
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0118.1/23

ATTY/TYPIST: CC:eab

BRIEF DESCRIPTION: Making updates to the Washington business corporation act.

1 AN ACT Relating to making updates to the Washington business
2 corporation act; amending RCW 23B.01.400, 23B.06.210, and 23B.10.020;
3 adding a new section to chapter 23B.06 RCW; and adding a new section
4 to chapter 23B.11 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 23B.01.400 and 2022 c 42 s 101 are each amended to
7 read as follows:

8 (~~Unless the context clearly requires otherwise, the~~) The
9 definitions in this section apply throughout this title unless the
10 context clearly requires otherwise.

11 (1) "Articles of incorporation" include amended and restated
12 articles of incorporation and articles of merger.

13 (2) "Authorized shares" means the shares of all classes a
14 domestic or foreign corporation is authorized to issue.

15 (3) "Conspicuous" means so prepared that a reasonable person
16 against whom the writing is to operate should have noticed it. For
17 example, text in italics, boldface, contrasting color, capitals, or
18 underlined is conspicuous.

19 (4) "Controlling interest" means ownership of an entity's
20 outstanding shares or interests in such number as to entitle the
21 holder at the time to elect a majority of the entity's directors or

1 other governors without regard to voting power which may thereafter
2 exist upon a default, failure, or other contingency.

3 (5) "Corporate action" means any resolution, act, policy,
4 contract, transaction, plan, adoption or amendment of articles of
5 incorporation or bylaws, or other matter approved by or submitted for
6 approval to a corporation's incorporators, board of directors or a
7 committee thereof, or shareholders.

8 (6) "Corporation" or "domestic corporation" means a corporation
9 for profit, including a social purpose corporation, which is not a
10 foreign corporation, incorporated under or subject to the provisions
11 of this title.

12 (7) "Deliver" or "delivery" means any method of delivery used in
13 conventional commercial practice, including delivery by hand, mail,
14 commercial delivery, and, if authorized in accordance with RCW
15 23B.01.410, by electronic transmission.

16 (8) "Distribution" means a direct or indirect transfer of money
17 or other property, except its own shares, or incurrence of
18 indebtedness by a corporation to or for the benefit of its
19 shareholders in respect to any of its shares. A distribution may be
20 in the form of a declaration or payment of a dividend; a distribution
21 in partial or complete liquidation, or upon voluntary or involuntary
22 dissolution; a purchase, redemption, or other acquisition of shares;
23 a distribution of indebtedness; or otherwise.

24 (9) "Document" means:

25 (a) Any tangible medium on which information is inscribed, and
26 includes handwritten, typed, printed, or similar instruments or
27 copies of such instruments; and

28 (b) An electronic record.

29 (10) "Electronic" means relating to technology having electrical,
30 digital, magnetic, wireless, optical, electromagnetic, or similar
31 capabilities.

32 (11) "Electronic mail" means an electronic transmission directed
33 to a unique electronic mail address, which electronic mail will be
34 deemed to include any files attached thereto and any information
35 hyperlinked to a website if the electronic mail includes the contact
36 information of an officer or agent of the corporation who is
37 available to assist with accessing such files and information.

38 (12) "Electronic mail address" means a destination, commonly
39 expressed as a string of characters, consisting of a unique user name
40 or mailbox, commonly referred to as the "local part" of the address,

1 and a reference to an internet domain, commonly referred to as the
2 "domain part" of the address, whether or not displayed, to which
3 electronic mail can be sent or delivered.

4 (13) "Electronic record" means information that is stored in an
5 electronic or other nontangible medium and: (a) Is retrievable in
6 paper form by the recipient through an automated process used in
7 conventional commercial practice; or (b) if not retrievable in paper
8 form by the recipient through an automated process used in
9 conventional commercial practice, is otherwise authorized in
10 accordance with RCW 23B.01.410(10).

11 (14) "Electronic transmission" or "electronically transmitted"
12 means internet transmission, telephonic transmission, electronic mail
13 transmission, transmission of a telegram, cablegram, or datagram, the
14 use of, or participation in, one or more electronic networks or
15 databases including one or more distributed electronic networks or
16 databases, or any other form or process of communication, not
17 directly involving the physical transfer of paper or another tangible
18 medium, which:

19 (a) Is suitable for the retention, retrieval, and reproduction of
20 information by the recipient; and

21 (b) Is retrievable in paper form by the recipient through an
22 automated process used in conventional commercial practice, or, if
23 not retrievable in paper form by the recipient through an automated
24 process used in conventional commercial practice, is otherwise
25 authorized in accordance with RCW 23B.01.410(10).

26 (15) "Employee" includes an officer but not a director. A
27 director may accept duties that make the director also an employee.

28 (16) "Entity" includes a corporation and foreign corporation,
29 not-for-profit corporation, business trust, estate, trust,
30 partnership, limited liability company, association, joint venture,
31 two or more persons having a joint or common economic interest, the
32 state, United States, and a foreign governmental subdivision, agency,
33 or instrumentality, or any other legal or commercial entity.

34 (17) "Execute," "executes," or "executed" means, with present
35 intent to authenticate or adopt a document:

36 (a) To sign or adopt a tangible symbol to the document, and
37 includes any manual, facsimile, or conformed signature;

38 (b) To attach or logically associate with an electronic
39 transmission an electronic sound, symbol, or process, and includes an
40 electronic signature; or

1 (c) With respect to a document to be filed with the secretary of
2 state, in compliance with the standards for filing with the office of
3 the secretary of state as prescribed by the secretary of state.

4 (18) "Foreign corporation" means a corporation for profit
5 incorporated under a law other than the law of this state.

6 (19) "Foreign limited partnership" means a partnership formed
7 under laws other than of this state and having as partners one or
8 more general partners and one or more limited partners.

9 (20) "General social purpose" means the general social purpose
10 for which a social purpose corporation is organized as set forth in
11 the articles of incorporation of the corporation in accordance with
12 RCW 23B.25.040(1)(c).

13 (21) "Governmental subdivision" includes authority, county,
14 district, and municipality.

15 (22) "Governor" has the meaning given that term in RCW 23.95.105.

16 (23) "Includes" denotes a partial definition.

17 (24) "Individual" includes the estate of an incompetent or
18 deceased individual.

19 (25) "Limited partnership" or "domestic limited partnership"
20 means a partnership formed by two or more persons under the laws of
21 this state and having one or more general partners and one or more
22 limited partners.

23 (26) "Means" denotes an exhaustive definition.

24 (27) "Notice" has the meaning provided in RCW 23B.01.410.

25 (28) "Person" means an individual, corporation, business trust,
26 estate, trust, partnership, limited liability company, association,
27 joint venture, government, governmental subdivision, agency, or
28 instrumentality, or any other legal or commercial entity.

29 (29) "Principal office" means the office, in or out of this
30 state, so designated in the annual report where the principal
31 executive offices of a domestic or foreign corporation are located.

32 (30) "Proceeding" includes civil suit and criminal,
33 administrative, and investigatory action.

34 (31) "Public company" means a corporation that has a class of
35 shares registered with the federal securities and exchange commission
36 pursuant to section 12 or 15 of the securities exchange act of 1934,
37 or section 8 of the investment company act of 1940, or any successor
38 statute.

39 (32) "Qualified director" means (a) with respect to a director's
40 conflicting interest transaction as defined in RCW 23B.08.700, any

1 director who does not have either (i) a conflicting interest
2 respecting the transaction, or (ii) a familial, financial,
3 professional, or employment relationship with a second director who
4 does have a conflicting interest respecting the transaction, which
5 relationship would, in the circumstances, reasonably be expected to
6 exert an influence on the first director's judgment when voting on
7 the transaction; (b) with respect to RCW 23B.08.735, a qualified
8 director under (a) of this subsection if the business opportunity
9 were a director's conflicting interest transaction; and (c) with
10 respect to RCW 23B.02.020(2)(g), a director who is not a director (i)
11 to whom the limitation or elimination of the duty of an officer to
12 offer potential business opportunities to the corporation would
13 apply, or (ii) who has a familial, financial, professional, or
14 employment relationship with another officer to whom the limitation
15 or elimination would apply, which relationship would, in the
16 circumstances, reasonably be expected to exert an influence on the
17 director's judgment when voting on the limitation or elimination.

18 (33) "Record date" means the date fixed for determining the
19 identity of a corporation's shareholders and their shareholdings for
20 purposes of this title. The determinations shall be made as of the
21 close of business on the record date unless another time for doing so
22 is specified when the record date is fixed.

23 (34) "Registered office" means the address of the corporation's
24 registered agent.

25 (35) "Secretary" means the corporate officer to whom the board of
26 directors has delegated responsibility under RCW 23B.08.400(3) for
27 custody of the minutes of the meetings of the board of directors and
28 of the shareholders and for authenticating records of the
29 corporation.

30 (36) "Shareholder" means the person in whose name shares are
31 registered in the records of a corporation or the beneficial owner of
32 shares to the extent of the rights granted by a nominee certificate
33 on file with a corporation.

34 (37) "Shares" means the units into which the proprietary
35 interests in a corporation are divided.

36 (38) "Social purpose" includes any general social purpose and any
37 specific social purpose.

38 (39) "Social purpose corporation" means a corporation that has
39 elected to be governed as a social purpose corporation under chapter
40 23B.25 RCW.

1 (40) "Specific social purpose" means the specific social purpose
2 or purposes for which a social purpose corporation is organized as
3 set forth in the articles of incorporation of the corporation in
4 accordance with RCW 23B.25.040(2)(a).

5 (41) "State," when referring to a part of the United States,
6 includes a state and commonwealth, and their agencies and
7 governmental subdivisions, and a territory and insular possession,
8 and their agencies and governmental subdivisions, of the United
9 States.

10 (42) "Subscriber" means a person who subscribes for shares in a
11 corporation, whether before or after incorporation.

12 (43) "Subsidiary" means an entity in which the corporation has,
13 directly or indirectly, a controlling interest.

14 (44) "United States" includes a district, authority, bureau,
15 commission, department, and any other agency of the United States.

16 (45) "Voting group" means all shares of one or more classes or
17 series that under the articles of incorporation or this title are
18 entitled to vote and be counted together collectively on a matter at
19 a meeting of shareholders. All shares entitled by the articles of
20 incorporation or this title to vote generally on the matter are for
21 that purpose a single voting group.

22 (46) "Writing" or "written" means any information in the form of
23 a document.

24 (47) "Forward stock split" means the pro rata division of all the
25 outstanding shares of a class of stock into a greater number of
26 shares of the same class, whether or not the authorized shares of
27 such a class are increased in the same proportion, but does not
28 include a share dividend under RCW 23B.06.230.

29 (48) "Reverse stock split" means the pro rata combination of all
30 the outstanding shares of a class of stock into a smaller number of
31 shares of the same class, whether or not the authorized shares of
32 such a class are reduced in the same proportion.

33 (49) "Stock split" means a forward stock split or a reverse stock
34 split.

35 **Sec. 2.** RCW 23B.06.210 and 2009 c 189 s 8 are each amended to
36 read as follows:

37 (1) The powers granted in this section to the board of directors
38 may be reserved to the shareholders by the articles of incorporation.

1 (2) Any issuance of shares must be approved by the board of
2 directors. Shares may be issued (~~(for)~~):

3 (a) For consideration determined by the board of directors from
4 time to time consisting of any tangible or intangible property or
5 benefit to the corporation, including cash, promissory notes,
6 services performed, contracts for services to be performed, or other
7 securities of the corporation; or

8 (b) As a share dividend or upon a stock split, reclassification
9 of outstanding shares into shares of another class or series, or
10 conversion of outstanding shares into shares of another class or
11 series.

12 (3) A good faith determination by the board of directors that the
13 consideration received or to be received for the shares to be issued
14 is adequate is conclusive insofar as the adequacy of consideration
15 relates to whether the shares are validly issued, fully paid and
16 nonassessable. When the board of directors has made such a
17 determination and the corporation has received the consideration, the
18 shares issued therefor are fully paid and nonassessable. Shares
19 issued as a share dividend or upon a stock split, reclassification of
20 outstanding shares into shares of another class or series, or
21 conversion of outstanding shares into shares of another class or
22 series are fully paid and nonassessable.

23 (4) The corporation may place in escrow shares issued for a
24 contract for future services or benefits or a promissory note, or
25 make other arrangements to restrict the transfer of the shares, and
26 may credit distributions in respect to the shares against their
27 purchase price, until the services are performed, the benefits are
28 received, or the note is paid. If the services are not performed, the
29 benefits are not received, or the note is not paid, the shares
30 escrowed or restricted and the distributions credited may be canceled
31 in whole or part.

32 (5) Where it cannot be determined that outstanding shares are
33 fully paid and nonassessable, there shall be a conclusive presumption
34 that such shares are fully paid and nonassessable if the board of
35 directors makes a good faith determination that there is no
36 substantial evidence that the full consideration for such shares has
37 not been paid.

38 NEW SECTION. Sec. 3. A new section is added to chapter 23B.06
39 RCW to read as follows:

1 (1) A corporation may effect a stock split by means of an
2 amendment to the articles of incorporation stating the effect of the
3 stock split on the outstanding shares of the affected class.

4 (2) An amendment to the articles of incorporation to effect a
5 stock split may, but is not required to, include a change in the
6 authorized shares of the affected class.

7 (3) Except for a forward stock split that complies with RCW
8 23B.10.020(4)(a) or a reverse stock split that complies with RCW
9 23B.10.020(4)(b), an amendment to the articles of incorporation to
10 effect a stock split must be approved in accordance with RCW
11 23B.10.030 and, if applicable, RCW 23B.10.040.

12 (4) The board of directors may fix the record date for
13 determining shareholders affected by a stock split, which date may
14 not precede the date on which the amendment to the articles of
15 incorporation effecting the stock split becomes effective in
16 accordance with RCW 23.95.210. If the board of directors does not fix
17 the record date for determining shareholders affected by a stock
18 split, the record date is the date on which the amendment to the
19 articles of incorporation effecting the stock split becomes effective
20 in accordance with RCW 23.95.210.

21 **Sec. 4.** RCW 23B.10.020 and 2009 c 189 s 31 are each amended to
22 read as follows:

23 Unless the articles of incorporation provide otherwise, a
24 corporation's board of directors may adopt one or more amendments to
25 the corporation's articles of incorporation without shareholder
26 approval:

27 (1) If the corporation has only one class of shares outstanding,
28 to provide, change, or eliminate any provision with respect to the
29 par value of any class of shares;

30 (2) To delete the names and addresses of the initial directors;

31 (3) To delete the name and address of the initial registered
32 agent or registered office, if a statement of change is on file with
33 the secretary of state;

34 (4) If the corporation has only one class of shares outstanding,
35 solely to:

36 (a) Effect a forward stock split of, or change the number of
37 authorized shares of that class in proportion to a forward stock
38 split of, or (~~stock~~) share dividend in, the corporation's
39 outstanding shares; or

1 (b) Effect a reverse stock split of the corporation's outstanding
2 shares (~~and~~) if the number of authorized shares of that class (~~in~~
3 ~~the same proportions~~) is proportionately reduced by the amendment;

4 (5) To change the corporate name; or

5 (6) To make any other change expressly permitted by this title to
6 be made without shareholder approval.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 23B.11
8 RCW to read as follows:

9 (1) The definitions in this subsection apply throughout this
10 section unless the context clearly requires otherwise.

11 (a) "Holding company" means the corporation that is or becomes
12 the direct parent of the surviving corporation of a merger
13 accomplished under this section and whose capital stock is issued in
14 that merger.

15 (b) "Parent constituent corporation" means the parent corporation
16 that merges with or into the subsidiary constituent corporation in
17 the merger.

18 (c) "Subsidiary constituent corporation" means the subsidiary
19 corporation that the parent constituent corporation merges with or
20 into in the merger.

21 (2) Unless the articles of incorporation provide otherwise, a
22 parent constituent corporation may merge with or into a single
23 indirect wholly owned subsidiary of the parent constituent
24 corporation without the approval of the plan of merger by the
25 shareholders of the parent constituent corporation if:

26 (a) The plan expressly permits or requires the merger to be
27 effected under this subsection;

28 (b) The holding company and the constituent corporations to the
29 merger are each organized under this title;

30 (c) At all times from its incorporation until consummation of a
31 merger under this section, the holding company was a direct wholly
32 owned subsidiary of the parent constituent corporation;

33 (d) Immediately before consummation of a merger under this
34 section, the subsidiary constituent corporation is a direct wholly
35 owned subsidiary of the holding company and an indirect wholly owned
36 subsidiary of the parent constituent corporation;

37 (e) The parent constituent corporation and the subsidiary
38 constituent corporation are the only constituent entities to the
39 merger;

1 (f) Immediately after the merger becomes effective, the survivor
2 of the merger becomes or remains a direct wholly owned subsidiary of
3 the holding company;

4 (g) Each share or fraction of a share of the parent constituent
5 corporation outstanding immediately before the merger becomes
6 effective is converted in the merger into a share or equal fraction
7 of a share of the holding company having the same designations and
8 relative preferences, rights, and limitations as the share or
9 fraction of a share of the parent constituent corporation being
10 converted in the merger;

11 (h) The articles of incorporation and bylaws of the holding
12 company immediately after the merger becomes effective contain
13 provisions identical to the articles of incorporation and bylaws of
14 the parent constituent corporation immediately before the merger
15 becomes effective, other than any provisions regarding the
16 incorporator or incorporators, the corporate name, the registered
17 office and agent, the initial board of directors and the initial
18 subscribers for shares, and the provisions contained in any amendment
19 to the articles of incorporation of the parent constituent
20 corporation that were necessary to effect an exchange,
21 reclassification, or cancellation of shares if the exchange,
22 reclassification, or cancellation has become effective;

23 (i) The articles of incorporation and bylaws of the survivor
24 immediately after the merger becomes effective contain provisions by
25 specific reference to this subsection requiring that any corporate
26 action by or involving the survivor, other than the election or
27 removal of directors of the survivor, must be approved by the
28 shareholders of the holding company, or any successor by merger, by
29 the same vote as is required by this title or under the articles of
30 incorporation or bylaws of the parent constituent corporation
31 immediately before the merger becomes effective, if that corporate
32 action would have required the approval of the shareholders of the
33 parent constituent corporation under this title or under the articles
34 of incorporation or bylaws of the parent constituent corporation
35 immediately before the merger becomes effective;

36 (j) The directors of the parent constituent corporation
37 immediately before the merger becomes effective become or remain the
38 directors of the holding company immediately after the merger becomes
39 effective; and

1 (k) The shareholders of the parent constituent corporation will
2 not recognize gain or loss for United States federal income tax
3 purposes as a result of the merger, as determined by the board of
4 directors of the parent constituent corporation.

5 (3) The holding company must, promptly after the effective date
6 of a merger effected under subsection (2) of this section, notify
7 each person who was a shareholder of the parent constituent
8 corporation as of the date the board of directors approves the merger
9 that the merger has become effective. The notice must contain or be
10 accompanied by a copy of the plan of merger or a summary of the
11 material terms and conditions of the merger and the consideration to
12 be received by those shareholders.

13 (4) To the extent restrictions under chapter 23B.19 RCW applied
14 to the parent constituent corporation or any of its shareholders at
15 the effective time of the merger, those restrictions apply to the
16 holding company and its shareholders immediately after the merger
17 becomes effective as though the holding company were the parent
18 constituent corporation, and all shares of stock of the holding
19 company acquired in the merger will, for the purposes of chapter
20 23B.19 RCW, be deemed to have been acquired at the time that the
21 corresponding shares of stock of the parent constituent corporation
22 were acquired. No shareholder who, immediately before the merger
23 becomes effective, was not an acquiring person of the parent
24 constituent corporation will, solely by reason of the merger, become
25 an acquiring person of the holding company.

26 (5) To the extent a shareholder of the parent constituent
27 corporation immediately before the merger was eligible to commence a
28 proceeding in the right of the parent constituent corporation in
29 accordance with RCW 23B.07.400, nothing in this section is deemed to
30 limit or extinguish that eligibility.

31 (6) Except as provided in subsections (2), (3), (4), and (5) of
32 this section, a merger between a parent constituent corporation and a
33 subsidiary constituent corporation is governed by the provisions of
34 this chapter applicable to mergers generally.

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