SB-340 Corporations: dissolution: bankruptcy. (2017-2018)

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Senate Bill No. 340

CHAPTER 267

An act to amend Section 1401 of, and to add Section 1401.5 to, the Corporations Code, relating to corporations.

[Approved by Governor September 23, 2017. Filed with Secretary of State September 23, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 340, Hertzberg. Corporations: dissolution: bankruptcy.

Under existing law, any domestic corporation, with respect to which a proceeding has been initiated under any applicable statute of the United States relating to reorganizations of corporations, has full power and authority to put into effect and carry out any plan of reorganization and the orders of the court or judge entered in that proceeding and is authorized to take any proceeding and do any act provided in the plan or directed by those orders, without further action by its board or shareholders. Existing law requires a certificate of dissolution to be filed and to become effective in accordance with its terms and specified provisions. Existing law also requires that certificate to be signed and verified under penalty of perjury, as may be directed by order of the court or judge, by a trustee or trustees appointed in a reorganization proceeding, or if none is appointed and acting, by officers of the corporation designated, or by a master or other court-appointed representative.

This bill additionally would authorize a trustee, liquidating agent, responsible officer, or other representative appointed by the court for a corporation, with respect to which a bankruptcy reorganization proceeding has been initiated, to execute and file a certificate of dissolution containing specified information. By expanding the category of persons who may execute and file a certificate under penalty of perjury, the bill would increase the scope of an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority   Appropriation: no   Fiscal Committee: yes   Local Program: yes

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1401 of the Corporations Code is amended to read:

1401. (a) A certificate of any amendment, change or alteration or of dissolution or any agreement of merger made by a corporation pursuant to Section 1400 and executed as provided in subdivision (b), shall be filed and shall thereupon become effective in accordance with its terms and the provisions of this chapter.

(b) The certificate, agreement of merger, or other instrument shall be signed and verified, as may be directed by the orders of the court or judge, by the trustee or trustees appointed in the reorganization proceeding (or a majority thereof) or, if none is appointed and acting, by officers of the corporation designated or by a master or other representative appointed by the court or judge, and shall state that provision for the making of that certificate, agreement of merger, or instrument is contained in an order, identifying the same, of a court or judge having jurisdiction of a proceeding under a statute of the United States for the reorganization of that corporation.

(c) Notwithstanding subdivision (b), a trustee, liquidating agent, responsible officer, or other representative appointed by the court for a corporation, with respect to which a proceeding has been initiated under any applicable statute of the United States as described in subdivision (a) of Section 1401.5 may execute and file a certificate of dissolution as provided in subdivision (b) of Section 1401.5.

SEC. 2. Section 1401.5 is added to the Corporations Code, to read:

1401.5. (a) A trustee, liquidating agent, responsible officer, or other representative appointed by the court for a corporation subject to an order for relief entered in a case under Chapter 11 (commencing with Section 1101) of Title 11 of the United States Code may sign and verify a certificate of dissolution when the corporation has been completely wound up.

(b) 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.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.