

SENATE BILL REPORT

SHB 2657

As Reported by Senate Committee On:
Judiciary, February 19, 2010

Title: An act relating to the dissolution of limited liability companies.

Brief Description: Addressing the dissolution of limited liability companies.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Pedersen).

Brief History: Passed House: 2/10/10, 96-0.

Committee Activity: Judiciary: 2/17/10, 2/19/10 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Regala, Vice Chair; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

Staff: Kim Johnson (786-7472)

Background: A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership.

An LLC may be dissolved voluntarily, administratively, or judicially. After dissolution of an LLC, but before cancellation of the certificate of formation, a manager or member of the LLC or a court-appointed receiver may wind up the business of the LLC. Winding up involves liquidating assets, paying creditors, and distributing proceeds from the liquidation of assets to the members of the LLC. After an LLC is dissolved, the certificate of formation that created the LLC is canceled.

Dissolution of an LLC does not eliminate any cause of action against the LLC that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of dissolution. A voluntarily-dissolved LLC may file for reinstatement by filing an application with the Office of the Secretary of State (OSOS). Current law requires the OSOS to cancel a voluntarily-dissolved LLC's certificate of formation if the dissolved LLC fails to file for reinstatement within 120 days after the effective date of dissolution.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Recently, the Washington Supreme Court held that cancellation of an LLC's certificate of formation bars the LLC from filing or continuing a lawsuit and bars a claimant from filing or continuing a lawsuit against the LLC. Under this decision, an LLC ceases to exist as a legal entity and cannot be sued once its certificate of formation is canceled.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Amendments): Certificate of Dissolution. A new document, a certificate of dissolution, is created for LLCs. A dissolved LLC may file a certificate of dissolution with the OSOS to provide notice that the LLC is dissolved. The dissolution of an LLC does not eliminate any cause of action by or against the LLC that was incurred prior to or after the dissolution if an action is filed within three years after the filing of the certificate of dissolution, and the certificate of dissolution is not revoked. This provision does not apply if the dissolved LLC has disposed of known claims.

Disposing of Known Claims. A dissolved LLC that has filed a certificate of dissolution with the OSOS may dispose of the known claims against it by providing notice to known claimants. Procedures are created to address what the notice to known claimants must contain and how claimants must notify a dissolved LLC of a claim. A known claim against an LLC is barred and the claim is not the liability of the LLC if the holder of the known claim was given written notice of dissolution and:

- the known claim was not received by a specified deadline; or
- the holder of a known claim that is rejected by the dissolved LLC does not commence a proceeding to enforce the claim within 90 days after the receipt of the notice of rejection.

Revocation of Dissolution. The procedures for how a voluntarily-dissolved LLC may revoke its dissolution are modified. An LLC that has dissolved and filed a certificate of dissolution with the OSOS may revoke its dissolution within 120 days of filing its certificate of dissolution. This provision applies to LLC's dissolved due to the happening of events specified in the LLC's agreement or by written consent of all the LLC's members.

Winding Up the Affairs of a Dissolved LLC. The provisions addressing who may wind up an LLC's affairs are revised. The persons responsible for managing the business and affairs of the LLC are responsible for winding up the activities of the dissolved LLC. Upon certain conditions, a superior court may order judicial supervision of the winding up of a dissolved LLC, including the appointment of a person to wind up the LLC's activities. For the purposes of winding up, a dissolved LLC may:

- preserve the LLC's activities and property as a going concern for a reasonable time;
- prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- transfer the LLC's property;
- settle disputes; and
- perform other acts necessary or appropriate to the winding up.

Certificate of Cancellation. All references to a certificate of cancellation for domestic LLCs are removed. The issuance of a certificate of cancellation of a foreign LLC's registration

does not impair the ability of a party to maintain an action, suit, or proceeding against the foreign LLC.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments As Passed Committee): A definition is added for the term “record.” The requirement that an LLC file a copy of the certificate of dissolution with the OSOS when filing a certificate of revocation of dissolution is removed. Language regarding the survival of claims by or against an LLC after dissolution is modified to clarify that claims survive beyond three years, unless the LLC files a certificate of dissolution and that certificate is not revoked.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony Proposed Amendment As Heard in Committee:

PRO: This bill seeks to address a latent defect in the LLC Act that has been present since it was adopted in Washington. The statute as it was proposed to us originally did not include a process of cancellation. The concept of cancellation stemmed from a concern expressed by the OSSO with their computer system and a perceived need to have a clear end to an LLC so it may be wiped off the books. I would also like to point out that I agree with the Supreme Court's interpretation of the statute in Chadwick. There is no need for the cancellation process. The bill before you lines up the dissolution process for LLCs with Limited Liability Partnerships and the Business Corporation Act.

As the Chair of the Partnership and LLC Committee of the Business Law Section of the Washington State Bar Association (WSBA), we take responsibility for drafting the bill. It is important to note that it has also worked its way through various other committees of the WSBA and has been well worked. We have received some comments regarding section 10, and I think that everyone agrees what needs to happen and we just need to hone the language to meet everyone's needs. We need to deal with the issues raised by the Chadwick case regarding the difference between dissolution and cancellation. It is important to think about this in the context of the other business entities. All we should worry about regarding LLC dissolution is when a claim may be brought by or against the LLC after dissolution has begun. What the bill does is make the LLC statutes related to dissolution, consistent with the other business entity statutes. All that is relevant is whether the entity has dissolved and if you have dissolved have you given notice to the world that you are dissolved. This bill provides clarity on these important questions. We support the bill we just seek very clear language on what claims survive, and feel we have reached agreement with the WSBA on this issue.

Persons Testifying: PRO: Representative Pedersen, prime sponsor; Brian Todd, Don Percival, WSBA Business Law Section; Marlyn Hawkins, Washington State Community Association Institute.