

ADDITION TO AND CHANGES IN THE OHIO CORPORATION LAW

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The Ohio Corporation Law was changed in only a few respects as a result of 1957 legislation by the General Assembly of Ohio. None of the changes effects a substantive revision of the law.

The 1957 changes were, in their initial form, either drafted by or suggested by the office of the Ohio Secretary of State or by the Ohio Department of Taxation; the Ohio State Bar Association Corporation Law Committee sponsored none of the 1957 legislation, whereas the complete revision of the Ohio Corporation Law in 1955 was prepared and sponsored by the Committee.

The 1957 changes are, in several instances, helpful to the general practitioner and, for the most part, the 1957 changes are not exceptionable. The four Senate bills which relate to corporations (293, 296, 297, and 298) were all adopted and became effective either on September 13, 1957 (S.B. 298) or on October 1, 1957.

House Bill No. 309 was introduced at the suggestion of the Ohio Department of Taxation, to require that a certificate of dissolution for a corporation for profit be accompanied by a receipt, certificate, or other evidence showing the payment of all sales, use, and highway use taxes accruing up to the date of the filing. Although House Bill No. 309 was not adopted, the material in that Bill was transferred to Senate Bill No. 297, changed, however, to the extent noted below.

Hereafter, reference will be made to the Ohio General Corporation Law by referring to sections of Chapter 1701, Ohio Revised Code, (1953) and reference will be made to the Ohio Non-Profit Corporation Law by referring to sections of Chapter 1702. The Senate bills will be considered in their numerical order.

AMENDED SENATE BILL No. 293

Amended Senate Bill No. 293, effective October 1, 1957, provided for the enactment of new Section 1702.59. In contrast with the annual franchise tax return required to be filed by corporations for profit, the new section requires a "statement of continued existence" from non-profit corporations every fifth year, with the first statement to be filed on or before March 31, 1958. However, the Secretary of State is required to give notice in writing and to provide a form for use in complying with the section to each non-profit corporation required to file such a statement. A nominal filing fee of \$1 is required by this section. Failure to file a statement of continued existence results in the cancellation by the

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Secretary of State of the articles of the non-profit corporation, but a reinstatement provision is provided.

The secretary of state has a proper desire to eliminate from the list of current non-profit corporations such corporations as are in fact no longer in existence. The procedure incorporated in new Section 1702.59 fills the need of the Secretary of State without imposing a burden on non-profit corporations.

AMENDED SENATE BILL No. 296

Amended Senate Bill No. 296, effective October 1, 1957, provides for the insertion of new divisions in Sections 1701.07 and 1702.06, both of which sections are entitled "Statutory Agent." The provision inserted in each section provides that, upon the failure of a corporation to designate another statutory agent following the death or resignation of its agent or his removal from the county in which the principal office of the corporation is located, "the secretary of state shall give notice thereof by registered mail to such corporation, and unless such default is cured within thirty days after the mailing of such notice or within such further period as the secretary of state grants, the secretary of state may, upon the expiration of such period, cancel the articles of such corporation. . . ." The new provision also permits reinstatement upon filing an application for reinstatement, a \$10 filing fee, and the required appointment of agent. Although it was pointed out to the Office of the Secretary of State that the use of the word "shall," in connection with the giving of notice by the Secretary of State, would appear to demand prescience regarding the health or residence of agents, it was decided not to recommend a change in the use of the word "shall," as it was felt that the only important factor in this change was to furnish to the Secretary of State an opportunity to compel corporations to have an agent. The Secretary of State, with reason, is desirous of eliminating the trouble and expense involved in his being the person upon whom processes, notices, or demands shall be initially served when the corporation's agent cannot be found or is not otherwise available.

AMENDED SENATE BILL No. 297

Amended Senate Bill No. 297, effective October 1, 1957, accomplishes a number of things, as follows:

1. The resolution of dissolution required under Sections 1701.86 and 1702.47 is now restored to the pre-1955 requirement, and the material about the names and addresses of directors and officers and other such material are now required to be set forth only in the certificate filed with the Secretary of State. In other words, the certificate of dissolution may now merely recite that the corporation in question "elects to be dissolved."

2. The language formerly appearing in Section 1701.86 to the effect that an unemployment compensation certificate was required to be

filed upon the withdrawal of a foreign corporation has now been transferred to the chapter dealing with foreign corporations (Chapter 1703), where it belongs.

3. The foreign corporation section, Section 1703.17, relating to the surrender of the foreign corporation's license to transact business in this state, has been revised so that its provisions are substantially like Sections 1701.86 and 1702.47 relating to the dissolution of domestic corporations.

4. In addition to the receipts, certificates, or other evidences heretofore required to be filed with the certificate of dissolution, a domestic corporation desiring to dissolve or a foreign corporation desiring to surrender its license must now file an additional 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." As initially presented in House Bill No. 309, the corporation in question would have been required to file 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," with no provision for the obtaining of such a receipt, certificate, or other evidence, based upon a guarantee that such taxes would be paid. It was pointed out to the Tax Commissioner that the guarantee provision already appeared in the dissolution sections in referring to the unemployment compensation contributions and that, for many corporations, it would be impossible to pay all sales, use, and highway use taxes until after dissolution had been effected. The Tax Commissioner reported that the Tax Department would be willing to accept guarantees, and he recognized the desirability of inserting the guarantee language in the new provision once it was pointed out to him that the guarantee language already existed with respect to unemployment compensation contributions. As a result, House Bill No. 309 was killed and the provision was transferred to Amended Senate Bill No. 297 with the guarantee language inserted.

AMENDED SENATE BILL NO. 298

Amended Senate Bill No. 298, effective September 13, 1957, provides for a very worthwhile change in permitting the use of microfilm equipment by the Secretary of State. In addition to the adoption of a new section, Section 11.201, to provide for microfilming, Sections 1701.08 and 1702.07 were amended to make appropriate reference to the fact that microfilming was a permitted procedure in this state.

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Certain mechanical and other mistakes appear in the sections of the Ohio Corporation Law changed by the 1957 legislation. For example:

1. The language of new Section 1702.59 does not accord with the definition language and other provisions of Chapter 1702. In addi-

tion, there are a number of references in Chapter 1702 (and in Sections 111.16, 757.03, 757.05, 1103.42, 1109.03, 1709.01, 1709.04, 1713.02, 1729.06, 1729.07, 1729.27, 1739.01, and 3735.62) to "Sections 1702.01 to 1702.58, inclusive," or similar references to the non-profit sections ending with 1702.58, and Senate Bill No. 293 made no changes in the other sections to note the adoption of new Section 1702.59.

2. The employment in Amended Senate Bill No. 296 of certain phrases and the employment of two paragraphs in one division are to be regretted, but, presumably, corrections may be made at a later date. For example, reference is made in revised Section 1701.07 to "any domestic corporation for profit," when the definition section of Chapter 1701 makes it unnecessary to do more than refer to "any corporation."

3. Similarly, a few mechanical mistakes appear in the law as a result of the adoption of Amended Senate Bill No. 297. Punctuation and the use of the conjunction "and" are either incorrect or incorrectly placed in several instances.

4. Amended Senate Bill No. 298 effected changes in Sections 1701.08 and 1702.07. In making the change in Section 1701.08, reference was made to the filing of articles of incorporation and other certificates provided "they comply with the provisions of sections 1701.01 to 1701.98, inclusive, of the Revised Code." Whereas the reference to sections of Chapter 1701 is correct and appropriate in Section 1701.08, the change in Section 1702.07 incorrectly refers to the same sections of Chapter 1701; the reference should, of course, have been to sections of Chapter 1702.

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It is suggested that, in the future, proposed changes in the Ohio Corporation Law be presented to the full Corporation Law Committee of the State Bar Association, well in advance of the legislation session, in order that mechanical defects of the sort set forth above may be reduced to a minimum. The extended time and effort expended by the Corporation Law Committee in connection with the 1955 changes gave committee members not only a feeling that Ohio has an excellent Corporation Law but also gave them rather extensive knowledge of the use of terms of art and manner of presentation found in Chapters 1701 and 1702.

At the same time, the author must reiterate his belief that the 1957 changes are generally helpful.