

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1948

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and
Senator Wise

SUBJECT: Dissolution of Corporations

DATE: April 23, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	CM	Favorable/CS
2.	_____	_____	CP	_____
3.	_____	_____	JU	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	RC	_____

I. Summary:

Under existing law, a dissolved corporation or successor entity must provide notice of its dissolution to creditors having a known claim against the corporation to inform them how to make a claim against the corporation. Under the bill, a dissolved corporation or successor entity must provide notice of its dissolution to creditors having an unknown claim, a claim of which the corporation has no knowledge, by filing a notice with the Department of State or by publishing a Notice of Corporate Dissolution in a newspaper. Both of these notices must: state the name of the corporation and date of dissolution; describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and state that all unknown claims will be barred unless a proceeding to enforce the claim is commenced within 4 years after the filing of the notice.

If a corporation or successor entity chooses the option to publish a Notice of Corporate Dissolution in a newspaper in lieu of filing a notice with the Department of State, the notice must appear once a week for 2 consecutive weeks in a newspaper of general circulation in a county in the state wherein the corporation owns real or personal property. The notice must be published within 10 days after the adoption of a corporation's articles of dissolution.

This bill creates section 607.1407, Florida Statutes.

II. Present Situation:

Dissolution of Corporations

Corporations may be dissolved voluntarily, administratively, or judicially.

Voluntary Dissolution

A corporation that has commenced operations in this state may be dissolved voluntarily after the board of directors of the corporation makes a recommendation to dissolve the corporation which is approved by a majority of all the votes entitled to be cast on the recommendation.¹

Alternatively, without action of the board of directors, action to dissolve a corporation may be taken by the written consent of the shareholders.² The corporation will be dissolved on the effective date of its articles of dissolution filed with the Department of State.³ A voluntarily dissolved corporation may not carry on any business except that necessary to wind up and liquidate its business and affairs.⁴

Administrative Dissolution

A corporation may be administratively dissolved by the Department of State under s. 607.1420(1), F.S., as the result of the following:

- (a) The corporation has failed to file its annual report or pay the annual report filing fee within the time required by [ch. 607, F.S.];
- (b) The corporation is without a registered agent or registered office in this state for 30 days or more;
- (c) The corporation does not 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;
- (d) The corporation has failed to answer truthfully and fully, within the time prescribed by this act, interrogatories propounded by the Department of State; or
- (e) The corporation's period of duration stated in its articles of incorporation has expired.

The effective date of the dissolution will be stated on the certificate of dissolution issued by the Department of State.⁵ An administratively dissolved corporation may not carry on any business except that necessary to wind up and liquidate its business and affairs.

Judicial Dissolution

A corporation may be judicially dissolved under s. 607.1430, F.S., as the result of the following:

- (1)(a) In a proceeding by the Department of Legal Affairs if it is established that:
 1. The corporation obtained its articles of incorporation through fraud; or
 2. The corporation has continued to exceed or abuse the authority conferred upon it by law.

- (2) In a proceeding by a shareholder if it is established that:

¹ Section 607.1402, F.S.

² *Id.*

³ Section 607.1403, F.S.

⁴ Section 607.1405, F.S.

⁵ Section 607.1421(2), F.S.

(a) 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

(b) 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;

(3) In a proceeding by a shareholder or group of shareholders in a corporation having 35 or fewer shareholders if it is established that:

(a) The corporate assets are being misapplied or wasted, causing material injury to the corporation; or

(b) 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;

(4) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(5) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

The effective date of the dissolution will be stated on the judgment dissolving the corporation.⁶ A judicially dissolved corporation may not carry on any business except that necessary to wind up and liquidate its business and affairs.

Claims Against Dissolved Corporations

Common Law

A legal action was not permitted under common law against a dissolved corporation to enforce a claim that accrued before the dissolution of a corporation. "At common law upon dissolution a corporation was for all purposes extinct and a legal action could not be maintained against a dissolved corporation." *Bahl v. Fernandina Contractors, Inc.*, 423 So. 2d 964, 965 (1st DCA, 1982). Thus, a statute that authorizes legal action against dissolved corporations is a "prolongation statute," which prolongs the existence of a remedy, rather than a statute of limitations. *Williams v. United States*, 674 F. Supp 334, 337 (N.D. Florida, 1987). "[U]nder the common law ... the real estate of a dissolved corporation reverted to the grantor and its personal property reverted to the crown or the state so no assets remained to be the distributed among creditors or stockholders." *Gerstel v. William Curry's Sons, Co.*, 25 So. 2d 560, 561 (Fla. 1946). Much of the common law relating to legal action against dissolved corporations has been superseded by statute in this state. *Id.*

⁶ Section 607.1433, F.S.

Statutory Law

Section 607.1406, F.S., provides for the orderly liquidation of a dissolved corporation or its successor entity including a process to dispose of known claims against a dissolved corporation. Under the statute, the dissolved corporation or its successor entity is required to provide written notice to known claimants or claimants who may have contingent claims that the claimant may be entitled to assert against the corporation. According to s. 607.1406, F.S., the notice must be made as follows:

- (2) The dissolved corporation or successor entity shall deliver to each of its known claimants written notice of the dissolution at any time after its effective date. The written notice shall:
 - (a) Provide a reasonable description of the claim that the claimant may be entitled to assert;
 - (b) State whether the claim is admitted or not admitted, in whole or in part, and, if admitted:
 1. The amount that is admitted, which may be as of a given date; and
 2. Any interest obligation if fixed by an instrument of indebtedness;
 - (c) Provide a mailing address where a claim may be sent;
 - (d) State the deadline, which may not be fewer than 120 days after the effective date of the written notice, by which confirmation of the claim must be delivered to the dissolved corporation or successor entity;
 - (e) State that the corporation or successor entity may make distributions thereafter to other claimants and the corporation's shareholders or persons interested as having been such without further notice.

According to the statute, claims made against the corporation resulting from the notice may be rejected by the corporation. The corporation's rejection of the claim, however, must be made at least 150 days before the expiration of the 3-year period following the effective date of the dissolution.⁷ Legal proceedings initiated after the 3-year period to enforce a rejected claim are barred.⁸

After claims against the dissolved corporation are satisfied, and 150 days after the last claim was rejected, any remaining funds must be distributed to the shareholders of the dissolved corporation.⁹ Rejected claims may be pursued through legal action after the corporation's funds are distributed to shareholders any time within the 3-year period after the effective date of the dissolution of the corporation.¹⁰ In such an event, a shareholder may be liable for the rejected claim to the extent of the shareholder's pro-rata share of the claim or amount distributed to the shareholder, whichever is less.¹¹

There is no provision in the Florida Statutes providing for the disposal of unknown claims, a claim of which a dissolved corporation has no knowledge, against a dissolved corporation.

⁷ Section 607.1406(3), F.S.

⁸ See s. 607.1406(13), F.S.

⁹ Section 607.1406(9), F.S.

¹⁰ Section 607.1406(13), F.S.

¹¹ Section 607.1406(12) and (14), F.S.

However, a legal action may be brought against a dissolved corporation to enforce an unknown claim within the 3-year period after the dissolution of the corporation. *Ruina v. Russell*, 369 So. 2d 642 (3rd DCA, 1979).

Newspapers of General Circulation

A newspaper of general circulation in a county is a newspaper that is:

- printed and published at least weekly;
- contains at least 25 percent of its words in English;
- qualified to be admitted and entered as periodicals matter at a post office in the county where published;
- for sale to the public generally;
- available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or property owners in the county where published, or of interest or of value to the general public; and
- has been in existence for at least a year.¹²

III. Effect of Proposed Changes:

Under existing law, a dissolved corporation or successor entity must provide notice of its dissolution to creditors having a known claim against the corporation to inform them how to make a claim against the corporation. Under the bill, a dissolved corporation or successor entity must provide notice of its dissolution to creditors having an unknown claim, a claim of which the corporation has no knowledge, by filing a notice with the Department of State or by publishing a Notice of Corporate Dissolution in a newspaper. Both of these notices must: state the name of the corporation and date of dissolution; describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and state that all unknown claims will be barred unless a proceeding to enforce the claim is commenced within 4 years after the filing of the notice.

If a corporation or successor entity chooses the option to publish a Notice of Corporate Dissolution in a newspaper in lieu of filing a notice with the Department of State, the notice must appear once a week for 2 consecutive weeks in a newspaper of general circulation in a county in the state wherein the corporation owns real or personal property. The notice must be published within 10 days after the adoption of a corporation's articles of dissolution. Because articles of dissolution are only adopted by corporations that voluntarily dissolve, the option to publish a Notice of Corporate Dissolution is apparently only available to corporations that voluntarily dissolve.

Section 607.1406, F.S., requires a dissolved corporation or successor entity to provide written notice to all creditors having known claims against the corporation to inform them how to make a claim against the corporation. Legal action to enforce a known claim is barred after the

¹² Sections 50.011 and 50.031, F.S.

expiration of the 3-year period following the dissolution of the corporation.¹³ Section 607.1406, F.S., however, does not specify whether a creditor may enforce a known claim against a dissolved corporation after the 3-year period when the corporation did not provide the statutorily required written notice of the corporation's dissolution to that creditor. Such creditors are treated under the committee substitute as having an unknown claim.

Under s. 607.1407, F.S., created by the committee substitute, the following creditors have an unknown claim against a dissolved corporation: creditors who have a claim against a dissolved corporation of which the corporation has no knowledge; creditors having a known claim against a dissolved corporation who did not receive written notice of the corporation's dissolution as required by s. 607.1406, F.S.; and creditors whose claims were not acted upon by the corporation. Creditors having an unknown claim against a dissolved corporation will have 4 years from the "filing date"¹⁴ to pursue legal action to enforce their claims against the dissolved corporation. After the distribution of a dissolved corporation's assets, a shareholder is only liable for claims against the corporation for the lesser of the shareholder's pro-rata share of the claim or the corporate assets distributed to the shareholder.

The committee substitute takes effect July 1, 2003.

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:

Creditors who have an unknown claim against a dissolved corporation may receive notice of a process to enforce their claim against a dissolved corporation by reviewing filings with the Department of State or in the legal notices section of certain newspapers.

¹³ See s. 607.1406(13), F.S.

¹⁴ See the "Technical Deficiencies" section of this analysis.

C. Government Sector Impact:

The Department of State may have to process additional corporate filings.

VI. Technical Deficiencies:

Legal action to enforce an unknown claim against a dissolved corporation must be initiated within 4 years after the “filing of the notice” or “filing date” under s. 607.1407(1)(c), (2)(c), and (3), F.S. If a corporation opts to publish notice of its dissolution in a newspaper, no notice may be “filed” with the Department of State. Additionally, the 4-year period after filing a notice or publishing a notice in a newspaper may be different depending on the type of notice chosen by the corporation. Thus, the Legislature may wish to amend the committee substitute to provide that legal actions to enforce a claim must be initiated within 4 years after the dissolution of the corporation.

On page 2, line 27 of the committee substitute, the reference to s. 607.1456(10), F.S., should be replaced with a reference to s. 607.1406(10), F.S.

VII. Related Issues:

Under s. 607.1406(3), F.S., a dissolved corporation must act on a known claim within 90 days after receipt and at least 150 days before the expiration of 3 years following the effective date of dissolution. The committee substitute, however, contains no requirement for a corporation to take action on a claim within a certain amount of time after receipt or within a certain amount of time before legal action to enforce the claim is barred. The Legislature may wish to amend the committee substitute by requiring the dissolved corporation to act on unknown claims within certain timeframes to prevent the initiation of legal action before the dissolved corporation has had a reasonable opportunity to review the claim.

VIII. Amendments:

None.