Aida S. Montano *Legislative Service Commission*

Sub. H.B. 278

124th General Assembly
(As Reported by H. Civil and Commercial Law)

Reps. Manning, Willamowski, Seitz, Latta, Grendell

BILL SUMMARY

- Authorizes the directors of a corporation generally to adopt specific amendments in the articles of incorporation that change the name of or the location in Ohio of the principal office of the corporation or that either increase the authorized number of shares of a class as a result of a dividend or distribution or change each issued and unissued authorized share of an outstanding class into a greater number of shares of that class and concurrently decrease the par value of issued and unissued shares of a particular class.

- Requires a corporation to send notice and a copy or summary of any directors' amendment or amended articles by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice and copy or summary are sent to each shareholder of record as of the date of approval of the amendment or amended articles.

- Expands the methods for sending certain notices or copies or summaries of documents under the General Corporation Law, including notice of shareholders' or directors' meetings, copy of financial statements to be laid before the shareholders at a shareholders' meeting, copy of amended or new regulations, copy of express terms of shares, notice of the effect of an amendment to the articles regarding a shareholder's right to vote cumulatively, or notice of approval of certain mergers and copy or summary of the merger agreements, to include mail, overnight delivery service, or any other means of communication authorized by the recipient of the notice, copy, or summary.

- Provides that the articles or regulations may authorize the directors to determine that shareholders' meetings may be held solely by means of

communications equipment and authorizes the directors to adopt guidelines and procedures for the use of communications equipment to verify that a person is a shareholder or proxyholder and to maintain a record of any vote or other action.

- Provides that if a meeting is to be held by means of communications equipment, the corporation must make the list or lists of shareholders of record and the financial statements open to the examination of any shareholder or proxyholder during the whole time of the meeting on a reasonably accessible electronic network.

- Modifies the General Corporation Law and the Nonprofit Corporation Law to provide that the legal existence of a corporation begins upon the filing of the articles of incorporation or on a later date specified in the articles that is not more than 90 days after the filing, and to add to the contents of a resolution of dissolution the date of dissolution if other than the filing date.

- Provides that the legal existence of a limited liability company begins upon the filing of the articles of organization or on a later date specified in the articles that is not more than 90 days after the filing.

- Makes changes in certain filings with the Secretary of State, including filing of biennial statements of professional associations, a foreign corporation's exclusive use of a name, change of a statutory agent's address, and renewal of registrations of trademarks or service marks, and requires the Secretary of State to prescribe forms for complying with the requirements of R.C. Title XVII.

TABLE OF CONTENTS

Amendment of articles by directors 3
Continuing law 3
Operation of the bill 4
Amendment of articles by shareholders 5
Notice of adopted amendment or amended articles 5
Continuing law 5
Operation of the bill 5
Method of sending notice or copies of documents 6
Regulations adopted by shareholders 6
Certificates for shares 7

Amendment to articles regarding shareholder's right to vote cumulatively.....8
Meeting of directors.....8
Agreement of merger.....8
Prohibition regarding false documents.....9
Meeting of shareholders.....10
Meeting by means of communications equipment.....10
Notice of meeting.....11
Waiver of notice.....12
Quorum.....12
List of shareholders of record.....13
Financial statements.....13
Action without a meeting.....14
Legal existence of corporation and limited liability company.....15
Existing law.....15
Operation of the bill.....15
Dissolution of corporation.....15
General Corporation Law.....15
Nonprofit Corporation Law.....17
Filings with the Secretary of State.....18
Filing forms.....18
Biennial report of limited liability partnership.....18
Biennial statement of professional association.....19
Foreign corporation's exclusive use of a name.....19
Change of statutory agent's address.....19
Renewal of registration of trademark or service mark.....20
Release of information by Tax Commissioner.....20

CONTENT AND OPERATION

Amendment of articles by directors

Continuing law

The General Corporation Law specifies the cases in which the directors of a corporation may adopt an amendment to the articles of incorporation. The directors' authority to amend the articles generally covers: (1) the determination of the express terms of any class of shares before issuance of shares of that class, or of one or more series within a class before issuance of shares of that series, (2) the authorization of sufficient unissued shares to satisfy conversion or option rights, (3) the reduction of the authorized number of shares of a class by the number redeemed, surrendered to, or acquired by the corporation upon conversion, exchange, purchase, or otherwise, or the elimination of all references in the articles to the shares when all of the authorized shares of a class have been so

redeemed, surrendered to, or acquired by the corporation, (4) the elimination of all references in the articles to the change of issued or unissued shares provided for in an amendment or amended articles that has become effective, and (5) after a merger or consolidation in which the surviving or new corporation is a domestic corporation, the elimination from the articles of any statement or provision pertaining exclusively to the merger or consolidation, or that was required to be set forth in the merger or consolidation agreement and would not be required in original articles or amendments to articles filed at the time the statement or provision was adopted. (R.C. 1701.70(B)(1) to (5).)

Operation of the bill

The bill expands the authority of the directors to adopt an amendment to the articles in the following cases (R.C. 1701.70(B)(6) to (10)):

(1) Unless otherwise provided in the articles, the directors may adopt an amendment changing the name of the corporation.

(2) The directors may adopt an amendment changing the place in Ohio where the principal office of the corporation is to be located.

(3) When the directors have declared a dividend or distribution on any class of outstanding shares of the corporation to be paid in shares of the same class, the directors may adopt an amendment to proportionately increase the authorized number of shares of the class, provided that (a) the corporation has only one class of shares outstanding or the dividend or distribution is not substantially prejudicial to the holders of any other class of the corporation's shares and (b) that amendment be adopted concurrently with the amendment described below in paragraph (5) when the dividend or distribution is declared on outstanding shares with par value.

(4) The directors may adopt an amendment to change each issued and unissued authorized share of an outstanding class into a greater number of shares of that class and to proportionately increase the authorized number of shares of that class, provided that (a) the corporation has only one class of shares outstanding or the change is not substantially prejudicial to the holders of any other class of the corporation's shares and (b) that amendment be adopted concurrently with the amendment described below in paragraph (5) when the change is made to outstanding shares with par value.

(5) Concurrently with the adoption of an amendment described above in paragraph (3) or (4), the directors may adopt an amendment decreasing the par value of issued and unissued shares of a particular class to the extent necessary to prevent an increase in the aggregate par value of the outstanding shares of the

class as a result of the dividend or distribution described in paragraph (3) or the change described in paragraph (4).

Paragraphs (1) to (5), above, do not apply to a corporation with 100 or fewer shareholders unless the corporation was created on or after the effective date of the section's amendment, or the articles of the corporation have been amended in compliance with R.C. 1701.71 (see "***Amendment of articles by shareholders***," below) or R.C. 1701.73 (see "***Notice of adopted amendment or amended articles***," below) specifically to make those paragraphs applicable (R.C. 1701.70(D)).

Amendment of articles by shareholders

Regardless of limitations or restrictions in the articles on the voting rights of the shares of any class, the holders of shares of a particular class are entitled under existing law to vote as a class on the adoption of an amendment that increases or decreases the par value of the issued shares of the particular class. The bill provides an exception to this right when the directors amend the articles of incorporation pursuant to the bill.

Under the bill, regardless of limitations or restrictions in the articles on the voting rights of the shares of any class, the holders of shares of a particular class are entitled to vote as a class on the adoption of an amendment that increases or decreases the par value of the issued shares of the particular class, *except in the case of an amendment to the articles adopted by the directors pursuant to paragraph (5)*, above, (added by the bill). (R.C. 1701.71(B)(1).)

Notice of adopted amendment or amended articles

Continuing law

Upon the adoption of any amendment or amended articles, a certificate containing a copy of the resolution adopting the amendment or amended articles, a statement of the manner of its adoption, and, in the case of adoption of the resolution by the incorporators or directors, a statement of the basis for that adoption, must be filed with the Secretary of State, and thereupon the articles are amended accordingly, any change of shares provided for in the amendment or amended articles become effective, and the amended articles supersede the existing articles (R.C. 1701.73(A)).

Operation of the bill

Under the bill, when an amendment or amended articles are adopted by the directors pursuant to existing law or as authorized by the bill under R.C. 1701.70 (see "***Amendment of articles by directors***," above), the corporation must send

notice of the amendment or amended articles, and a copy or summary of the amendment or amended articles, by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice and copy or summary are sent, to each shareholder of the corporation of record as of the date on which the directors approved the amendment or amended articles. The notice must be sent to the shareholders within 20 days after the filing of the certificate required by continuing law as described in the preceding paragraph. (R.C. 1701.73(A).)

Method of sending notice or copies of documents

The bill expands the methods for sending certain notices or copies or summaries of documents under the General Corporation Law.

Regulations adopted by shareholders

Existing law. The regulations of a corporation may include provisions with respect to the time and place for holding meetings of shareholders and meetings of directors. Unless expressly prohibited by the articles or the regulations, the emergency regulations of a corporation may make any provision that may be practical or necessary with respect to the time and place for holding meetings of directors. (R.C. 1701.11(B)(1) and (4) and (C)(1).)

If the regulations are amended or new regulations are adopted, without a meeting of the shareholders, the secretary of the corporation must mail a copy of the amendment or the new regulations to each shareholder who would have been entitled to vote on the adoption of the amendment or the new regulations and did not participate in the adoption of the amendment or the new regulations (R.C. 1701.11(D)).

Operation of the bill. Under the bill, the regulations may include provisions with respect to the place, *if any*, and time for holding meetings of shareholders and meetings of directors. Unless expressly prohibited by the articles or the regulations, the emergency regulations of a corporation may make any provision that may be practical or necessary with respect to the place, *if any*, and time for holding meetings of directors. (Italicized phrases are added by the bill.) (R.C. 1701.11(B)(1) and (4) and (C)(1).)

If the regulations are amended or new regulations are adopted, without a meeting of the shareholders, the secretary of the corporation must *send* a copy of the amendment or the new regulations *by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom a copy of the amendment or new regulations are sent* (added by the bill), to each shareholder who would have been entitled to vote on the adoption of the amendment or the

new regulations and did not participate in the adoption of the amendment or the new regulations (R.C. 1701.11(D)).

Certificates for shares

Existing law. Existing law requires that each certificate for shares must state on the face or the back of the certificate (a) the express terms, if any, of the shares represented by the certificate and of the other class or classes and series of shares, if any, that the corporation is authorized to issue, (b) a summary of such express terms, (c) that the corporation will *mail* to the shareholder a copy of the express terms, if any, of the shares without charge within five days after receipt of written request therefor, or (d) that a copy of such express terms is attached to and by reference made a part of the certificate and that the corporation will *mail* to the shareholder a copy of such express terms without charge within five days after receipt of written request therefor if the copy has become detached from the certificate. (R.C. 1701.25(A)(5).)

Generally, no restriction on the right to transfer shares and no reservation of lien on shares is effective against a transferee of such shares unless, as to certificated securities, there is set forth on the face or the back of the certificate therefor, among others: a summary of the terms of such restriction or reservation and a statement that the corporation will *mail* to the shareholder a copy of such restriction or reservation without charge within five days after receipt of written request therefor or if such restriction or reservation is contained in the articles or regulations of the corporation, or in an instrument in writing to which the corporation is a party, a statement to that effect and a statement that the corporation will *mail* to the shareholder a copy of such restriction or reservation without charge within five days after receipt of written request therefor (R.C. 1701.25(B)(2) and (3)).

A corporation must *mail* to a shareholder without charge within five days after receipt of written request therefor the copy or copies described in the two preceding paragraphs (R.C. 1701.25(C)).

Operation of the bill. The bill requires a corporation to *send* to a shareholder without charge within five days after receipt of written request therefor the copy or copies described in the first two paragraphs above in "***Existing law***" *by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the copy or copies are sent* (added by the bill). It replaces "mail" as described in those two paragraphs with "send." (R.C. 1701.25(A)(5)(c) and (d), (B)(2) and (3), and (C).)

Amendment to articles regarding shareholder's right to vote cumulatively

Under existing law, the articles of a corporation may be amended to eliminate the right of every shareholder to vote cumulatively in the election of directors or to delete a provision that eliminates that right, *except* that, if a corporation is formed after July 24, 1986, or if a corporation that exists on that date does not have issued and outstanding shares that are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, the articles may be amended to eliminate the right of every shareholder to vote cumulatively in the election of directors only upon compliance with certain requirements, including a *written* notice that must have been given to the shareholders that states, in solid capital letters, that an effect of the amendment to the articles will be to do both of the following: (a) to permit a majority of a quorum of the voting power in the election or removal of directors to elect or remove every director and (b) to preclude a minority of a quorum of the voting power in the election or removal of directors from electing or preventing the removal of any director. (R.C.1701.69(B)(10)(b).)

The bill eliminates the requirement as described in the preceding paragraph that the notice be written. It requires that the notice be *sent to the shareholders by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice is sent*. (R.C. 1701.69(B)(10)(b).)

Meeting of directors

Current law requires that *written* notice of the time and place of each meeting of the directors be given to each director either by personal delivery or by mail, telegram, or cablegram at least two days before the meeting, which notice need not specify the purposes of the meeting (R.C. 1701.61(C)).

The bill provides that *notice* (instead of *written notice*) of the place, *if any*, and time of each meeting of the directors must be given to each director either by personal delivery or by mail, telegram, cablegram, *overnight delivery service, or any other means of communication authorized by the director* at least two days before the meeting. The notice need not specify the purposes of the meeting. (Italicized phrases are added by the bill.) (R.C. 1701.61(C).)

Agreement of merger

Merger into parent corporation. Current law provides for the merger of one or more domestic or foreign subsidiaries into a domestic or foreign parent corporation with certain requirements. It provides that within 20 days after the approval of the agreement of merger by the directors of each domestic constituent

corporation, the surviving corporation must deliver or send *written* notice of such approval and copy or summary of the agreement to each shareholder of each domestic constituent corporation other than the surviving corporation of record as of the date on which the directors of the surviving corporation approved the agreement. (R.C. 1701.80(A) and (C)(2).)

Under the bill, within 20 days after the approval of the agreement of merger by the directors of each domestic constituent corporation, the surviving corporation must deliver or send *notice* (instead of *written notice*) of such approval and copy or summary of the agreement to each shareholder of each domestic constituent corporation, other than the surviving corporation, of record as of the date on which the directors of the surviving corporation approved the agreement *by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice and copy or summary are sent* (added by the bill) (R.C. 1701.80(C)(2)).

Merger into domestic subsidiary corporation. Current law provides for the merger of one or more domestic or foreign corporations into a domestic subsidiary corporation with certain requirements. It provides that within 20 days after the approval of the agreement of merger by the directors of the surviving subsidiary corporation, the surviving corporation must deliver or send *written* notice of such approval and a copy or summary of the agreement to each shareholder of the surviving corporation, other than the parent of the surviving corporation, of record as of the date on which the directors of the surviving corporation approved the agreement. (R.C. 1701.801(A) and (C)(2).)

Under the bill, within 20 days after the approval of the agreement of merger by the directors of the surviving subsidiary corporation, the surviving corporation must deliver or send *notice* (instead of *written notice*) of such approval and a copy or summary of the agreement to each shareholder of the surviving corporation, other than the parent of the surviving corporation, of record as of the date on which the directors of the surviving corporation approved the agreement *by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice and copy or summary are sent* (added by the bill) (R.C. 1701.801(C)(2)).

Prohibition regarding false documents

Current law prohibits any officer, director, employee, or agent of a corporation, either alone or with another or others, with intent to deceive, from making, issuing, delivering, *transmitting by mail*, or publishing any prospectus, report, circular, certificate, statement, balance sheet, exhibit, or document, respecting the shares, assets, liabilities, capital, business, dividends or

distributions, earnings, or accounts of a corporation, which is false in any material respect, knowing such statement to be false (R.C. 1701.93(A)(1)).

The bill modifies this prohibition by prohibiting any officer, director, employee, or agent of a corporation, either alone or with another or others, with intent to deceive, from making, issuing, delivering, publishing, *or sending by mail or by any other means of communication* (instead of *transmitting by mail*) any prospectus, report, circular, certificate, statement, balance sheet, exhibit, or document, respecting the shares, assets, liabilities, capital, business, dividends or distributions, earnings, or accounts of a corporation, that is false in any material respect, knowing the statement to be false (R.C. 1701.93(A)(1)).

Meeting of shareholders

Meeting by means of communications equipment

Under existing law, meetings of shareholders may be held either within or without this state if so provided in the articles or the regulations. In the absence of any such provision, all meetings must be held at the principal office of the corporation in Ohio. (R.C. 1701.40(B).)

The bill expands existing law by providing that the articles or regulations may authorize the directors to determine that the meeting may not be held at any physical place, but instead may be held solely by means of communications equipment as described in the following paragraph. If the corporation is an issuing public corporation and the articles or regulations do not require that a meeting be held at a particular physical place and authorize the directors to fix the place of the meeting, the directors may determine that the meeting may not be held at any physical place, but instead may be held solely by means of communications equipment as described in the following paragraph. The bill provides that in the absence of any provision in the articles (if the articles so provide under existing law or the bill), all meetings must be held at the principal office of the corporation in Ohio. (R.C. 1701.40(B).)

If authorized by the directors, the shareholders and proxyholders who are not physically present at a meeting of shareholders may attend a meeting of shareholders by use of communications equipment that enables the shareholder or proxyholder an opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting and to speak or otherwise participate in the proceedings contemporaneously with those physically present. Any shareholder using communications equipment will be deemed present in person at the meeting whether the meeting is to be held at a designated place or solely by means of communications equipment. The bill authorizes the directors to adopt guidelines

and procedures for the use of communications equipment in connection with a meeting of shareholders to permit the corporation to verify that a person is a shareholder or proxyholder and to maintain a record of any vote or other action. (R.C. 1701.40(C).)

Notice of meeting

Existing law. Written notice stating the time, place, and purposes of a meeting of the shareholders must be given either by personal delivery or by mail not less than seven nor more than 60 days before the date of the meeting unless the articles or the regulations specify a longer period: (a) to each shareholder of record entitled to notice of the meeting, (b) by or at the direction of the president or the secretary or any other person required or permitted by the regulations to give such notice. If mailed, the notice must be addressed to the shareholder at the shareholder's address as it appears on the records of the corporation. Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at the meeting. (R.C. 1701.41(A).)

Operation of the bill. Under the bill (new language is in italics), written notice stating the time, place, *if any*, and purposes of a meeting of the shareholders, *and the means, if any, by which shareholders can be present and vote at the meeting through the use of communications equipment* must be given either by personal delivery or by mail, *overnight delivery service, or any other means of communication authorized by the shareholder to whom the notice is given*, not less than seven nor more than 60 days before the date of the meeting unless the articles or the regulations specify a longer period: (a) to *every* shareholder of record entitled to notice of the meeting, (b) by or at the direction of the president or the secretary or any other person required or permitted by the regulations to give that notice. If mailed *or sent by overnight delivery service*, the notice must be *sent* to the shareholder at the shareholder's address as it appears on the records of the corporation. *If sent by another means of communication authorized by the shareholder, the notice must be sent to the address furnished by the shareholder for those transmissions*. Notice of adjournment of a meeting need not be given if the time and place, *if any*, to which it is adjourned *and the means, if any, by which shareholders can be present and vote at the adjourned meeting through the use of communications equipment* are fixed and announced at the meeting. (R.C. 1701.41(A).)

The bill provides that any authorization by a shareholder to send notices given pursuant to the General Corporation Law by any means other than in person or by mail or overnight delivery service is revocable by written notice to the corporation either by personal delivery or by mail, overnight delivery service, or any other means of communication authorized by the corporation. If sent by another means of communication authorized by the corporation, the notice must be

sent to the address furnished by the corporation for those transmissions. Any authorization by a shareholder to send notices given pursuant to the General Corporation Law by any means other than in person or by mail or overnight delivery service will be deemed to have been revoked by the shareholder if (a) the corporation has attempted to make delivery of two consecutive notices in accordance with that authorization, and (b) the secretary or an assistant secretary of the corporation, or other person responsible for giving of notice, has received notice that, or otherwise believes that, delivery has not occurred. However, an inadvertent failure to treat the inability to deliver notice as a revocation will not invalidate any meeting of shareholders or other action. (R.C. 1701.41(C).)

Waiver of notice

Under existing law, notice of the time, place, and purposes of any meeting of shareholders or directors, as the case may be, whether required by law, the articles, the regulations, or (in the case of directors) the bylaws, may be waived in writing, either before or after the holding of such meeting, by any shareholder, or by any director, which writing must be filed with or entered upon the records of the meeting (R.C. 1701.42).

Under the bill, notice of the time, place, *if any* (added by the bill), and purposes of any meeting of shareholders or directors, as the case may be, whether required by law, the articles, the regulations, or (in the case of directors) the bylaws, may be waived in writing, either before or after the holding of such meeting, by any shareholder, or by any director, which writing must be filed with or entered upon the records of the meeting. *A telegram, cablegram, electronic mail, or an electronic or other transmission capable of authentication that appears to have been sent by a person described in the preceding sentence and that contains a waiver by that person is a writing for the purposes of the bill* (added by the bill). (R.C. 1701.42.)

Quorum

Under existing law, unless the articles or the regulations otherwise provide, the shareholders present in person or by proxy at any meeting of shareholders constitute a quorum for such meeting, but no action required by law, the articles, or the regulations to be authorized or taken by the holders of a designated proportion of the shares of any particular class or of each class, may be authorized or taken by a lesser proportion (R.C. 1701.51(A)).

The bill provides that unless the articles or the regulations otherwise provide, the shareholders present in person, by proxy, *or by use of communications equipment* (added by the bill) at any meeting of shareholders constitute a quorum for such meeting, but no action required by law, the articles,

or the regulations to be authorized or taken by the holders of a designated proportion of the shares of any particular class or of each class, may be authorized or taken by a lesser proportion (R.C. 1701.51(A)).

List of shareholders of record

Existing law provides that upon request of any shareholder at any meeting of shareholders, there must be produced at that meeting an alphabetically arranged list, or classified lists, of the shareholders of record as of the applicable record date, who are entitled to vote, showing their respective addresses and the number and class of shares held by each (R.C. 1701.37(B)).

The bill expands existing law by providing that if the meeting is to be held solely or in part by means of communications equipment, then the corporation must make the list or lists described in the preceding paragraph open to the examination of any shareholder or proxyholder during the whole time of the meeting on a reasonably accessible electronic network. The bill authorizes the directors to adopt guidelines and procedures to permit the corporation to verify that any person accessing the list or lists is a shareholder or proxyholder. (R.C. 1701.37(B).)

The bill further provides that unless otherwise prohibited by law, if a shareholder has authorized the corporation to deliver notices of shareholder meetings required as described above in "***Notice of meeting***" to the shareholder by any means other than mail and has not rescinded that authorization, the corporation must include the electronic mail address or other electronic contact information necessary to deliver the notice on any list or lists of shareholders prepared pursuant to existing law (R.C. 1701.37(D)).

Financial statements

Under existing law, upon the *written* request of any shareholder made prior to the date of the annual meeting of shareholders or meeting held in lieu of it, the corporation must *mail* a copy of the financial statements laid or to be laid before the shareholders at the meeting to the shareholder on or before the later of specified days (R.C. 1701.38(C)).

Under the bill (new language is in italics), upon the request of any shareholder made *in writing or by any other means of communication authorized by the corporation* prior to the date of the annual meeting of shareholders or meeting held in lieu of it, the corporation must *send* a copy of the financial statements laid or to be laid before the shareholders at the meeting to the shareholder *by mail, overnight delivery service, or any other means of*

communication authorized by the shareholder to whom the copy is sent on or before the later of certain days specified in existing law (R.C. 1701.38(C)).

The bill further provides that if the meeting described in the preceding paragraph is to be held solely by means of communications equipment, the corporation must make the financial statements open to the examination of any shareholder or proxyholder during the whole time of the meeting on a reasonably accessible electronic network. The bill authorizes the directors to adopt guidelines and procedures to permit the corporation to verify that any person accessing the financial statements is a shareholder or proxyholder. (R.C. 1701.38(D).)

Forfeiture. Existing law provides that every corporation that fails to *mail* to any shareholder making written request for it, a copy of the financial statement as described above, or to lay before the shareholders at a proper meeting of shareholders, upon request of any shareholder at the meeting, that financial statement, is subject to a monetary forfeiture (R.C. 1701.94(A)(4) and (5)).

The bill provides that every corporation that fails to *send* (instead of *mail*) to any shareholder making written request for it, a copy of the financial statement as described above, or to lay before the shareholders *or make available in the manner provided for as described above in the second preceding paragraph* (added by the bill) at a proper meeting of shareholders, upon request of any shareholder at the meeting, that financial statement, is subject to a monetary forfeiture (R.C. 1701.94(A)(4) and (5)).

Action without a meeting

Existing law provides that unless the articles or the regulations prohibit the authorization or taking of any action of the *shareholders* or of the *directors* without a meeting, any action that may be authorized or taken at a meeting of the shareholders or of the directors, as the case may be, may be authorized or taken *without a meeting* with the affirmative vote or approval of, and in a *writing or writings signed* by all the shareholders who would be entitled to notice of a meeting of the shareholders held for such purpose, or all the directors, respectively, which writing or writings must be filed with or entered upon the records of the corporation (R.C. 1701.54).

The bill expands existing law by providing that a telegram, cablegram, electronic mail, or an electronic or other transmission capable of authentication that appears to have been sent by a person described in the preceding paragraph and that contains an affirmative vote or approval of that person is a signed writing for the purposes of existing law and the bill. The date on which that telegram, cablegram, electronic mail, or electronic or other transmission is sent is the date on which the writing is signed. (R.C. 1701.54(B).)

Legal existence of corporation and limited liability company

Existing law

The existing General Corporation Law and Nonprofit Corporation Law provide that the legal existence of a corporation must begin upon the filing of the articles of incorporation (R.C. 1701.04(E) and 1702.04(D)).

Under the Limited Liability Company Law, one or more persons, without regard to residence, domicile, or state of organization, may form a limited liability company. The *company is formed when one or more persons or their authorized representative signs and files with the Secretary of State articles of organization* that set forth specified items. (R.C. 1705.04(A).)

Operation of the bill

The bill modifies the beginning of the legal existence of a corporation under the General Corporation Law and the Nonprofit Corporation Law by providing that the legal existence of the corporation begins upon the filing of the articles *or on a later date specified in the articles that is not more than 90 days after the filing* (added by the bill) (R.C. 1701.04(E) and 1702.04(D)).

The bill eliminates the provision in the Limited Liability Company Law that the company is formed when one or more persons or their authorized representatives signs and files with the Secretary of State articles of organization and instead provides that the articles of organization must be signed and filed with the Secretary of State. It further provides that the legal existence of the company begins upon the filing of the articles of organization or a later date specified in the articles of organization that is not more than 90 days after the filing. (R.C. 1705.04(A).)

Dissolution of corporation

General Corporation Law

Existing law. Current law provides for the voluntary dissolution of a corporation, sets forth the contents of a resolution of dissolution, and specifies the types of documents that must accompany a certificate of dissolution filed with the Secretary of State. These documents include the following (R.C. 1701.86(H)(2), (3), and (6)):

(1) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the *date of such filing*, or that such payment has been adequately guaranteed;

(2) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the *date of such filing*;

(3) In lieu of the receipt, certificate, or other evidence as described above, an affidavit of one or more persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled "date of filing of the certificate of dissolution" and was advised in writing of the acknowledgment by the corporation of the applicability of certain provisions of the General Corporation Law.

Upon the filing of a certificate of dissolution and accompanying documents, the corporation must be dissolved (R.C. 1701.86(I)).

Operation of the bill. The bill adds to the contents of a resolution of dissolution *the date of dissolution, if other than the filing date* (R.C. 1701.86(F)(7)). It modifies the contents of the above types of documents that must accompany a certificate of dissolution as follows (R.C. 1701.86(H)(2), (3) and (6)):

(1) A receipt, certificate, or other evidence showing the payment of all franchise, sales, use, and highway use taxes accruing up to the date of such filing *or, if applicable, to the later date specified in the certificate of dissolution as described in the preceding paragraph* (added by the bill), or that such payment has been adequately guaranteed;

(2) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing *or, if applicable, to the later date specified in the certificate of dissolution as described in the second preceding paragraph, or that such payment has been adequately guaranteed* (added by the bill);

(3) In lieu of the receipt, certificate, or other evidence as described above, an affidavit of one or more persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled *effective date of the dissolution* (instead of "date of filing of the certificate of dissolution") and was advised in writing of the acknowledgment by the corporation of the applicability of certain provisions of the General Corporation Law.

Upon the filing of a certificate of dissolution and the accompanying documents, *or on a later date specified in the certificate that is not more than 90*

days after the filing (added by the bill), the corporation must be dissolved (R.C. 1701.86(I)).

Nonprofit Corporation Law

Existing law. Current law provides for the voluntary dissolution of a nonprofit corporation, sets forth the contents of a resolution of dissolution, and specifies the types of documents that must accompany a certificate of dissolution filed with the Secretary of State. These documents include the following (R.C. 1702.47(G)(2), (4), and (5)):

(1) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the *date of such filing*, unless the affidavit of the person executing the certificate of dissolution states that the corporation has no personal property in Ohio subject to personal property taxes;

(2) A receipt, certificate, or other evidence showing the payment of all sales, use, and highway use taxes accruing up to the *date of such filing*, or that such payment has been adequately guaranteed;

(3) In lieu of the receipt, certificate, or other evidence as described above, an affidavit of one or more persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled "date of filing of the certificate of dissolution" and was advised in writing of the acknowledgment by the corporation of the applicability of certain provisions of the Nonprofit Corporation Law.

Upon the filing of a certificate of dissolution and those accompanying documents, the corporation must be dissolved (R.C. 1702.47(H)).

Operation of the bill. The bill adds to the contents of a resolution of dissolution *the date of dissolution, if other than the filing date* (R.C. 1702.47(E)(7)). It modifies the contents of the above types of documents that must accompany a certificate of dissolution as follows (R.C. 1702.47(G)(2), (4), and (5)):

(1) A receipt, certificate, or other evidence showing the payment of all personal property taxes accruing up to the date of such filing *or, if applicable, to the later date specified in the certificate of dissolution as described in the preceding paragraph* (added by the bill), unless the affidavit of the person executing the certificate of dissolution states that the corporation has no personal property in Ohio subject to personal property taxes;

(2) A receipt, certificate, or other evidence showing the payment of all sales, use, and highway use taxes accruing up to the date of such filing *or, if applicable, to the later date specified in the certificate of dissolution as described in the second preceding paragraph* (added by the bill), or that such payment has been adequately guaranteed;

(3) In lieu of the receipt, certificate, or other evidence as described above, an affidavit of one or more persons executing the certificate of dissolution or of an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled *effective date of the dissolution* (instead of "date of filing of the certificate of dissolution") and was advised in writing of the acknowledgment by the corporation of the applicability of certain provisions of the Nonprofit Corporation Law.

Upon the filing of a certificate of dissolution and the accompanying documents, *or on a later date specified in the certificate that is not more than 90 days after the filing* (added by the bill), the corporation must be dissolved (R.C. 1702.47(H)).

Filings with the Secretary of State

Filing forms

The bill requires the Secretary of State to prescribe the forms for persons to use in complying with the requirements of R.C. Title XVII (Corporations, Partnerships, other Associations) to the extent that those requirements relate to filings with the Office of the Secretary of State (R.C. 111.25).

Biennial report of limited liability partnership

Under existing law, a domestic limited liability partnership or foreign registered limited liability partnership, *biennially* during the month of July in odd-numbered years, must file a report with the Office of the Secretary of State verifying and, if necessary, updating, as of the 30th day of June of that year, the information contained in the partnership's registration application (R.C. 1775.63--not in the bill).

The bill replaces "annual report" with "biennial report" in the existing provision of law pertaining to the filing fee for that report (R.C. 111.16(I)(2)) and deletes "annual" from the "reporting requirements" for a foreign limited liability partnership transacting business in Ohio (R.C. 1775.64(C)).

Biennial statement of professional association

Current law requires a professional association, within 30 days after the 30th day of June in *each year*, to furnish a statement to the Secretary of State showing the names and post-office addresses of all of the shareholders in the association and certifying that all of the shareholders are duly licensed, certificated, or otherwise legally authorized to render within Ohio the same professional service for which the association was organized or, in the case of a combination of professional services, to render within Ohio state any of the applicable types of professional services for which the association was organized (R.C. 1785.06).

The bill instead requires a professional association, within 30 days after the 30th day of June in *each even-numbered year*, to furnish a statement as described in the preceding paragraph to the Secretary of State (R.C. 1785.06). It replaces "annual statement" with "biennial statement" in the existing provision of law pertaining to the filing fee for that statement (R.C. 111.16(I)(2)).

Foreign corporation's exclusive use of a name

Under current law, any person intending to organize a corporation under the laws of another state, or any foreign corporation intending to transact business in Ohio or intending to change its name, may file in the Office of the Secretary of State, in writing and on a form prescribed by the Secretary of State, an application for the exclusive use of a name to be used by that proposed or existing foreign corporation. If the Secretary of State finds that such a name is proper under existing law, the Secretary of State must indorse the Secretary of State's approval upon such application, and from the date of the indorsement the applicant has the exclusive use of that name for a period of *60 days*. The rights so secured may be transferred by the holder thereof by filing in the Office of the Secretary of State a written transfer setting forth the name and address of the transferee. Every such application must be accompanied by a fee of *$5*, which must be returned in the event that the application is not approved. (R.C. 1703.06.)

The bill extends the period in which the applicant has the exclusive use of the name as described in the preceding paragraph from 60 days to *180 days*. It increases the fee for the application from $5 to *$50*. (R.C. 1703.06.)

Change of statutory agent's address

Current law provides that *unless the change is reported on the annual report filed with the Department of Taxation*, if the corporation's statutory agent changes the agent's address from that appearing upon the record in the Office of the Secretary of State, the corporation or the agent must forthwith file with the

Secretary of State, on a form prescribed by the Secretary of State, a written statement setting forth the new address (R.C. 1701.07(E)).

The bill eliminates the exception from the filing with the Secretary of State of a statutory agent's change of address if the change is reported on the annual report filed with the Department of Taxation (R.C. 1701.07(E)).

Renewal of registration of trademark or service mark

Existing law provides that the registration of a trademark or service mark is effective for a term of ten years from the date of registration. Upon the filing of an application within six months prior to the expiration of that term on a form furnished by the Secretary of State, the registrant may renew the registration at the end of each ten-year period for a similar term. A renewal fee of $10 that is payable to the Secretary of State must accompany the renewal application. The renewal application must require the applicant to state that the mark still is in use in Ohio. (R.C. 1329.58.)

The bill additionally requires the renewal application to be accompanied by a specimen of the mark as actually used and to contain a brief description of the mark as it appears on the specimen (R.C. 1329.58).

Release of information by Tax Commissioner

The current Corporation Franchise Tax Law specifies the contents of the annual corporation report filed with the Tax Commissioner and the requirements for a corporation's keeping of records and other pertinent documents and filing of copies of federal income tax returns and determinations. The bill repeals a requirement in existing law that *by the 31st day of March each year, the Tax Commissioner must release to the Secretary of State the name and address of each corporation and the name and address of the statutory agent of that corporation as indicated in the corporation's annual report filed during the preceding calendar year.* (R.C. 5733.03.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	05-29-01	p.	485
Reported, H. Civil and Commercial Law	10-03-01	pp.	874-875

h0278-rh.124/kl