SUBJECT: Judicial Dissolution of a Corporation

DATE: April 19, 1999 REVISED: 4/21/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Olafson</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill expands the grounds for the judicial dissolution of a corporation to include voluntary or administrative dissolution for three consecutive years. The bill provides that, in addition to the Department of Legal Affairs, any state agency may initiate proceedings for the judicial dissolution of a corporation.

The bill amends section 607.1430, Florida Statutes.

II. Present Situation:

Florida Corporations

A for-profit corporation is a corporation created for the purpose of conducting business in the widest sense of the term. In Florida, such a corporation may be organized generally under ch. 607, F.S., but may take on special attributes as prescribed by other subservient chapters. The shareholders of a corporation are not personally liable for the debts and obligations of the corporation as it functions as a separate legal entity, distinct from its shareholders. Thus, the liability of shareholders for corporate losses is limited to the amount of each shareholder's individual investment. The treatment of a corporation as a separate legal entity shields the shareholders from personal liability for the debts of the corporation, except in limited circumstances such as using the corporation as a shield to commit certain illegal or fraudulent activities. The Division of Corporations, a division of the Department of State, is a ministerial filing agency which serves as the statewide central repository for business entity filings and annual reports. Chapter 617 of the Florida Statutes governs not-for-profit corporations and has dissolution procedures separate from those provided in ch. 607, F.S.

Voluntary Dissolution

Under ss. 607.1401 and 607.1402, F.S., a Florida corporation may voluntarily dissolve, without court supervision, when:

- a majority of the incorporators or directors approve the filing of articles of dissolution at such time when the corporation has not issued shares or has not yet commenced business;
- a majority of shareholders approve a proposal by the board of directors for dissolution; or
- a majority of shareholders vote to give written consent for dissolution, without action by the board.

Under s. 607.1405, F.S., a dissolved corporation continues its corporate existence, but is not allowed to carry on any business, except when appropriate to wind up and liquidate its business and affairs, including:

- collecting its assets;
- disposing of its properties that will not be distributed in kind to its shareholders;
- discharging or making provision for discharging its liabilities;
- distributing its remaining property among its shareholders according to their interests; and
- doing every other act necessary to wind up and liquidate its business and affairs.

A dissolved corporation or successor entity may dispose of the known claims against it by providing written notice of the dissolution to each known creditor. After notifying creditors and waiting at least 120 days, the corporation may pay its debts and obligations in full. If there are insufficient funds, such claims and obligations are to be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available. Any remaining funds will be distributed to the shareholders of the dissolved corporation. A shareholder of a dissolved corporation, the assets of which were distributed pursuant to s. 607.1406(9), F.S., is not liable for any claim against the corporation on which a proceeding is not begun prior to the expiration of three years following the effective date of the dissolution.

Judicial Dissolution

Section 607.1430, F.S., provides that the following parties may initiate proceedings for dissolution in circuit court:

- *a shareholder* who establishes that the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or the shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;
- *a shareholder in a corporation having 35 or fewer shareholders*, who establishes that the corporate assets are being misapplied or wasted, causing material injury to the corporation; or the directors or those in control of the corporation have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent;

- *a creditor* who establishes that his or her claim against a corporation has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;
- *the corporation*, upon request, for a voluntary dissolution to be continued under court supervision; or
- *the Department of Legal Affairs*, when such entities can establish that the corporation obtained its articles of incorporation through fraud; or the corporation has continued to exceed or abuse the authority conferred upon it by law.¹

In addition to dissolution, a circuit court has the authority to order alternative remedies which include, but are not limited to, the appointment of a receiver or custodian pendente lite, the appointment of a provisional director, the mandatory purchase of the complaining shareholder's shares, or the grant of equitable relief.

Section 607.1433(2), F.S., specifies that after entering the judgment of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with s. 607.1405, F.S.

Administrative Dissolution

Section 607.1420, F.S., provides that the Department of State may commence a proceeding under s. 607.1421, F.S., to administratively dissolve a corporation if the corporation:

- has failed to file its annual report or pay the annual report filing fee;
- is without a registered agent or registered office in this state for 30 days or more;
- fails to notify the Department of State within 30 days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- has failed to answer truthfully and fully, within the time prescribed by this act, interrogatories propounded by the Department of State; or the corporation's period of duration stated in its articles of incorporation has expired.²

If the Department of State determines that one or more grounds exist under s. 607.1420, F.S., for dissolving a corporation, it will serve the corporation with written notice of its determination. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department that each ground determined by the department does not exist

¹Section 607.1430(1)(b), F.S., provides that the enumeration of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state.

²Section 607.1420(2), F.S., provides that the enumeration of grounds for administrative dissolution as provided in s. 607.1420(1) paragraphs (a) through (e), F.S., shall not exclude actions or special proceedings by the Department of Legal Affairs or any state officials for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state.

within 60 days of issuance of the notice, the department administratively dissolves the corporation by issuing a certificate of dissolution. An administratively dissolved corporation continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under s. 607.1405, F.S., and notify its claimants under s. 607.1406, F.S. The administrative dissolution of a corporation, however, does not terminate the authority of its registered agent nor does it force the liquidation of corporate assets. The Department of State estimates that it administratively dissolves 100,000 corporations a year and grants reinstatement to approximately 25,000 corporations annually.

Under s. 607.1422, F.S., a corporation administratively dissolved by the Department of State may apply to the department for reinstatement at any time after the effective date of dissolution. Upon review, the department may cancel the corporation's certificate of dissolution and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement. A Florida corporation which has been administratively dissolved may remain inactive indefinitely without winding up or liquidating its business and affairs. The Model Business Corporation Act, upon which Florida's Business Corporation Act was based, provides a two-year window for reinstatement by the Department of State following administrative dissolution (Florida, however, did not adopt this provision of the model act).

Certain state agencies may have difficulty collecting judgments against corporations that have been administratively dissolved for a number of years but have never liquidated their assets. An agency may win a judgment against an administratively dissolved corporation in court, and then subsequently return to court in an attempt to force judicial dissolution as a creditor. As a creditor, the agency must prove that its claim has been reduced to judgment, that the execution on the judgment returned unsatisfied, and that the corporation is insolvent; or that the corporation (through its agent) has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

III. Effect of Proposed Changes:

The bill amends s. 607.1430, F.S., to expand the grounds for judicial dissolution to include a showing that a corporation has been voluntarily or administratively dissolved for three consecutive years. The bill provides that all state agencies, as well as the Department of Legal Affairs, have the authority to initiate proceedings in circuit court for judicial dissolution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Currently, the Department of Legal Affairs may invoke judicial dissolution when a corporation has obtained its articles of incorporation through fraud or the corporation has continued to exceed or abuse the authority conferred upon it by law. This bill authorizes the Department of Legal Affairs and any state agency to invoke judicial dissolution of voluntarily and administratively dissolved corporations that have been dissolved for three consecutive years.

After entering the judgment of dissolution, the court will direct the winding up and liquidation of the corporation's business and affairs in accordance with s. 607.1405, F.S. This section provides that the winding up and liquidation of a corporation includes: collecting its assets; disposing of its properties that will not be distributed in kind to its shareholders; discharging or making provision for discharging its liabilities; distributing its remaining property among its shareholders according to their interests; and doing every other act necessary to wind up and liquidate its business and affairs.

Under the provisions included in this bill, a state agency could force dissolution of a voluntarily or administratively dissolved corporation that has been dissolved for three or more years. This process would eliminate the need for agencies to first go to court and get a judgment against an administratively or voluntarily dissolved corporation and then initiate proceedings as a creditor under s. 607.1430(4), F.S. Agencies may attempt to have the circuit court order a corporation to distribute its remaining property among shareholders according to their interests. To the extent that there are liabilities associated with the property, such liabilities could be passed on to the shareholders.

C. Government Sector Impact:

The bill would provide all state agencies with the power to petition the court for judicial dissolution when such corporation has been voluntarily or administratively dissolved for three years, thus providing agencies with an additional judicial means to collect against dissolved corporations. The bill would also provide any state agency with the authority to initiate judicial dissolution for fraud or continued exceeding or abuse of authority.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce and Economic Opportunities:

Provides language further restricting the grounds for judicial dissolution of an administratively or voluntarily dissolved corporation by providing that in addition to being dissolved for three consecutive years, such corporation must have failed to wind up and liquidate its business and affairs under s. 607.1405, F.S.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
