

AMENDED IN SENATE JUNE 12, 2002

AMENDED IN ASSEMBLY MAY 14, 2002

AMENDED IN ASSEMBLY APRIL 23, 2002

AMENDED IN ASSEMBLY MARCH 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1875

Introduced by Assembly Members Nakano and Correa
(Coauthors: Assembly Members Alquist, Bill Campbell, Cox,
Harman, Longville, Salinas, and Washington)
(Coauthor: Senator Margett)

February 4, 2002

An act to add Section 1900.5 to the Corporations Code, and to amend Sections 23331 and 23334 of the Revenue and Taxation Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1875, as amended, Nakano. Corporations: articles of dissolution.

The General Corporations Law sets forth procedures for the creation and dissolution of a corporation.

This bill would authorize the filing of articles of dissolution with the Secretary of State relative to the dissolution of a corporation that has not issued shares and would revise certain related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1900.5 is added to the Corporations
 2 Code, to read:

3 1900.5. (a) Notwithstanding any other provision of this
 4 division, when a corporation has not issued shares, a majority of
 5 the directors, or, if no directors have been named in the articles or
 6 been elected, the incorporator or a majority of the incorporators
 7 may sign and verify a certificate of dissolution stating the
 8 following:

9 (1) That the certificate of dissolution is being filed within 12
 10 months from the date the articles of incorporation were filed.

11 ~~(2) That the known debts and liabilities of the corporation have~~
 12 ~~been paid, or adequately provided for, or paid or adequately~~
 13 ~~provided for as far as its assets permitted, or that it has incurred no~~
 14 ~~known debts or liabilities, as the case may be. If there are known~~
 15 ~~debts or liabilities for payment of which adequate provision has~~
 16 ~~been made, the certificate shall state what provision has been~~
 17 ~~made, setting forth the name and address of the corporation,~~
 18 ~~person, or governmental agency that has assumed or guaranteed~~
 19 ~~the payment, or the name and address of the depository with which~~
 20 ~~deposit has been made or any other information that may be~~
 21 ~~necessary to enable the creditor or other person to whom payment~~
 22 ~~is to be made to appear and claim payment of the debt or liability.~~

23 (2) *That the corporation does not have any debts or other*
 24 *liabilities, except as provided in paragraph (3).*

25 (3) That the tax liability will be satisfied on a taxes paid basis
 26 or that a person or corporation or other business entity assumes the
 27 tax liability, if any, of the dissolving corporation and is responsible
 28 for additional corporate taxes, if any, that are assessed and that
 29 become due after the date of the assumption of the tax liability.

30 (4) That a final franchise tax return has been filed with the
 31 Franchise Tax Board as required under the Corporation Tax Law
 32 (Part 11 (commencing with Section 23001) of Division 2 of the
 33 Revenue and Taxation Code).

34 (5) That the corporation has not conducted any business from
 35 the time of the filing of the articles of incorporation.

36 (6) That the known assets of the corporation remaining after
 37 payment of, or adequately providing for, known debts and



1 liabilities have been distributed to the persons entitled thereto or
2 that the corporation acquired no known assets, as the case may be.

3 (7) That a majority of the directors, or, if no directors have been
4 named in the articles or been elected, the incorporator or a majority
5 of the incorporators authorized the dissolution and elected to
6 dissolve the corporation.

7 (8) That the corporation has not issued any shares, and if the
8 corporation has received payments ~~on subscriptions~~ for shares
9 from investors, those payments have been returned to those
10 investors.

11 (9) That the corporation is dissolved.

12 (b) A certificate of dissolution signed and verified pursuant to
13 subdivision (a) shall be filed with the Secretary of State. The
14 Secretary of State shall file the certificate of dissolution without
15 the tax clearance certificate specified in Section 23334 of the
16 Revenue and Taxation Code and shall notify the Franchise Tax
17 Board of the dissolution.

18 (c) Upon filing a certificate of dissolution pursuant to
19 subdivision (b), a corporation shall be dissolved and its powers,
20 rights, and privileges shall cease.

21 SEC. 2. Section 23331 of the Revenue and Taxation Code is
22 amended to read:

23 23331. (a) For the purposes of this article, the effective date
24 of dissolution of a corporation is the date on which the certified
25 copy of the court decree, judgment, or order declaring the
26 corporation duly wound up and dissolved is filed in the office of
27 the Secretary of State or the date on which the certificate of
28 winding up, if necessary, and the certificate of dissolution are filed
29 in the office of the Secretary of State. For the purposes of this
30 article, the effective date of withdrawal of a foreign corporation is
31 the date on which the certificate of withdrawal is filed in the office
32 of the Secretary of State.

33 (b) The Secretary of State shall, through an information
34 program and by forms and instructions provided to taxpayers,
35 recommend that all documents required by this article to be filed
36 with the Secretary of State be sent, if mailed, by certified mail with
37 return receipt requested. The Secretary of State shall also notify
38 taxpayers that receipt of documents by the Secretary of State
39 pursuant to this article will be acknowledged within 21 days of
40 receipt.



1 (c) On or before 21 days after their receipt, the Secretary of
2 State shall provide a taxpayer with acknowledgment of the receipt
3 of documents submitted by a taxpayer pursuant to this article.

4 (d) The office of the Secretary of State shall, no later than July
5 1, 1991, submit to the Legislature a report of the development of
6 a taxpayer information program, the revision of forms and
7 instructions, and the implementation of procedures for
8 acknowledging receipt from taxpayers of documents required by
9 this article.

10 SEC. 3. Section 23334 of the Revenue and Taxation Code is
11 amended to read:

12 23334. No decree of dissolution shall be made and entered by
13 any court, nor shall the ~~county clerk of any county or the~~ Secretary
14 of State file a decree of dissolution, or file in the case of a credit
15 union incorporated under the California Credit Union Law a
16 certificate of election to dissolve, or in the case of any other
17 taxpayer file a certificate of dissolution, except as provided in
18 subdivision (c) of Section 1905 of the Corporations Code and
19 subdivision (b) of Section 1900.5 of the Corporations Code, or any
20 other document by which the term of existence of the taxpayer
21 shall be reduced or terminated, nor shall the Secretary of State file
22 any certificate of the surrender by a foreign corporation of its right
23 to do intrastate business in this state unless the taxpayer obtains
24 from the Franchise Tax Board and files with the court, ~~county~~
25 ~~clerk~~, or Secretary of State, as the case may be, a tax clearance
26 certificate indicating that the Franchise Tax Board is satisfied from
27 the available evidence that all taxes imposed by this chapter have
28 been paid or are secured by bond, deposit, or otherwise. Within 30
29 days after receiving a request for a certificate, the Franchise Tax
30 Board shall either issue the certificate or notify the person
31 requesting the certificate of the amount of tax that must be paid or
32 the amount of bond, deposit, or other security that must be
33 furnished as a condition of issuing the certificate. The issuance of
34 the certificate shall not relieve the taxpayer or any individual or
35 corporation from liability for any taxes, penalties, or interest
36 imposed by this part, nor shall the issuance of the certificate in the
37 case of any credit union which revokes its election to wind up and
38 dissolve, relieve that credit union of any taxes or interest that
39 would have been imposed under this part had the election not been
40 filed.



1 The Franchise Tax Board shall furnish a copy of the tax
2 clearance certificate to the Secretary of State.

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