

CHAPTER 682

S.B. No. 1450

An Act relating to distribution of the assets of a nonprofit corporation on dissolution of the corporation; amending the Texas Non-Profit Corporation Act (Articles 1396-6.02 and 1396-7.06, Vernon's Texas Civil Statutes) by amending Article 6.02 and Section B of Article 7.06.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 6.02, Texas Non-Profit Corporation Act (Article 1396-6.02, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 6.02. **APPLICATION AND DISTRIBUTION OF ASSETS.** A. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

"(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

"(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

"(3) *Unless provided otherwise by a provision of the corporation's articles of incorporation that refers to this subsection, the remaining assets of the corporation shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1954 (26 U.S.C. Section 501(c)(3)), or its successor statute, or which are described in Section 170(c)(1) or (2), Internal Revenue Code of 1954 (26 U.S.C. Section 170(c)(1) or (2)), or its successor statute [Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, together with any income earned thereon shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the*

dissolving corporation], pursuant to a plan of distribution adopted as provided in this Act. A district court of the county in which the corporation's principal office is located shall distribute to one or more organizations exempt under Section 501(c)(3) or described in Section 170(c)(1) or (2), or their successor statutes, the remaining assets of the corporation not distributed under the plan of distribution. Any distribution by the court shall be made in such manner as, in the judgment of the court, will best accomplish the general purposes for which the corporation was organized.

"[(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others:

"[(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this Act.]"

SECTION 2. Section B, Article 7.06, Texas Non-Profit Corporation Act (Article 1396-7.06, Vernon's Texas Civil Statutes), is amended to read as follows:

"B. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

"(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

"(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

"(3) Unless provided otherwise by a provision of the corporation's articles of incorporation that refers to this subsection, the remaining assets of the corporation shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1954 (26 U.S.C. Section 501 (c)(3)), or its successor statute, or which are described in Section 170(c)(1) or (2), Internal Revenue Code of 1954 (26 U.S.C. Section 170(c)(1) or (2)), or its successor statute. The distribution by the court shall be made in such manner as, in the judgment of the court, will best accomplish the general purposes for which the corporation was organized [Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

"[(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

"[(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct]."

SECTION 3. This Act takes effect September 1, 1985, and applies only to nonprofit corporations formed on or after that date.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 17, 1985, by a viva-voce vote; Senate concurred in House amendment on May 27, 1985, by a viva-voce vote; passed the House, with amendment, on May 24, 1985, by a non-record vote.

Approved: June 15, 1985

Effective: September 1, 1985