

*Fifth Edition, 2016*

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**Washington Business Corporation Act  
(RCW 23B)**

**Sourcebook**

**Original Act – Legislative History  
Amendments (through 2015) – CARC Commentary  
Uniform Business Organizations Code –  
General Provisions (RCW 23.95)  
Significant Washington Decisions  
Significant Decisions in Other Model Act Jurisdictions**

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## INTRODUCTION AND EXPLANATORY NOTES

The WSBA Business Law Section Corporate Act Revision Committee (“CARC”) was organized in 1975 and its primary function is to continuously consider the need for possible amendments to or additions to Washington’s business corporation laws in light of changes to the Model Business Corporations Act, developments in corporate and securities laws and practices, judicial decisions and regulatory actions. CARC also reviews and comments on amendments and changes to Washington’s business laws proposed by others.

Perhaps CARC’s most ambitious success in its history was its drafting, and involvement in connection with the adoption, of the current Washington Business Corporations Act, RCW 23B, which the Washington Legislature adopted in 1989. CARC has since drafted, and testified on behalf of the WSBA before the Legislature with respect to, numerous amendments to RCW 23B.

Members of CARC conceived the concept of *Washington Business Corporations Act (RCW 23B) Sourcebook* in 1999. CARC’s concept - brought to life by the first edition of the *Sourcebook* published by the Washington State Bar Association in 2005 - was to assemble in one place historical information and other resources regarding each section in RCW 23B and to update the *Sourcebook* regularly to reflect new amendments to the chapter.

In addition to providing updates reflecting recent amendments to RCW 23B, this fifth edition of the *Sourcebook* adds the Uniform Business Organizations Code – General Provisions (RCW 23.95) to the core *Sourcebook* subjects covered in prior editions. Sections of RCW 23B dealing with filing documents with the Secretary of State, corporate names, registered agents, foreign corporations, and administrative dissolution were amended or repealed in 2015 and are now found in RCW 23.95. The purpose of RCW 23.95 was to harmonize in a single chapter these common subjects applicable to corporations, limited liability companies (RCW 25.15), limited partnerships and LLLPs (RCW 25.10), limited liability partnerships (RCW 25.05), general cooperative associations (RCW 23.86), nonprofit corporations (RCW 24.03) and nonprofit miscellaneous and mutual corporations (RCW 24.06).

### Technical notes:

- a. The legislative history materials refer to provisions in the “Proposed Act” with section numbers in the form of a one- or two-digit number, a decimal point, and a 2 digit number (i.e., Proposed Act section 2.01.) The materials are matched with the codified RCW 23B section number for the section as adopted.
- b. The Proposed Act section number in almost all cases represents the section of the 1984 Revised Model Business Corporation Act source for the provision (the principal exceptions were Proposed Act sections 8.70-8.73 which came from RMBCA sections 8.60-8.63).
- c. The Proposed Act section numbers generally were converted by the Office of the Code Reviser into the RCW 23B.00.000 (5 digit) form by inserting the Proposed section number as follows:
  1. If the proposed chapter number – the number before the decimal point – is 1 to 9, add a zero before the chapter number, and a zero after the section number

to get the codified citation. Thus, Proposed section 1.40 was codified as RCW 23B.01.400.

2. If the chapter number is 10 to 19, add a zero after the section number. Thus, Proposed section 10.01 was codified as RCW 23B.10.010.
- d. Legislative amendments adding more than one new provision to the statute usually use a section number of the legislative chapter for cross-references. For convenience, the materials use the RCW codified number – the citation that appears in codified new sections – rather than strictly adhering to language in the amendment.

## A Special Acknowledgement for the Reporter

Richard O. Kummert, the former D. Wayne and Anne Gittinger Professor of Law at the University of Washington, a founding member of CARC, and the chief architect of many of its most heralded accomplishments, served as the reporter for the *Sourcebook* until his recent passing and, for 37 years, was the lead academic resource on CARC as the committee drafted RCW 23B and then reviewed and revised various sections of RCW 23B. His encyclopedic knowledge of corporate law was critical to CARC's work. He also deserves the principal credit for refining the original concept of the *Sourcebook*, transforming the first edition into a reality in 2005 and preparing the second, third and fourth editions. Professor Kummert not only supervised the performance of the necessary legal research, the organization of the manuscript, and the search for and compilation of the legislative history and CARC commentary from the often less than organized files of current and past CARC members, he also prepared the selected judicial case notes and the superlative index that makes the *Sourcebook* user-friendly. Simply put, without Professor Kummert's leadership and management of this project, the *Sourcebook* would still be a concept appearing on CARC's monthly agenda. We will miss him, not just as the *Sourcebook* reporter, CARC's senior member, and the leading expert on Washington corporate law, but as a colleague, mentor and friend.

Special recognition and gratitude should be given to Jennifer Snider. Ms. Snider has spent hundreds of hours assembling the manuscript for each edition and managing and organizing the monumental number of details necessary to get the manuscript ready for publication.

Our thanks are also extended to Beth Bryant (UW Law, Class of 1999) and Janelle Milodragovich (UW Law, Class of 2005) for their significant legal research and editorial contributions to the first edition and to Luke Campbell (UW Law, Class of 2008) for his legal research in identifying and briefing relevant cases from other jurisdictions that were added to the 2007 version of the second edition. The other members of CARC have served as an informal editorial board and deserve special recognition for their editorial contributions and guidance.

Finally, we would like to thank our "mother ship", the WSBA Business Law Section and its Executive Committee, for encouraging CARC to undertake the *Sourcebook* project and providing moral and, perhaps more significantly, financial support for the project. In addition to financing the creation of the *Sourcebook*, the Business Law Section underwrote the cost of providing a copy of the *Sourcebook*, free of charge, to WSBA Business Law Section members and to the chambers of each state and federal judge sitting in the state of Washington. It also has agreed to provide financial support to CARC so that CARC will be able to prepare and provide a free updates to owners of the *Sourcebook*.

Although we have been careful in compiling and editing the information in the *Sourcebook* and believe that it is accurate, it is not inconceivable that you may find errors in, or material missing from, the text. If you have questions or comments or identify a possible error or omission, we encourage you to contact any member of the Corporate Act Revision Committee.

John Reed  
Editor

# **Title 23B RCW**

## **Washington Business Corporation Act**

### **Chapter 23B.01 RCW**

#### **GENERAL PROVISIONS**

- 23B.01.010 Short Title.**
- 23B.01.020 Reservation of Power to Amend or Repeal.**
- 23B.01.200 Filing Requirements.**
- 23B.01.202 Certificate of Authority as Insurance Company – Filing of Records.**
- 23B.01.204 Certificate of Authority from Department of Financial Institutions–Filing of Records.**
- 23B.01.210 Forms. [REPEALED]**
- 23B.01.220 Fees.**
- 23B.01.230 Effective Time and Date of Record.**
- 23B.01.240 Correcting Filed Records.**
- 23B.01.250 Filing Duty of Secretary of State.**
- 23B.01.260 Judicial Review of Secretary of State’s Refusal to File a Record. [REPEALED]**
- 23B.01.270 Evidentiary Effect of Copy of Filed Record. [REPEALED]**
- 23B.01.280 Certificate of Existence or Authorization.**
- 23B.01.290 Penalty for Signing False Document.**
- 23B.01.300 Powers.**
- 23B.01.400 Definitions.**
- 23B.01.410 Notice.**
- 23B.01.420 Notice – Common Address – Address Defined – Shareholder Consent.**
- 23B.01.500 Domestic Corporations – Notice of Due Date for Payment of Annual License Fee and Filing Annual Report. [REPEALED]**
- 23B.01.510 Foreign Corporations – Notice of Due Date for Payment of Annual License Fee and Filing Annual Report. [REPEALED]**
- 23B.01.520 Domestic Corporations – Filing and Initial License Fees.**
- 23B.01.530 Domestic Corporations – Annual License Fees. [REPEALED]**
- 23B.01.540 Foreign Corporations – Filing and Initial License Fees.**
- 23B.01.550 Foreign Corporations – Annual License Fees. [REPEALED]**
- 23B.01.560 License Fees for Reinstated Corporation. [REPEALED]**
- 23B.01.570 Penalty for Nonpayment of Annual Corporate License Fees and Failure to File a Substantially Complete Annual Report – Payment of Delinquent Fees -- Rules.**
- 23B.01.580 Waiver of Penalty Fees. [REPEALED]**
- 23B.01.590 Public Service Companies Entitled to Deductions.**





## **RCW 23B.01.200**

### **FILING REQUIREMENTS**

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#### ***CURRENT SECTION***

- (1) A record required or permitted by this title to be filed in the office of the secretary of state must satisfy the requirements of Article 2 of chapter 23.95 RCW, this section, and any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.**
  - (2) Unless otherwise indicated in this title, all records delivered to the secretary of state for filing must be executed:**
    - (a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;**
    - (b) If directors have not been selected or the corporation has not been formed, by an incorporator; or**
    - (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.**
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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §3 (eff. 7-1-90)**

- (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.
- (2) This title must require or permit filing the document in the office of the secretary of state.
- (3) The document must contain the information required by this title. It may contain other information as well.
- (4) The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.
- (5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
- (6) The document must be executed:
  - (a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
  - (b) If directors have not been selected or the corporation has not been formed, by an incorporator; or
  - (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (7) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and the capacity in which the person signs. The document may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.
- (8) If the secretary of state has prescribed a mandatory form for the document under RCW 23B.01.210, the document must be in or on the prescribed form.
- (9) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy, the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal, 51<sup>st</sup> Legis. 2983-84 (1989)**

###### ***Section 1.20 Filing Requirement.***

Proposed section 1.20 standardizes the filing requirements for all documents required or permitted by the Proposed Act to be filed with the secretary of state. In a few instances, other sections of the Act impose

additional requirements which must also be complied with if the document in question is to be filed. Proposed section 1.20 relates only to documents which the Proposed Act expressly requires or permits to be filed with the secretary of state; it does not authorize or direct the secretary of state to accept or reject for filing other documents relating to corporations and does not treat documents required or permitted to be filed under other statutes.

The purposes of the filing requirements of chapter 1 are: (1) to simplify the filing requirements by the elimination of formal or technical requirements that serve little purpose, (2) to minimize the number of pieces of paper to be processed by the secretary of state, and (3) to eliminate all possible disputes between persons seeking to file documents and the secretary of state as to the legal efficacy of documents.

The requirements of Proposed section 1.20 may be summarized as follows:

(1) To be eligible for filing, a document must be typed or printed and in the English language (except to the limited extent permitted by Proposed subsection 1.20(e)).

(2) To be filed a document must simply be executed by a corporate officer. Proposed subsection 1.21(f). No specific corporate officer is designated as the appropriate officer to sign though the signing officer must designate the office or the capacity in which the officer signs the document. Among the officers who are expressly authorized to sign a document is the chairperson of the board of directors, a choice that may be appropriate if the corporation has a board of directors but has not appointed officers. If a corporation has not been formed or has neither officers nor a board of directors, an incorporator may execute the document. Many organizations, like lenders or title companies, may desire that specific documents include acknowledgements, verifications, or seals; Proposed subsection 1.21(g) therefore provides that the addition of these forms of execution does not affect the eligibility of the document for filing.

(3) A document must be filed by the secretary of state if it contains the information required by the Proposed Act. The document may contain additional information or statements and their presence is not ground for the secretary of state to reject the document for filing. These documents must be accepted for filing even though the secretary of state believes that the language is illegal or unenforceable. In view of this very limited discretion granted to the secretary of state under this section, Proposed subsection 1.25(d) defines the secretary of state's role as "ministerial" and provides that no inference or presumption arises from the fact that the secretary of state accepted a document for filing. See the Comments to Proposed sections 1.25 and 1.30.

(4) Proposed subsection 1.20(i) requires that a document filed with the secretary of state must be accompanied by "one exact or conformed copy." The requirement in the old law and in many state statutes that "duplicate originals" (each being executed as an original document) be submitted has been eliminated. Under Proposed subsection 1.20(i) an "exact" copy is a reproduction of the executed original document by photographic or xerographic process; a "conformed" copy is a copy on which the existence of signatures is entered or noted on the copy. The substitution of exact or conformed copies for duplicate originals reflects advances in the art of office copying machines that permit the routine reproduction of exact copies of executed documents. However, a person submitting "duplicate originals" meets the requirement of this section since the secretary of state may treat the duplicate original as a "conformed copy." The reasons for requiring an exact or conformed copy of a filed document to accompany the signed original, and the processing of these documents by the secretary of state, are discussed in the Comment to Proposed section 1.25.

#### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 1991, ch.72, §24 (eff. 7-28-91)** (*amends only original subsection 6*)

(6) ~~The~~ Unless otherwise indicated in this title, all documents submitted for filing must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

**CARC COMMENTARY**

Technical amendments proposed by the Secretary of State. CARC proposed parallel amendments to 23B.10.070(6).

\* \* \* \* \*

**Laws 2002, ch. 297, §1 (eff. 6-13-02)**

(1) A ~~document-record~~ must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) ~~The secretary of state may permit records to be filed through electronic transmission. The secretary of state may adopt rules varying from these requirements to facilitate electronic filing. These rules shall detail the circumstances under which the electronic filing of records shall be permitted and how such records shall be filed. These rules may also impose additional requirements related to implementation of electronic filing processes including but not limited to: File formats; signature technologies; the manner of delivery; and the types of entities or records permitted.~~

(3) This title must require or permit filing the ~~document-record~~ in the office of the secretary of state.

(4) ~~The document-record~~ must contain the information required by this title. It may contain other information as well.

(5) ~~The document-record~~ must: (a) ~~Be~~ typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state; or (b) meet the standards for electronic filing as may be prescribed by the secretary of state.

(6) ~~The document-record~~ must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(7) Unless otherwise indicated in this title, all ~~documents-records~~ submitted for filing must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(8) The person executing the ~~document-record~~ shall sign it and state beneath or opposite the signature the name of the person and the capacity in which the person signs. The ~~document-record~~ may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.

(9) If the secretary of state has prescribed a mandatory form for the ~~document-record~~ under RCW 23B.01.210, the ~~document-record~~ must be in or on the prescribed form.

(10) ~~The document-record~~ must be ~~delivered to received~~ by the office of the secretary of state for filing and, ~~except in the case of an electronic filing,~~ must be accompanied by one exact or conformed copy, the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing.

**CARC COMMENTARY**

See CARC Comment to 2002 Amendment of RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2101 (eff. 1-16-15)**

(1) A record required or permitted by this title to be filed in the office of the secretary of state must satisfy the requirements of Article 2 of chapter 23.95 RCW, this section, and ((6)) any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) ~~((The secretary of state may permit records to be filed through electronic transmission. The~~

~~secretary of state may adopt rules varying from these requirements to facilitate electronic filing. These rules shall detail the circumstances under which the electronic filing of records shall be permitted and how such records shall be filed. These rules may also impose additional requirements related to implementation of electronic filing processes including but not limited to: File formats; signature technologies; the manner of delivery; and the types of entities or records permitted.~~

~~(3) This title must require or permit filing the record in the office of the secretary of state.~~

~~(4) The record must contain the information required by this title. It may contain other information as well.~~

~~(5) The record must: (a) Be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state; or (b) meet the standards for electronic filing as may be prescribed by the secretary of state.~~

~~(6) The record must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.~~

~~(7)) Unless otherwise indicated in this title, all records ((submitted)) delivered to the secretary of state for filing must be executed:~~

~~(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;~~

~~(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~

~~(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

~~((8) The person executing the record shall sign it and state beneath or opposite the signature the name of the person and the capacity in which the person signs. The record may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.~~

~~(9) If the secretary of state has prescribed a mandatory form for the record under RCW 23B.01.210, the record must be in or on the prescribed form.~~

~~(10) The record must be received by the office of the secretary of state for filing and, except in the case of an electronic filing, must be accompanied by one exact or conformed copy, the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing.))~~

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# RCW 23B.01.210 FORMS

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## REPEALED Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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### *HISTORY AND COMMITTEE COMMENTARY*

#### **ORIGINAL SECTION Laws 1989, ch. 165, §4 (eff. 7-1-90)**

The secretary of state may prescribe and furnish on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; (4) the annual report; and (5) such other forms not in conflict with this title as may be prescribed by the secretary of state. If the secretary of state so requires, use of these forms is mandatory.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal, 51<sup>st</sup> Legis. 2984 (1989)**

##### *Section 1.21 Forms.*

As described in the Comment to Proposed section 1.20, documents are entitled to filing under the Proposed Act if they meet the substantive and formal requirements of the Act; they may also contain additional information if the person submitting the document so elects. See the Comments to Proposed sections 1.20 and 1.25. Certain types of reports and requests for documents may be processed efficiently only if uniform forms are prescribed by the secretary of state. Certificates of existence, for example, should require specific information located at specific places on the form; similarly, processing of large-volume, largely routine filings is expedited if standardized forms are required. Also, the disclosure requirements of the annual report may be administered on a systematic basis if a standardized form is mandated.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1991, ch. 72, §25 (eff. 7-28-91)**

The secretary of state may prescribe and furnish on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; (4) ~~the~~an initial report; (5) an annual report; and (6~~5~~) such other forms not in conflict with this title as may be prescribed by the secretary of state. If the secretary of state so requires, use of these forms is mandatory.

#### ***CARC COMMENTARY***

The 1991 Proposed Amendments revise RCW 23B.02.050(4) to provide that a corporation's initial annual report must be filed with the Secretary of State within 120 days of the date the corporation's articles of incorporation were filed. To facilitate its processing of initial, and subsequent, annual reports, the Office of the Secretary of State proposed amendments to RCW 23B.01.210 and other provisions in the Act to recognize separate forms for the initial, and for each subsequent, annual reports.

#### **REPEALED SECTION**

The secretary of state may prescribe and furnish on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; (4) an initial report; (5) an annual report; and (6) such other forms not in conflict with this title as may be prescribed by the secretary of state. If the secretary of state so requires, use of these forms is mandatory.

\* \* \* \* \*



## **RCW 23B.01.220 FEES**

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### ***CURRENT SECTION***

**Corporations are subject to the applicable fees, charges, and penalties established by the secretary of state under RCW 23.95.260 and 43.07.120.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §5 (eff. 7-1-90)**

- (1) The secretary of state shall collect in accordance with the provisions of this title:
- (a) Fees for filing documents and issuing certificates;
  - (b) Miscellaneous charges;
  - (c) License fees as provided in RCW 23B.01.500 through 23B.01.550;
  - (d) Penalty fees; and
  - (e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.
- (2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:
- (a) One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:
    - (i) Articles of incorporation; and
    - (ii) Application for certificate of authority;
  - (b) Twenty-five dollars for:
    - (i) Articles of correction;
    - (ii) Amendment of articles of incorporation;
    - (iii) Restatement of articles of incorporation, with or without amendment;
    - (iv) Articles of merger or share exchange;
    - (v) Articles of revocation of dissolution;
    - (vi) Application for amended certificate of authority; and
    - (vii) Application for reinstatement;
  - (c) Ten dollars for:
    - (i) Application for reservation, registration, or assignment of reserved name;
    - (ii) Corporation's statement of change of registered agent or registered office, or both;
    - (iii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;
    - (iv) Annual report; and
    - (v) Any document not listed in this subsection that is required or permitted to be filed under this title;
  - (d) No fee for:
    - (i) Agent's consent to act as agent;
    - (ii) Agent's resignation, if appointed without consent;
    - (iii) Articles of dissolution;
    - (iv) Certificate of reinstatement;
    - (v) Certificate of judicial dissolution;
    - (vi) Application for certificate of withdrawal; and
    - (vii) Certificate of revocation of authority to transact business.
- (3) The secretary of state shall collect a fee of twenty-five dollars per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.
- (4) The secretary of state shall collect from every person, except corporations organized under the laws of this state for which existing law provides a different fee schedule:
- (a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ten dollars for the certificate, plus twenty cents for each page copied;

- (b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ten dollars; and
- (c) For furnishing copies of any document, instrument, or paper relating to a corporation, one dollar for the first page and twenty cents for each page copied thereafter.
- (5) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal, 51<sup>st</sup> Legis. 2984 (1989)**

*Section 1.22 Filing, Service and Copying Fees.*

Proposed section 1.22 establishes in a single section the filing fees for all documents that may be filed under the Proposed Act.

The catch-all in Proposed subsection 1.22(b)(3) will apply to any document for which a statute does not establish a specific filing fee plus any document that later amendments to the statute may authorize or direct be filed with the secretary of state without establishing a specific filing fee.

Proposed subsection 1.22(b)(4) states that no fee is applicable to filing the resignation of a registered agent if appointed without consent. This provision permits a person who is named as a registered agent without consent to eliminate any reference to the person in the records of the secretary of state without expense.

Proposed sections 5.04, 11.07, 15.07, 15.20, and 15.31 require the secretary of state to serve as agent for service of process on domestic and foreign corporations under the circumstances there specified. The fee for this service is set forth in Proposed subsection 1.22(c).

Proposed subsection 1.22(d) establishes standard fees for copying filed documents and certifying that copies are true copies.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1990, ch. 178, §1 (eff. 7-1-90)** (*amends only subsections (2) and (4) of original section*)

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

(a) One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:

- (i) Articles of incorporation; and
- (ii) Application for certificate of authority.

(b) Fifty dollars for an application for reinstatement;

(c) Twenty-five dollars for:

- (i) Articles of correction;
- (ii) Amendment of articles of incorporation;
- (iii) Restatement of articles of incorporation, with or without amendment;
- (iv) Articles of merger or share exchange; (v) Articles of revocation of dissolution; and

~~(vi) Application for amended certificate of authority; and~~

(vii) Application for reinstatement;

~~(de) Ten-Twenty dollars for: an~~

(i) Application for reservation, registration, or assignment of reserved name;

(e) Ten dollars for:

(ii) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;



- (iii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;
- ~~(iviii)~~ Annual report; and
- ~~(ivv)~~ Any document not listed in this subsection that is required or permitted to be filed under this title;
- ~~(fd)~~ No fee for:
  - (i) Agent's consent to act as agent;
  - (ii) Agent's resignation, if appointed without consent;
  - (iii) Articles of dissolution;
  - (iv) ~~Certificate of reinstatement;~~
  - (v) Certificate of judicial dissolution; and
  - ~~(vvi)~~ Application for certificate of withdrawal; and
  - (vii) Certificate of revocation ~~of authority to transact business.~~

(4) The secretary of state shall collect from every person, ~~except corporations organized under the laws of this state for which existing law provides a different fee schedule or organization:~~

- (a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ten dollars for the certificate, plus twenty cents for each page copied;
- (b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ten dollars; and
- (c) For furnishing copies of any document, instrument, or paper relating to a corporation, one dollar for the first page and twenty cents for each page copied thereafter.

**CARC COMMENTARY**

The fee structure for corporate filings is amended to be consistent with current RCW 23A filing fees. Corporation may now change their registered agent or office on their annual report without incurring an additional fee.

\* \* \* \* \*

**Laws 1991, ch. 72, §26 (eff. 7-28-91)** (*amends only subsection (2) and (4) of original sections, as amended in 1990*)

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

- (a) One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:
  - (i) Articles of incorporation; and
  - (ii) Application for certificate of authority.
- (b) Fifty dollars for an application for reinstatement;
- (c) Twenty-five dollars for:
  - (i) Articles of correction;
  - (ii) Amendment of articles of incorporation;
  - (iii) Restatement of articles of incorporation, with or without amendment;
  - (iv) Articles of merger or share exchange;
  - (v) Articles of revocation of dissolution; and
  - (vi) Application for amended certificate of authority;
- (d) Twenty dollars for an application for reservation, registration, or assignment of reserved name;
- (e) Ten dollars for:
  - (i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;
  - (ii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;

- (iii) ~~Initial report or a~~Annual report; and
- (iv) Any document not listed in this subsection that is required or permitted to be filed under this title;
- (f) No fee for:
  - (i) Agent's consent to act as agent;
  - (ii) Agent's resignation, if appointed without consent;
  - (iii) Articles of dissolution;
  - (iv) Certificate of judicial dissolution; and
  - (v) Application for certificate of withdrawal.

(4) The secretary of state shall collect from every person or organization:

- (a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ten dollars for the certificate, plus twenty cents for each page copied;
- (b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ten dollars; and
- (c) For furnishing copies of any document, instrument, or paper relating to a corporation, other than of an initial report or an annual report, one dollar for the first page and twenty cents for each page copied thereafter. The fee for furnishing a copy of the most recent annual report of a corporation (or of the initial report if no annual report has been filed) is one dollar, and the fee for furnishing a copy of any other annual report of a corporation is five dollars.

**CARC COMMENTARY**

See CARC Comment to 1991 Amendment of RCW 23B.01.210.

\* \* \* \* \*

**Laws 1992, ch. 107, §7 (eff. 7-1-92)** (*amends subsection (2) of original sections, as amended in 1990 and 1991*)

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

- (a) One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:
  - (i) Articles of incorporation; and
  - (ii) Application for certificate of authority;
- (b) Fifty dollars for an application for reinstatement;
- (c) Twenty-five dollars for:
  - (i) Articles of correction;
  - (ii) Amendment of articles of incorporation;
  - (iii) Restatement of articles of incorporation, with or without amendment;
  - (iv) Articles of merger or share exchange;
  - (v) Articles of revocation of dissolution; and
  - (vi) Application for amended certificate of authority;
- (d) Twenty dollars for an application for reservation, registration, or assignment of reserved name;
- (e) Ten dollars for:
  - (i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;
  - (ii) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;
  - (iii) ~~Initial report or annual report~~; and
  - (iv) Any document not listed in this subsection that is required or permitted to be filed under this title;

- (f) No fee for:
  - (i) Agent's consent to act as agent;
  - (ii) Agent's resignation, if appointed without consent;
  - (iii) Articles of dissolution;
  - (iv) Certificate of judicial dissolution; ~~and~~
  - (v) Application for certificate of withdrawal; and
  - (vi) Annual report.

***CARC COMMENTARY***

Eliminates fee for filing annual report when it is filed concurrently with payment of annual fees.

\* \* \* \* \*

**Laws 1993, ch. 269, §2 (eff. 7-1-93)**

- (1) The secretary of state shall collect in accordance with the provisions of this title:
  - (a) Fees for filing documents and issuing certificates;
  - (b) Miscellaneous charges;
  - (c) License fees as provided in RCW 23B.01.500 through 23B.01.550;
  - (d) Penalty fees; and
  - (e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.
- (2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:
  - (a) One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:
    - ~~(a)~~ Articles of incorporation; and
    - ~~(b)~~ Application for certificate of authority;
    - (b) Fifty dollars for an (3) The secretary of state shall establish by rule, fees for the following:
      - (a) ~~A~~application for reinstatement;
      - (c) Twenty-five dollars for:
        - ~~(b)~~ Articles of correction;
        - ~~(c)~~ Amendment of articles of incorporation;
        - ~~(d)~~ Restatement of articles of incorporation, with or without amendment;
        - ~~(e)~~ Articles of merger or share exchange;
        - ~~(f)~~ Articles of revocation of dissolution; ~~and~~
        - ~~(g)~~ Application for amended certificate of authority;
      - (d) Twenty dollars for an (h) ~~A~~application for reservation, registration, or assignment of reserved name;
      - (e) Ten dollars for:
        - (i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;
        - ~~(j)~~ Agent's resignation, or statement of change of registered office, or both, for each affected corporation;
        - ~~(k)~~ Initial report; and
        - ~~(l)~~ Any document not listed in this subsection that is required or permitted to be filed under this title; ~~;~~
    - (f) No fees (4) Fees shall be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial cost study performed by the secretary.
- (5) The secretary of state shall not collect fees for:
  - ~~(a)~~ Agent's consent to act as agent;
  - ~~(b)~~ Agent's resignation, if appointed without consent;
  - ~~(c)~~ Articles of dissolution;

- ~~(d)~~ Certificate of judicial dissolution;
- ~~(e)~~ Application for certificate of withdrawal; and
- ~~(f)~~ Annual report when filed concurrently with the payment of annual license fees.
- ~~(63)~~ The secretary of state shall collect a fee ~~of twenty five dollars in an amount established by the secretary of state by rule~~ per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.
- ~~(74)~~ The secretary of state shall establish by rule and collect a fee from every person or organization:
- (a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ~~ten dollars for the certificate, plus twenty cents for each page copied;~~
- (b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate, ~~ten dollars;~~ and
- ~~(c)~~ For furnishing copies of any document, instrument, or paper relating to a corporation, other than of an initial report or an annual report, ~~one dollar for the first page and twenty cents for each page copied thereafter. The fee for furnishing a copy of the most recent annual report of a corporation (or of the initial report if no annual report has been filed) is one dollar, and the fee for furnishing a copy of any other annual report of a corporation is five dollars.~~
- ~~(85)~~ For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570.

**CARC COMMENTARY**

Deletes dollar amount of fees for most filings from the statute; authorizes secretary of state to fix fees based on cost of providing service.

\* \* \* \* \*

**Laws 2002, ch. 297, §3 (eff. 6-13-02)**

- (1) The secretary of state shall collect in accordance with the provisions of this title:
- (a) Fees for filing ~~documents-records~~ and issuing certificates;
- (b) Miscellaneous charges;
- (c) License fees as provided in RCW 23B.01.500 through 23B.01.550;
- (d) Penalty fees; and
- (e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.
- (2) The secretary of state shall collect the following fees when the ~~documents-records~~ described in this subsection are delivered for filing:
- One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:
- (a) Articles of incorporation; and
- (b) Application for certificate of authority.
- (3) The secretary of state shall establish by rule, fees for the following:
- (a) Application for reinstatement;
- (b) Articles of correction;
- (c) Amendment of articles of incorporation;
- (d) Restatement of articles of incorporation, with or without amendment;
- (e) Articles of merger or share exchange;
- (f) Articles of revocation of dissolution;
- (g) Application for amended certificate of authority;
- (h) Application for reservation, registration, or assignment of reserved name;
- (i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;
- (j) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;
- (k) Initial report; and

- (1) Any ~~document-record~~ not listed in this subsection that is required or permitted to be filed under this title.
- (4) Fees shall be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial cost study performed by the secretary of state.
- (5) The secretary of state shall not collect fees for:
- (a) Agent's consent to act as agent;
  - (b) Agent's resignation, if appointed without consent;
  - (c) Articles of dissolution;
  - (d) Certificate of judicial dissolution;
  - (e) Application for certificate of withdrawal; and
  - (f) Annual report when filed concurrently with the payment of annual license fees.
- (6) The secretary of state shall collect a fee in an amount established by the secretary of state by rule per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.
- (7) The secretary of state shall establish by rule and collect a fee from every person or organization:
- (a) For furnishing a certified copy of any ~~document-record~~, instrument, or paper relating to a corporation;
  - (b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate; and
  - (c) For furnishing copies of any ~~document-record~~, instrument, or paper relating to a corporation, other than of an initial report or an annual report.
- (8) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570.

**CARC COMMENTARY**

See CARC Comment to 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2102 (eff. 1-1-16)**

~~Corporations are subject to the applicable fees, charges, and penalties established by the (1) The secretary of state under RCW 23.95.260 and 43.07.120. shall collect in accordance with the provisions of this title:~~

- ~~(a) Fees for filing records and issuing certificates;~~
  - ~~(b) Miscellaneous charges;~~
  - ~~(c) License fees as provided in RCW 23B.01.500 through 23B.01.550;~~
  - ~~(d) Penalty fees; and~~
  - ~~(e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.~~
- ~~(2) The secretary of state shall collect the following fees when the records described in this subsection are delivered for filing:~~
- ~~One hundred seventy five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:~~
- ~~(a) Articles of incorporation; and~~
  - ~~(b) Application for certificate of authority.~~
- ~~(3) The secretary of state shall establish by rule, fees for the following:~~
- ~~(a) Application for reinstatement;~~
  - ~~(b) Articles of correction;~~
  - ~~(c) Amendment of articles of incorporation;~~
  - ~~(d) Restatement of articles of incorporation, with or without amendment;~~
  - ~~(e) Articles of merger or share exchange;~~
  - ~~(f) Articles of revocation of dissolution;~~
  - ~~(g) Application for amended certificate of authority;~~
  - ~~(h) Application for reservation, registration, or assignment of reserved name;~~

- ~~(i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;~~
- ~~(j) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;~~
- ~~(k) Initial report; and~~
- ~~(l) Any record not listed in this subsection that is required or permitted to be filed under this title.~~
- ~~(4) Fees shall be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial cost study performed by the secretary of state.~~
- ~~(5) The secretary of state shall not collect fees for:~~
  - ~~(a) Agent's consent to act as agent;~~
  - ~~(b) Agent's resignation, if appointed without consent;~~
  - ~~(c) Articles of dissolution;~~
  - ~~(d) Certificate of judicial dissolution;~~
  - ~~(e) Application for certificate of withdrawal; and~~
  - ~~(f) Annual report when filed concurrently with the payment of annual license fees.~~
- ~~(6) The secretary of state shall collect a fee in an amount established by the secretary of state by rule per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.~~
- ~~(7) The secretary of state shall establish by rule and collect a fee from every person or organization:~~
  - ~~(a) For furnishing a certified copy of any record, instrument, or paper relating to a corporation;~~
  - ~~(b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate; and~~
  - ~~(c) For furnishing copies of any record, instrument, or paper relating to a corporation, other than of an initial report or an annual report.~~
- ~~(8) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570.~~

\* \* \* \* \*

## **RCW 23B.01.230**

### **EFFECTIVE TIME AND DATE OF RECORD**

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#### ***CURRENT SECTION***

**A record filed with the secretary of state is effective as provided in RCW 23.95.210, and may state a delayed effective date and time in accordance with RCW 23.95.210.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §6 (eff. 7-1-90)**

(1) Except as provided in subsection (2) of this section and RCW 23B.01.240(3), a document accepted for filing is effective on the date it is filed by the secretary of state and at the time on that date specified in the document. If no time is specified in the document, the document is effective at the close of business on the date it is filed by the secretary of state.

(2) If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a document specifies a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(3) When a document is received for filing by the secretary of state in a form which complies with the requirements of this title and which would entitle the document to be filed on receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to and be shown as the date on which the secretary of state first received the document in acceptable form.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal, 51<sup>st</sup> Legis. 2984-85 (1989)**

###### *Section 1.23 Effective Time and Date of Document.*

Proposed subsection 1.23(a) provides that documents accepted for filing become effective at the close of business on the date of filing, or at another specified time on that date, unless a delayed effective date is selected under Proposed subsection 1.23(b). Proposed subsection 1.23(c) continues the rule stated in the old law: it treats a document as effective as of the date it is submitted for filing even though it may not be reviewed and accepted for filing until several days later. The effective time provisions set forth in Proposed subsection 1.23(a) should provide counsel with sufficient flexibility to plan same-day transactions in which documents (e.g., articles of merger) are filed on the morning of the day the transaction is to become effective.

Proposed subsection 1.23(b) provides an alternative method of establishing the effective date of a document. The document itself may fix as its effective date any date within 90 days after the date it is filed; it may also fix the time it becomes effective on that date. If no time is specified, the document becomes effective as of the close of business on the specified date. The Proposed Act also allows the effective date fixed in a document to be corrected to a limited extent. See the Comment to Proposed section 1.24.

Proposed subsection 1.23(b) does not authorize the retroactive establishment of an effective date before the date of filing.

##### **AMENDMENTS TO ORIGINAL SECTION**

###### **Laws 2002, ch. 297, §4 (eff. 6-13-02)**

(1) Except as provided in subsection (2) of this section and RCW 23B.01.240(3), a ~~document-record~~ accepted for filing is effective on the date it is filed by the secretary of state and at the time on that date specified in the ~~document-record~~. If no time is specified in the ~~document-record~~, the ~~document-record~~ is

effective at the close of business on the date it is filed by the secretary of state.

(2) If a ~~document-record~~ specifies a delayed effective time and date, the ~~document-record~~ becomes effective at the time and date specified. If a ~~document-record~~ specifies a delayed effective date but no time is specified, the ~~document-record~~ is effective at the close of business on that date. A delayed effective date for a ~~document-record~~ may not be later than the ninetieth day after the date it is filed.

(3) When a ~~document-record~~ is received for filing by the secretary of state in a form which complies with the requirements of this title and which would entitle the ~~document-record~~ to be filed on receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to and be shown as the date on which the secretary of state first received the ~~document-record~~ in acceptable form.

**CARC COMMENTARY**

See CARC Comment to 2002 Amendment of RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2103 (eff. 1-1-16)**

~~(1) Except as provided in subsection (2) of this section and RCW 23B.01.240(3), a record accepted for filing is effective on the date it is filed by the secretary of state and at the time on that date specified in the record. If no time is specified in the record, the record is effective at the close of business on the date it is filed by the secretary of state.~~

~~(2) If a record specifies a delayed effective time and date, the record becomes effective at the time and date specified. If a record specifies a delayed effective date but no time is specified, the record is effective at the close of business on that date. A delayed effective date for a record may not be later than the ninetieth day after the date it is filed.~~

~~(3) When a record is received for filing by the secretary of state in a form which complies with the requirements of this title and which would entitle the record to be filed on receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to and be shown as the date on which the secretary of state first received the record in acceptable form. A record filed with the secretary of state is effective as provided in RCW 23.95.210, and may state a delayed effective date and time in accordance with RCW 23.95.210.~~

\* \* \* \* \*



## **RCW 23B.01.240**

### **CORRECTING FILED RECORDS**

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#### ***CURRENT SECTION***

**A domestic or foreign corporation may correct a record filed by the secretary of state in accordance with RCW 23.95.220.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §7 (eff. 7-1-90)**

(1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (a) contains an incorrect statement; or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) By preparing articles of correction that (i) describe the document, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2985 (1989)**

###### ***Section 1.24 Correcting Filed Document.***

Proposed section 1.24 permits making corrections in filed documents without refiling the entire document or submitting formal articles of amendment. This correction procedure has two advantages: (1) filing articles of correction may be less expensive than refiling the document or filing articles of amendment, and (2) articles of correction do not alter the effective date of the underlying document being corrected. Indeed, under Proposed subsection 1.24(c), even the correction relates back to the original effective date of the document except as to persons relying on the original document and adversely affected by the correction. As to these persons, the effective date of articles of correction is the date such articles are filed.

A document may be corrected either because it contains an "incorrect statement" or because it was defectively executed (including defects in optional forms of execution that do not affect the eligibility of the original document for filing).

A provision in a document setting an effective date (Proposed section 1.23) may be corrected under this section, but the corrected effective date must comply with Proposed section 1.23 measured from the date of the original filing of the document being corrected, i.e., it cannot be before the date of filing of the document or more than 90 days thereafter.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2002, ch. 297, §5 (eff. 6-13-02)**

(1) A domestic or foreign corporation may correct a ~~document-record~~ filed by the secretary of state if the ~~document-record~~ (a) contains an incorrect statement; or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A ~~document-record~~ is corrected:

(a) By preparing articles of correction that (i) describe the ~~document-record~~, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the ~~document-record~~ they correct except as to persons relying on the uncorrected ~~document-record~~ and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

***CARC COMMENTARY***

See CARC Comment to 2002 Amendment of RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2104 (eff. 1-1-16)**

~~(1) A domestic or foreign corporation may correct a record filed by the secretary of state if the record (a) contains an incorrect statement; or (b) was defectively executed, attested, sealed, verified, or acknowledged.~~

~~(2) A record is corrected:~~

~~(a) By preparing articles of correction that (i) describe the record, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and~~

~~(b) By delivering the articles of correction to the secretary of state for filing.~~

~~(3) Articles of correction are effective on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are effective when filed in accordance with RCW 23.95.220.~~

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## **RCW 23B.01.250**

### **FILING DUTY OF SECRETARY OF STATE**

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#### ***CURRENT SECTION***

**RCW 23.95.225 governs the secretary of state's duty to file records delivered to the secretary of state for filing, the manner and effect of filing, and procedures that apply when the secretary of state refuses to file a record.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §8 (eff. 7-1-90)**

- (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of RCW 23B.01.200, the secretary of state shall file it.
- (2) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date of filing, on both the original and the document copy. After filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative.
- (3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief written explanation of the reason for the refusal.
- (4) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:
  - (a) Affect the validity or invalidity of the document in whole or part;
  - (b) Relate to the correctness or incorrectness of information contained in the document; or
  - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2985-86 (1989)**

###### ***Section 1.25 Filing Duty of Secretary of State.***

Under Proposed section 1.25 the secretary of state is required to file a document if it "satisfies the requirements of section 1.20." This language should be contrasted with the old law (and many state statutes) that required the secretary of state to ascertain whether the document "conformed with law" before filing it. The purpose of this change is to limit the discretion of the secretary of state to a ministerial role in reviewing the contents of documents. If the document submitted is in the form prescribed and contains the information required by Proposed section 1.20 and the applicable provision of the Proposed Act, the secretary of state under Proposed section 1.25 must file it even though it contains additional provisions the secretary of state may feel are irrelevant or not authorized by the Proposed Act or by general principles. Consistently with this approach, Proposed subsection 1.25(d) states that the filing duty of the secretary of state is ministerial and provides that filing a document with the secretary of state does not affect the validity or invalidity of any provision contained in the document and does not create any presumption with respect to any provision. Persons adversely affected by provisions in a document may test their validity in a proceeding appropriate for that purpose. Similarly, the attorney general of the state may also question the validity of provisions of documents filed with the secretary of state in an independent suit brought for that purpose; in neither case should any presumption or inference be drawn about the validity of the provision from the fact that the secretary of state accepted the document for filing.

Proposed subsection 1.25(b) provides that when the secretary of state files a document, the secretary of state stamps or endorses it as filed, retains the signed original document for the secretary of state's records, and returns the exact or conformed copy (which must accompany the document under Proposed subsection 1.20(i)) to the corporation or its representative. This will establish that a document has been filed in the

form of the copy. Consideration was given to dispensing with the document copy entirely and providing only for the return of a fee receipt or equivalent document. Several states currently follow this practice with respect to articles of incorporation and other documents. It was felt to be important, however, to continue a practice by which each corporation receives back from the secretary of state for its records a document that on its face shows that it is an exact or conformed copy of the document that was filed with the secretary of state. This copy is usually placed in the minute book and is available for informal inspection without requiring a person to examine the records of the secretary of state. Of course, a person desiring a certified copy of any filed document may obtain it from the office of the secretary of state by paying the fee prescribed in Proposed subsection 1.22(d).

Proposed subsection 1.25(b) provides that acceptance of articles of incorporation or other documents is evidenced merely by return of a copy endorsed as filed. The old law and the statutes of many states provided that acceptance by the secretary of state is evidenced by a "certificate" (e.g., of incorporation, of merger, or of amendment). This older practice was not retained in the Proposed Act because it was felt desirable to reduce the number of pieces of paper issued by the secretary of state.

Because of the simplification of formal filing requirements and the limited discretion granted to the secretary of state by the Proposed Act, it is probable that rejection of documents for filing will occur only rarely. Proposed subsection 1.25(c) provides that if the secretary of state does reject a document for filing the secretary of state must return it to the corporation or its representative together with a brief written explanation of the secretary of state's reason for rejection. This rejection may be the basis of judicial review under Proposed section 1.26.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 2002, ch. 297, §6 (eff. 6-13-02)**

(1) If a ~~document-record~~ delivered to the office of the secretary of state for filing satisfies the requirements of RCW 23B.01.200, the secretary of state shall file it.

(2)(a) The secretary of state files a ~~document-record~~: (i) In the case of a record in a tangible medium, by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date of filing, on both the original and the ~~document-record~~ copy. After filing a document; and (ii) in the case of an electronically transmitted record, by the electronic processes as may be prescribed by the secretary of state from time to time that result in the information required by (a)(i) of this subsection being permanently attached to or associated with such electronically transmitted record.

(b) After filing a record, the secretary of state shall deliver ~~the document copy~~ a record of the filing to the domestic or foreign corporation or its representative either: (i) In a written copy of the filing; or (ii) if the corporation has designated an address, location, or system to which the record may be electronically transmitted and the secretary of state elects to provide the record by electronic transmission, in an electronically transmitted record of the filing.

(3) If the secretary of state refuses to file a ~~document-record~~, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief ~~written~~ explanation of the reason for the refusal. The explanation shall be either: (a) In a written record or (b) if the corporation has designated an address, location, or system to which the explanation may be electronically transmitted and the secretary of state elects to provide the explanation by electronic transmission, in an electronically transmitted record.

(4) The secretary of state's duty to file ~~documents-records~~ under this section is ministerial. Filing or refusal to file a ~~document-record~~ does not:

- (a) Affect the validity or invalidity of the ~~document-record~~ in whole or part;
- (b) Relate to the correctness or incorrectness of information contained in the ~~document-record~~; or
- (c) Create a presumption that the ~~document-record~~ is valid or invalid or that information contained in the ~~document-record~~ is correct or incorrect.

#### **CARC COMMENTARY**

See CARC Comment to 2002 Amendment to RCW 23B.01.410.

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**Laws 2015, ch. 176, §2105 (eff. 1-1-16)**

~~(1) If a record delivered to the office of the secretary of state for filing satisfies the requirements of RCW 23B.01.200, the secretary of state shall file it.~~

~~(2)(a) The secretary of state files a record: (i) In the case of a record in a tangible medium, by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date of filing, on both the original and the record copy; and (ii) in the case of an electronically transmitted record, by the electronic processes as may be prescribed by the secretary of state from time to time that result in the information required by (a)(i) of this subsection being permanently attached to or associated with such electronically transmitted record.~~

~~(b) After filing a record, the secretary of state shall deliver a record of the filing to the domestic or foreign corporation or its representative either: (i) In a written copy of the filing; or (ii) if the corporation has designated an address, location, or system to which the record may be electronically transmitted and the secretary of state elects to provide the record by electronic transmission, in an electronically transmitted record of the filing.~~

~~(3) If the secretary of state refuses to file a record, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief explanation of the reason for the refusal. The explanation shall be either: (a) In a written record or (b) if the corporation has designated an address, location, or system to which the explanation may be electronically transmitted and the secretary of state elects to provide the explanation by electronic transmission, in an electronically transmitted record.~~

~~(4) The secretary of state's duty to file records under this section is ministerial. Filing or refusal to file a record does not:~~

~~(a) Affect the validity or invalidity of the record in whole or part;~~

~~(b) Relate to the correctness or incorrectness of information contained in the record; or~~

~~(c) Create a presumption that the record is valid or invalid or that information contained in the record is~~

~~correct or incorrect RCW 23.95.225 governs the secretary of state's duty to file records delivered to the secretary of state for filing, the manner and effect of filing, and procedures that apply when the secretary of state refuses to file a record.~~

\* \* \* \* \*



**RCW 23B.01.260**  
**JUDICIAL REVIEW OF SECRETARY OF STATE'S REFUSAL TO FILE**  
**A RECORD**

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**REPEALED Laws 2015, ch. 176, §2149 (eff. 1-1-16)**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §9 (eff. 7-1-90)**

If the secretary of state refuses to file a document delivered to the office for filing, the person submitting the document, in addition to any other legal remedy which may be available, shall have the right to judicial review of such refusal pursuant to the provisions of chapter 34.05 RCW.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2986 (1989)**

*Section 1.26 Judicial Review of Secretary of State's Refusal To File Document.*

The Committee rejected the RMA approach, which would have defined the court to hear appeals from actions of the secretary of state, described the petition, and make some very general statements regarding the proceeding and appeal therefrom. The Committee believed that the only comprehensive way to deal with such judicial review was to invoke the Administrative Procedure Act and authorities thereunder. Hence, it substituted Proposed section 1.26 for RMA §1.26.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2002, ch. 297, §7 (eff. 6-13-02)**

If the secretary of state refuses to file a ~~document delivered to record~~ document received by the office for filing, the person submitting the ~~document~~record, in addition to any other legal remedy which may be available, shall have the right to judicial review of such refusal pursuant to the provisions of chapter 34.05 RCW.

***CARC COMMENTARY***

See CARC Comment to 2002 Amendment of RCW 23B.01.410.

**REPEALED SECTION**

If the secretary of state refuses to file a record received by the office for filing, the person submitting the record, in addition to any other legal remedy which may be available, shall have the right to judicial review of such refusal pursuant to the provisions of chapter 34.05 RCW.

\* \* \* \* \*





**RCW 23B.01.270**  
**EVIDENTIARY EFFECT OF COPY OF FILED RECORD**

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**REPEALED** Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §10 (eff. 7-1-90)

A certificate bearing the manual or facsimile signature of the secretary of state and the seal of the state, when attached to or located on a document or a copy of a document filed by the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

**OFFICIAL LEGISLATIVE HISTORY** Senate Journal 51<sup>st</sup> Legis. 2986 (1989)

*Section 1.27 Evidentiary Effect of Copy of Filed Document.*

The secretary of state may be requested to certify that a specific document has been filed with the secretary of state upon payment of the fees specified in Proposed section 1.22. Proposed section 1.27 provides that the certificate is conclusive evidence only that the original document is on file. The limited effect of the certificate is consistent with the ministerial filing obligation imposed on the secretary of state under the Proposed Act.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2002, ch. 297, §8 (eff. 6-13-02)**

A certificate bearing the manual or facsimile signature of the secretary of state and the seal of the state, when attached to or located on a ~~document-record~~ or a copy of a ~~document-record~~ filed by the secretary of state, is conclusive evidence that the original ~~document-record~~ is on file with the secretary of state.

***CARC COMMENTARY***

See CARC Comment to 2002 Amendment of RCW 23B.01.410.

**REPEALED SECTION**

A certificate bearing the manual or facsimile signature of the secretary of state and the seal of the state, when attached to or located on a record or a copy of a record filed by the secretary of state, is conclusive evidence that the original record is on file with the secretary of state.

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## **RCW 23B.01.280**

### **CERTIFICATE OF EXISTENCE OR AUTHORIZATION**

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#### ***CURRENT SECTION***

**Any person may apply to the secretary of state under RCW 23.95.235 to furnish a certificate of existence for a domestic corporation or a certificate of registration for a foreign corporation.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §11 (eff. 7-1-90)**

- (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.
- (2) A certificate of existence or authorization means that as of the date of its issuance:
  - (a) The domestic corporation is duly incorporated under the laws of this state, or that the foreign corporation is authorized to transact business in this state;
  - (b) All fees and penalties owed to this state under this title have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;
  - (c) The corporation's most recent annual report required by RCW 23B.16.220 has been delivered to the secretary of state; and
  - (d) Articles of dissolution or an application for withdrawal have not been filed by the secretary of state.
- (3) A person may apply to the secretary of state to issue a certificate covering any fact of record.
- (4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in the corporate form in this state.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2986-87 (1989)**

###### *Section 1.28 Certificate of Existence or Authorization.*

Proposed section 1.28 establishes a procedure by which any person may obtain a conclusive certificate from the secretary of state that a particular domestic or foreign corporation is in existence or is authorized to transact business in the state. The secretary of state is to make the judgment whether or not the corporation is in existence or is authorized to transact business from public records only and is not expected to make a more extensive investigation. In appropriate cases, the secretary of state may issue a certificate subject to specified qualifications.

Proposed subsection 1.28(b)(5) refers only to fees or penalties imposed by the Proposed Act and collected by the secretary of state or collected by other agencies and reported to the secretary of state. Proposed subsection 1.28(b)(5) relates only to fees or penalties to the extent their nonpayment affects the existence or authorization to transact business of the corporation.

A certificate of existence or authorization that may be relied on as binding and conclusive is of material assistance to attorneys who may be required to give formal legal opinions in connection with corporate transactions.

##### **AMENDMENTS TO ORIGINAL SECTION**

###### **Laws 1991, ch. 72, §27 (eff. 7-28-91) (amends only subsection (2) of the original provision)**

- (2) A certificate of existence or authorization means that as of the date of its issuance:
  - (a) The domestic corporation is duly incorporated under the laws of this state, or that the foreign corporation is authorized to transact business in this state;

- (b) All fees and penalties owed to this state under this title have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;
- (c) The corporation's initial report or its most recent annual report required by RCW 23B.16.220 has been delivered to the secretary of state; and
- (d) Articles of dissolution or an application for withdrawal have not been filed by the secretary of state.

***CARC COMMENTARY***

Amendment recognizes the distinction (created by amendment to RCW 23B.01.210) between a corporation's initial report, and its annual reports filed thereafter. See CARC Comment to 1991 amendment to 23B.01.210.

\* \* \* \* \*

**Laws 2015, ch. 176, §2106 (eff. 1-1-16)**

- (1) Any person may apply to the secretary of state under RCW23.95.235 to furnish a certificate of existence for a domestic corporation or a certificate of authorization registration for a foreign corporation.
- (2) ~~A certificate of existence or authorization means that as of the date of its issuance:~~
  - (a) ~~The domestic corporation is duly incorporated under the laws of this state, or that the foreign corporation is authorized to transact business in this state;~~
  - (b) ~~All fees and penalties owed to this state under this title have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;~~
  - (c) ~~The corporation's initial report or its most recent annual report required by RCW 23B.16.220 has been delivered to the secretary of state; and~~
  - (d) ~~Articles of dissolution or an application for withdrawal have not been filed by the secretary of state.~~
- (3) ~~A person may apply to the secretary of state to issue a certificate covering any fact of record.~~
- (4) ~~Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in the corporate form in this state.~~

\* \* \* \* \*

**RCW 23B.01.290**  
**PENALTY FOR SIGNING FALSE DOCUMENT**

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***CURRENT SECTION***

**RCW 23.95.240 governs the penalty that applies for executing a false record that intended to be delivered to the secretary of state for filing.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §12 (eff. 7-1-90)**

Same as current.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2987 (1989)**

*Section 1.29 Penalty for Signing False Document.*

Proposed section 1.29 makes it a criminal offense for any person to sign a document knowing it is false in any material respect with intent that the document be submitted for filing to the secretary of state.

\* \* \* \* \*

**Laws 2015, ch. 176, §2107 (eff. 1-1-16)**

~~Any person who signs a document such person knows is false any material respect with intent that the document be delivered the secretary of state for filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW~~ RCW 23.95.240 governs the penalty that applies for executing a false record that intended to be delivered to the secretary of state for filing.

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## **RCW 23B.01.400**

### **DEFINITIONS**

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#### ***CURRENT SECTION***

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

- (1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
- (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.
- (3) "Conspicuous" means so prepared that a reasonable person against whom the record is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
- (4) "Corporate action" means any resolution, act, policy, contract, transaction, plan, adoption or amendment of articles of incorporation or bylaws, or other matter approved by or submitted for approval to a corporation's incorporators, board of directors or a committee thereof, or shareholders.
- (5) "Corporation" or "domestic corporation" means a corporation for profit, including a social purpose corporation, which is not a foreign corporation, incorporated under or subject to the provisions of this title.
- (6) "Deliver" includes (a) mailing, (b) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders, transmission by facsimile equipment, and (c) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders under RCW 23B.01.410 or chapter 23B.07, 23B.08, 23B.11, 23B.13, 23B.14, or 23B.16 RCW delivery by electronic transmission.
- (7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
- (8) "Effective date of notice" has the meaning provided in RCW 23B.01.410.
- (9) "Electronic transmission" means an electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.
- (10) "Electronically transmitted" means the initiation of an electronic transmission.
- (11) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.
- (12) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, two or more persons having a joint or common economic interest, the state, United

States, and a foreign governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Execute," "executes," or "executed" means (a) signed with respect to a written record or (b) electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission, or (c) with respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

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

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

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

(17) "Governmental subdivision" includes authority, county, district, and municipality.

(18) "Includes" denotes a partial definition.

(19) "Individual" includes the estate of an incompetent or deceased individual.

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

(21) "Means" denotes an exhaustive definition.

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

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

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

(25) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

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

(27) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to RCW 23B.08.735, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020(5)(k), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or



employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

(28) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

(29) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title.

The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(30) "Registered office" means the address of the corporation's registered agent.

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

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

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

(34) "Social purpose" includes any general social purpose and any specific social purpose.

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

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

(37) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

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

(39) "Tangible medium" means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.

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

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

(42) "Writing" does not include an electronic transmission.

(43) "Written" means embodied in a tangible medium.

**Revisers note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k). (2) This section was amended by 2015 c 20 § 1 and by 2015 c 176 § 2148, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

## ***HISTORY AND COMMITTEE COMMENTARY***

### **ORIGINAL SECTION Laws 1989, ch. 165, §14 (eff. 7-1-90)**

The following terms in the current section are the same in the original section: articles of incorporation, authorized shares, corporation, effective date of notice, employee, foreign corporation, governmental subdivision, includes, individual, means, notice, principal office, proceeding, record date, secretary, shares, shareholder, state, subscriber, United States, and voting group.

The following terms in the current section were in the original section, but with the following definition:

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Deliver" includes mailing.

"Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

"Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government. "Person" includes an individual and an entity.

"Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, and that has more than three hundred holders of record of its shares.

The remaining terms in the current section have been added since the original was effective.

### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2987-88 (1989)**

#### *Section 1.40 Title Definitions.*

Proposed section 1.40 collects in a single section definitions of terms used throughout the Proposed Act. Sections of the Act in a few instances contain specialized definitions applicable only to those sections.

Some of the definitions of Proposed section 1.40 are drawn directly from the old law and are reasonably self-explanatory. A number of definitions, however, are new or deserve further explanation.

"Conspicuous" is defined in Proposed subsection 1.40(3) basically as defined in section 1-201(10) of the UNIFORM COMMERCIAL CODE. Even though the definition indicates some of the methods by which a provision may be made attention-calling, the test is whether attention can reasonably be expected to be called to it.

"Corporation," "domestic corporation," and "foreign corporation" are defined in Proposed subsections 1.40(4) and (10). The word "corporation," when used alone, refers only to domestic corporations. In a few instances, the phrase "domestic corporation" has been used in order to contrast it with a foreign corporation.

The term "distribution" defined in Proposed subsection 1.40(6) is a fundamental element of the financial provisions of the old law as amended in 1984. Proposed section 6.40 sets forth a single, unitary test for the validity of any "distribution." Proposed subsection 1.40(6) in turn defines "distribution" to include all transfers of money or other property made by a corporation to any shareholder in respect of the corporation's shares, except mere changes in the unit of interest such as share dividends and share splits.

Thus, a "distribution" includes the declaration or payment of a dividend, a purchase by a corporation of its own shares, a distribution of evidences of indebtedness or promissory notes of the corporation, and a distribution in voluntary or involuntary liquidation.

The term "indirect" in the definition of "distribution" is intended to include transactions like the repurchase of parent company shares by a subsidiary whose actions are controlled by the parent. It also is intended to include any other transaction in which the substance is clearly the same as a typical dividend or share repurchase, no matter how structured or labeled.

The term "entity," defined in Proposed subsection 1.40(9), appears in the definition of "person" in Proposed subsection 1.40(16) and is included to cover all types of artificial persons. See also the definitions of "governmental subdivision," in Proposed subsection 1.40(11), "state," in Proposed subsection 1.40(23), and "United States," in Proposed subsection 1.40(25).

Proposed subsection 1.40(17) defines the principal office of a corporation to be the office, within or without the state, where the principal executive office of the corporation is located. Many corporations maintain numerous offices, but there is usually one office, sometimes colloquially referred to as the home office, headquarters, or executive suite, where the principal corporate officers are located. The corporation must designate its principal office address in the annual report required by Proposed section 16.22. In case of doubt as to which corporate office is the principal office, the designation by the corporation in its annual report should be accepted as establishing the principal office of the corporation.

The definition of "shareholder" in Proposed subsection 1.40(22) includes a beneficial owner of shares named in a nominee certificate under Proposed section 7.23, but only to the extent of the rights granted the beneficial owner in the certificate--for example, the right to receive notice of, and vote at, a shareholders' meeting. Various substantive sections of the Proposed Act also permit holders of voting trust certificates or beneficial owners of shares (not subject to a nominee certificate under Proposed section 7.23) to exercise some of the rights of a "shareholder." See, for example, Proposed section 7.40 (derivative proceedings). The term "secretary" is defined in Proposed subsection 1.40(20) since the Proposed Act does not require the corporation to maintain any specific or titled officers. See Proposed section 8.40. However, some corporate officer, however titled, must perform the functions described in this definition, and that officer is referred to as the "secretary" in various sections of the Act that impose a duty on that person.

The term "person" is defined in Proposed subsection 1.40(16) to include an individual or an entity. In the case of an individual the Proposed Act assumes that the person is competent to act in the matter under general state law independent of the corporation statute.

Proposed subsection 1.40(27) defines "voting group" for purposes of the Act as a matter of convenient reference. A "voting group" consists of all shares of one or more classes or series that under the articles of incorporation or the title are entitled to vote and be counted together collectively on a matter. Shares entitled to vote "generally" on a matter under the articles of incorporation or this title are for that purpose a single voting group. The word "generally" signifies all shares entitled to vote on the matter by the articles of incorporation or this title that do not expressly have the right to be counted or tabulated separately. "Voting groups" are thus the basic units of collective voting at a shareholders' meeting, and voting by voting groups may provide essential protection to one or more classes or series of shares against actions that are detrimental to the rights or interests of that class or series.

The determination of which shares form part of a single voting group must be made from the provisions of the articles of incorporation and of this title. In a few instances under the Proposed Act, the board of directors may establish the right to vote by voting groups. On most matters coming before shareholders' meetings, only a single voting group, consisting of a class of voting or common shares, will be involved, and action on such a matter is effective when approved by that voting group pursuant to Proposed section 7.25. See Proposed subsection 7.26(a). If a second class of shares is also entitled to vote on the matter,

then a further determination must be made as to whether that class is to vote as a separate voting group or whether it is to vote along with the other voting shares as part of a single voting group.

Members of the board of directors are usually elected by the single voting group of shares entitled to vote generally; in some circumstances, however, some members of the board may be selected by one voting group and other members by one or more different voting groups. See Proposed section 8.03.

The definition of a voting group permits the establishment by statute of quorum and voting requirements for a variety of matters considered at shareholders' meetings in corporations with multiple classes of shares. See Proposed sections 7.25 and 7.26. Depending on the circumstances, two classes or series of shares may vote together collectively on a matter as a single voting group, they may be entitled to vote on the matter separately as two voting groups, or one or both of them may not be entitled to vote on the matter at all.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1991, ch. 72, §28 (eff. 7-28-91)**

*(only definitions amended or added are presented; amendments changing only subsection numbers are ignored) (amends original "deliver")*

"Deliver" includes (a) mailing and (b) for purposes of delivering a demand, consent, or waiver to the corporation or one of its officers, transmission by facsimile equipment.

**CARC COMMENTARY**

The definition of "deliver" in subsection (5) is expanded to make it clear that demands, consents and waivers may be delivered to the corporation and its officers by facsimile transmission (as permitted for written notice under RCW 23B.01.410(2).)

\* \* \* \* \*

**Laws 1991, ch. 269, §35 (eff. 7-28-91) (added two definitions)**

"Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

"Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

**CARC COMMENTARY**

Definitions were added as part of 1991 amendments by Chapter 269 to the Limited Partnership Act to permit mergers between corporations and limited partnerships. See CARC Comment to 1991 Amendment to RCW 23B.11.110.

\* \* \* \* \*

**Laws 1995, ch. 47, §1 (eff. 7-23-95) (amends "distribution")**

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

**CARC COMMENTARY**

The term "distribution" was introduced into the Washington Business Corporation Act in 1984 as part of a general revision of the financial provisions of the Act. The prior law had imposed different tests upon a corporation's distributions to its shareholders, which varied with the precise form of the distribution. The 1984 amendment used a broad definition of the term as a critical part

of a revision that subjected all forms of distributions to shareholders to a single series of tests. However, the statute was not clear as to the status of distributions made in connection with liquidation or dissolution of the corporation. On the other hand, the commentary to the 1984 amendments, and to the 1989 general revision of the Act, both state that a “distribution” includes “a distribution in voluntary and involuntary liquidation.” The proposed amendment simply adds that statement to the definition in the statute and thereby removes an important ambiguity in the current statute.

\* \* \* \* \*

**Laws 1996, ch. 155, §4 (eff. 6-6-96) (amends “public company”)**

"Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute, ~~and that has more than three hundred holders of record of its shares.~~

**CARC COMMENTARY**

Last clause deleted as surplusage.

\* \* \* \* \*

**Laws 2000, ch. 168, §1 (eff. 6-8-00) (adds “electronic transmission”)**

"Electronic transmission" or "electronically transmitted" means any process of electronic communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of the transmitted information by the recipient.

**CARC COMMENTARY**

See CARC Comment to 2000 Amendment to RCW 23B.07.220.

\* \* \* \* \*

**Laws 2002, ch. 296, §1 (eff. 6-13-02) (amends “person”)**

"Person" includes an individual and an entity means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

**CARC COMMENTARY**

In reviewing RCW Chapter 23B, CARC noted that the definition of “person” used in RCW 23B.01.100(19) and the definitions of “person” in the Partnership Act, the Limited Liability Company Act and Limited Partnership Act, while very similar, are each slightly different without good reason. The recent adoption of the Revised Uniform Partnership Act (RCW Chapter 25.05) in 1998 provides a good model for the definition in each business organization statute. Accordingly, CARC is proposing that the Chapter 23B definitions of a person be revised to be consistent with the other statutes. Similar revisions to “person” are being suggested for RCW Chapter 25.10 (Limited Partnerships) and RCW Chapter 25.15 (Limited Liability Companies). The issue is somewhat more complicated in Chapter 23B because the WBCA also has a definition of “entity” which is not in the other statutes. With the proposed revisions to “entity” in the Chapter 23B definitions, the result is that a “person” under Chapter 23B.

\* \* \* \* \*

**Laws 2002, ch. 297, §9 (eff. 6-13-02) (amends “conspicuous”, “deliver”, “electronic transmission”, “entity”; adds “electronically transmitted”, “execute”, “record”, “tangible medium”, “writing”, and “written”.)**

"Conspicuous" means so ~~written-prepared~~ that a reasonable person against whom the ~~writing-record~~ is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Deliver" includes (a) mailing, and (b) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders, transmission by facsimile equipment, and (c) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders under RCW 23B.01.410 or chapter 23B.07, 23B.08, 23B.11, 23B.13, 23B.14, or 23B.16 RCW delivery by electronic transmission.

"Electronic transmission" or "electronically transmitted" means any process of an electronic communication (a) not directly involving the physical transfer of paper a record in a tangible medium and (b) that is suitable for the retention, retrieval, and reproduction of the transmitted information by the recipient may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

"Electronically transmitted" means the initiation of an electronic transmission.

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

"Execute," "executes," or "executed" means (a) signed with respect to a written record or (b) electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission, or (c) with respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

"Record" means information inscribed on a tangible medium or contained in an electronic transmission.

"Tangible medium" means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.

"Writing" does not include an electronic transmission.

"Written" means embodied in a tangible medium.

***CARC COMMENTARY***

See CARC Comment to 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

**Laws 2009, ch. 189, §1 (eff. 7-26-09) (adds "corporate action.")**

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

***CARC COMMENTARY***

The term "corporate action" is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

\* \* \* \* \*

**Laws 2012, ch. 215, §17 (eff. 6-7-12) (adds "social purpose")**

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

(16) "General social purpose" means the general social purpose for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with section 5(1)(c) of this act.

~~((17))~~ (17) "Governmental subdivision" includes authority, county, district, and municipality.

~~((17))~~ ~~((18))~~ (18) "Includes" denotes a partial definition.

~~((18))~~ ~~((19))~~ (19) "Individual" includes the estate of an incompetent or deceased individual.

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

~~((20))~~ (21) "Means" denotes an exhaustive definition.

~~((21))~~ (22) "Notice" has the meaning provided in RCW 23B.01.410.

~~((22))~~ (23) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~((23))~~ (24) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

~~((24))~~ (25) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

~~((25))~~ (26) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

~~((26))~~ (27) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

~~((27))~~ (28) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

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

~~((29))~~ (30) "Shares" means the units into which the proprietary interests in a corporation are divided.

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

~~((31))~~ (32) "Social purpose" includes any general social purpose and any specific social purpose.

(33) "Social purpose corporation" means a corporation that has elected to be governed as a social purpose corporation under chapter 23B.--- RCW (the new chapter created in section 19 of this act).

(34) "Specific social purpose" means the specific social purpose or purposes for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with section 5(2)(a) of this act.

(35) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

~~((32))~~ (36) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~((33))~~ (37) "Tangible medium" means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.

~~((34))~~ (38) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

~~((35))~~ (39) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

~~((36))~~ (40) "Writing" does not include an electronic transmission.

~~((37))~~ (41) "Written" means embodied in a tangible medium.

\* \* \* \* \*

**Laws 2015, ch. 20, §1 (eff. 7-24-15) (adds "qualified director")**

(27) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to section 5 of this act, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020(5)(k), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

(28) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

~~((28))~~(29) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~((29))~~(30) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

~~((30))~~(31) "Shares" means the units into which the proprietary interests in a corporation are divided.

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

~~((32))~~(33) "Social purpose" includes any general social purpose and any specific social purpose.

~~((33))~~(34) "Social purpose corporation" means a corporation that has elected to be governed as a social purpose corporation under chapter 23B.25 RCW.

~~((34))~~(35) "Specific social purpose" means the specific social purpose or purposes for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(2)(a).

~~((35))~~(36) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

~~((36))~~(37) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~((37))~~(38) "Tangible medium" means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.

~~((38))~~(39) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

~~((39))~~(40) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

~~((40))~~(41) "Writing" does not include an electronic transmission.

~~((41))~~(42) "Written" means embodied in a tangible medium.



**CARC COMMENTARY**

Because the term “qualified director” is used not just in the conflicting interest director transaction provisions of RCW 23B.08.700 to .730 but is also now used with respect to provisions with respect to business opportunities, this definition has been moved to RCW 23B.01.400.

Under item (k) of RCW 23B.02.020(5), a provision in the articles of incorporation limiting or eliminating the duty of an officer or related person to offer a business opportunity requires further action by the board of directors before such provision can apply to a specific officer or related person. That action must be by the “qualified directors.” For these purposes, “qualified directors” are directors who are not the relevant officer or related person and who do not have a familial, financial, professional or employment relationship with the relevant officer which could be reasonably expected to exert an influence on the director’s vote.

\* \* \* \* \*

**Laws 2015, ch. 176, §2148 (eff. 1-1-16) (adds “registered office”)**

(30) “Registered office” means the address of the registered agent.

(31) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

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

~~(33) “Shares” means the units into which the proprietary interests in a corporation are divided.~~

~~(32) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.~~

~~(34) “Social purpose” includes any general social purpose and any specific social purpose.~~

~~(35) “Social purpose corporation” means a corporation that has elected to be governed as a social purpose corporation under chapter 23B.25 RCW.~~

~~(36) “Specific social purpose” means the specific social purpose or purposes for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(2)(a).~~

~~(37) “State,” when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.~~

~~(38) “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.~~

~~(39) “Tangible medium” means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.~~

~~(40) “United States” includes a district, authority, bureau, commission, department, and any other agency of the United States.~~

~~(41) “Voting group” means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.~~

~~(42) “Writing” does not include an electronic transmission.~~

~~(43) “Written” means embodied in a tangible medium.~~

\* \* \* \* \*



## **RCW 23B.01.410**

### **NOTICE**

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#### ***CURRENT SECTION***

**(1) Notice under this title must be provided in the form of a record, except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.**

**(2) Permissible means of transmission.**

**(a) Oral notice.** Oral notice may be communicated in person, by telephone, wire, or wireless equipment which does not transmit a facsimile of the notice, or by any electronic means which does not create a record. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

**(b) Notice provided in a tangible medium.** Notice may be provided in a tangible medium and be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment which transmits a facsimile of the notice. If these forms of notice in a tangible medium are impracticable, notice in a tangible medium may be transmitted by an advertisement in a newspaper of general circulation in the area where published.

**(c) Notice provided in an electronic transmission.**

**(i) Notice may be provided in an electronic transmission and be electronically transmitted.**

**(ii) Notice to shareholders or directors in an electronic transmission is effective only with respect to shareholders and directors that have consented, in the form of a record, to receive electronically transmitted notices under this title and designated in the consent the address, location, or system to which these notices may be electronically transmitted and with respect to a notice that otherwise complies with any other requirements of this title and applicable federal law.**

**(A) Notice to shareholders or directors for this purpose includes material that this title requires to accompany the notice.**

**(B) A shareholder or director who has consented to receipt of electronically transmitted notices may revoke this consent by delivering a revocation to the corporation in the form of a record.**

**(C) The consent of any shareholder or director is revoked if (I) the corporation is unable to electronically transmit two consecutive notices given by the corporation in accordance with the consent, and (II) this inability becomes known to the secretary of the corporation, the transfer agent, or any other person responsible for giving the notice. The inadvertent failure by the corporation to treat this inability as a revocation does not invalidate any meeting or other corporate action.**

**(iii) Notice to shareholders or directors who have consented to receipt of electronically transmitted notices may be provided by (A) posting the notice on an electronic network and (B) delivering to the shareholder or director a separate record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.**

(iv) Notice to a domestic or foreign corporation, authorized to transact business in this state, in an electronic transmission is effective only with respect to a corporation that has designated in a record an address, location, or system to which the notices may be electronically transmitted.

(d) Materials accompanying notice to shareholders of public companies. Notwithstanding anything to the contrary in this section or any other section of this title, if this title requires that a notice to shareholders be accompanied by certain material, a public company may satisfy such a requirement, whether or not a shareholder has consented to receive electronically transmitted notice, by (i) posting the material on an electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law) at or prior to the time that the notice is delivered to the public company's shareholders entitled to receive the notice, and (ii) delivering to the public company's shareholders entitled to receive the notice a separate record of the posting (which record may accompany, or be contained in, the notice), together with comprehensible instructions regarding how to obtain access to the posting on the electronic network. In such a case, the material is deemed to have been delivered to the public company's shareholders at the time the notice to the shareholders is effective under this section. A public company that elects pursuant to this section to post on an electronic network any material required by this title to accompany a notice to shareholders is required, at its expense, to provide a copy of the material in a tangible medium (alone or in combination or as part of any other materials the public company has posted on the electronic network in compliance with federal law) to any shareholder entitled to such a notice who so requests.

(3) Effective time and date of notice.

(a) Oral notice. Oral notice is effective when received.

(b) Notice provided in a tangible medium.

(i) Notice in a tangible medium, if in a comprehensible form, is effective at the earliest of the following:

(A) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

(B) When received;

(C) Except as provided in (b)(ii) of this subsection, five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(D) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(ii) Notice in a tangible medium by a domestic or foreign corporation to its shareholder, if in a comprehensible form and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, is effective:

(A) When mailed, if mailed with first-class postage prepaid; and

**(B) When dispatched, if prepaid, by air courier.**

**(iii) Notice in a tangible medium to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to the corporation's registered agent or to the corporation or its secretary at its principal office shown in its most recent annual report, or in the case of a foreign corporation that has not yet delivered its annual report in its foreign registration statement.**

**(c) Notice provided in an electronic transmission. Notice provided in an electronic transmission, if in comprehensible form, is effective when it: (i) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or (ii) has been posted on an electronic network and a separate record of the posting has been delivered to the recipient together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.**

**(4) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §15 (eff. 7-1-90)**

(1) Notice under this title must be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

(2) Written notice may be transmitted by: Mail, private carrier or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment which transmits a facsimile of the notice. If these forms of written notice are impracticable, written notice may be transmitted by an advertisement in a newspaper of general circulation in the area where published. Oral notice may be communicated in person or by telephone, wire or wireless equipment which does not transmit a facsimile of the notice. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(i) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(ii) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(b) Oral notice is effective when communicated if communicated in a comprehensible manner.

(c) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2988-89 (1989)**

*Section 1.41 Notice.*

Proposed section 1.41 establishes rules for determining how notice may be given and when notice is effective for a variety of purposes under the Proposed Act.

Proposed subsection 1.41(a) provides that notice generally under the Act must be given in writing. Proposed subsection 1.41(a) accepts from this general requirement notice of any meeting of the board of directors, which may be oral if expressly authorized by the corporation's articles of incorporation or bylaws. The exception was designed to authorize oral notice of directors' meetings (assuming the required article of incorporation or bylaw provision is present) and to emphasize the breadth of the general requirement of written notice.

Proposed subsection 1.41(b) defines written notice for purposes of the Act essentially as notice which results in the recipient receiving a paper copy of the notice. Thus, written notice includes a notice typed or printed on paper and transmitted by mail, private carrier, or personal delivery to the recipient. Written notice includes a notice transmitted by telegraph if messenger service is specified. Written notice includes a notice transmitted by teletype (including telex and twx) if answerback is received. Written notice includes a notice transmitted by telephone, wire or wireless equipment which transmits a facsimile of the notice. If such equipment does not transmit a facsimile, e.g., electronic mail (even though that system permits hard copies to be made of incoming messages at the option of the recipient), such notice is oral.

Proposed subsection 1.41(c) provides that notice by a corporation to its shareholders is effective when mailed if correctly addressed with sufficient first-class postage. The correct address for this purpose is the address shown in the corporation's records. The effect of this section is to permit the corporation to compute the statutory time periods for notice of shareholders' meetings and other actions from the date the notice is mailed without regard to where its shareholders are located or the time it takes for the mail to reach them.

Written notice to shareholders by persons other than the corporation is effective as provided in Proposed subsection 1.41(e). Notice by the corporation to its shareholders that is not addressed to the record address of the shareholder, or is effective when received under Proposed subsection 1.41(e).

Proposed subsection 1.41(d) provides that notice to a corporation may be addressed to the registered agent of the corporation at its registered office or to the corporation or its secretary at the principal office of the corporation as shown in its most recent public filing. An officer, director, or shareholder of a corporation will normally give written notice to the corporation by delivering or mailing a copy of that notice to the corporation or to the secretary of the corporation at its principal office. Such a notice is effective when it is received. Such notice may be given for a variety of purposes under this Act, e.g., giving notice of intent to dissent (Proposed section 13.21), notice of a demand to inspect books and records (Proposed section 16.02), and notices of resignation (Proposed sections 8.07 and 8.43). This method of giving notice to the corporation, however, is not exclusive, and an officer, director, or shareholder may give notice in other ways as well.

Persons who have no prior relationship with the corporation may give notice either to the registered agent of the corporation, or if they wish, to the corporation or its secretary at its principal office.

Proposed section 1.41 also contains a variety of general provisions dealing with notice. It recognizes, for example, that notice of a board of directors' meeting may be given orally if that is specifically authorized by the articles of incorporation or bylaws. It also deals with situations where notice may be sought to be given to persons for who no current address is available, or where personal notice is impractical. Notice delivered to the person's last known address is effective as described in Proposed subsection 1.41(e) even though never actually received by the person. Proposed subsection 1.41(b) also authorizes notice by publication in some circumstances, including radio, television, or other form of public wire or wireless communication.

Proposed subsection 1.41(g) recognizes that other sections of the Act prescribe specific notice requirements for particular situations--e.g., service of process on a corporation's registered agent under Proposed section 5.04--and that these specific requirements, rather than the general requirements of Proposed section 1.41, control. Finally, the second sentence of Proposed subsection 1.41(g) permits a corporation's articles of incorporation or bylaws to prescribe the corporation's own notice requirements, if they are not inconsistent with the general requirements of this section or specific requirements of other sections of the Act.

The rules set forth in Proposed section 1.41 permit many other sections of the Proposed Act to be phrased simply in terms of giving or delivering notice without repeating details with respect to how notice should be given and when it is effective in various circumstances.

**CARC COMMENTARY**

The Senate Journal inexplicably omits the following paragraphs that were submitted to the Legislature regarding Proposed section 1.41:

Proposed subsection 1.41(a) provides that notice generally under the Act must be given in writing. Proposed subsection 1.41(a) excepts from this general requirement notice of any meeting of the board of directors, which may be oral if expressly authorized by the corporation's articles of incorporation or bylaws. The exception was designed to authorize oral notice of directors; meetings (assuming the required article of incorporation or bylaw provision is present) and to emphasize the breadth of the general requirement of written notice.

Proposed subsection 1.41(b) defines written notice for purposes of the Act essentially as notice which results in the recipient receiving a paper copy of the notice. Thus, written notice includes a notice typed or printed on paper and transmitted by mail, private carrier, or personal delivery to the recipient. Written notice includes a notice transmitted by telegraph if messenger service is specified. Written notice includes a notice transmitted by teletype (including teles and twx) if answerback is received. Written notice includes a notice transmitted by telephone, wire or wireless equipment which transmits a facsimile of the notice. If such equipment does not transmit a facsimile, e.g., electronic mail (even though that system permits hard copies to be made of incoming messages at the option of the recipient), such notice is oral.

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**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1990, ch. 178, §2 (eff. 7-1-90)** (*amends only original subsection 5*)

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched;

(b) When received;

(c) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(d) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(e) Oral notice is effective when communicated if communicated in a comprehensible manner.

(f) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern.

**CARC COMMENTARY**

A new subsection (5)(a) is added, authorizing articles of incorporation or bylaws to provide that notice sent to the address, telephone number, or other number of an addresses appearing on the records of the corporation will be effective on despatch. This option significantly enlarges the methods offered by the Proposed Act to have notice effective despite never being received by the addressee.

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**Laws 1991, ch. 72, §29 (eff. 7-28-91) (amends only subsection 5, as amended by Laws 1990)**

(5) ~~Except as provided in subsection (3) of this section,~~ Written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

(b) When received;

(c) Except as provided in subsection (3) of this section, fFive days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(d) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

**CARC COMMENTARY**

Subsection (5) is reorganized to make it clear that written notice to shareholders may be effected by means other than first-class mail under subsection (3). Subsection (5)(a) is clarified set as to limit the situations in which notice is effective upon dispatch to those contemplated at the time of the 1990 Amendments (i.e., notice by telegraph, teletype or facsimile equipment).

\* \* \* \* \*

**Laws 2002, ch. 297, §10 (eff. 6-13-02)**

(1) ~~Notice under this title must be in writing provided in the form of a record, except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.~~

(2) Written notice may be transmitted by: Mail ~~Permissible means of transmission.~~

(a) Oral notice. Oral notice may be communicated in person, by telephone, wire, or wireless equipment which does not transmit a facsimile of the notice, or by any electronic means which does not create a record. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

(b) Notice provided in a tangible medium. Notice may be provided in a tangible medium and be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment which transmit a facsimile of the notice. If these forms of written notice in a tangible medium are impracticable, written notice in a tangible medium may be transmitted by an advertisement in a newspaper of general circulation in the area where published. Oral notice may be communicated in person or by telephone, wire or wireless equipment which does not transmit a facsimile of the notice. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

(3) ~~Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed with first class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.~~

(4) Written (c) n ~~Notice provided in an electronic transmission.~~

(i) Notice may be provided in an electronic transmission and be electronically transmitted.

(ii) Notice to shareholders or directors in an electronic transmission is effective only with respect to shareholders and directors that have consented, in the form of a record, to receive electronically transmitted notices under this title and designated in the consent the address, location, or system to which these notices



may be electronically transmitted and with respect to a notice that otherwise complies with any other requirements of this title and applicable federal law.

(A) Notice to shareholders or directors for this purpose includes material that this title requires or permits to accompany the notice.

(B) A shareholder or director who has consented to receipt of electronically transmitted notices may revoke this consent by delivering a revocation to the corporation in the form of a record.

(C) The consent of any shareholder or director is revoked if (I) the corporation is unable to electronically transmit two consecutive notices given by the corporation in accordance with the consent, and (II) this inability becomes known to the secretary of the corporation, the transfer agent, or any other person responsible for giving the notice. The inadvertent failure by the corporation to treat this inability as a revocation does not invalidate any meeting or other action.

(iii) Notice to shareholders or directors who have consented to receipt of electronically transmitted notices may be provided by (A) posting the notice on an electronic network and (B) delivering to the shareholder or director a separate record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

~~(iv) a~~Notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Written notice, in an electronic transmission is effective only with respect to a corporation that has designated in a record an address, location, or system to which the notices may be electronically transmitted.

(3) Effective time and date of notice.

(a) Oral notice. Oral notice is effective when received.

(b) Notice provided in a tangible medium.

(c) Notice in a tangible medium, if in a comprehensible form, is effective at the earliest of the following:

(A) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

~~(B)~~ When received;

~~(C)~~ Except as provided in (b)(ii) of this subsection (3) of this section, five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

~~(D)~~ On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

~~(6) Oral notice is effective when communicated if communicated in a comprehensible manner.~~

(7) (i) Notice in a tangible medium by a domestic or foreign corporation to its shareholder, if in a comprehensible form and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, is effective:

(A) When mailed, if mailed with first class postage prepaid; and

(B) When dispatched, if prepaid, by air courier.

(iii) Notice in a tangible medium to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to the corporation's registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report, or in the case of a foreign corporation that has not yet delivered its annual report in its application for a certificate of authority.

(C) Notice provided in an electronic transmission. Notice provided in an electronic transmission, if in comprehensible form, is effective when it: (i) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or (ii) has been posted on an electronic network and a separate record of the posting has been delivered to the recipient together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

(4) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern.

***CARC COMMENTARY***

Nationally, there is a substantial trend to allow communications from corporations to their shareholders to be made by electronic means. It is efficient and can be very cost saving for larger companies. Similarly, filing electronically could be very beneficial for practitioners and the Secretary of State. Currently, the law in Washington regarding the validity of an electronic notice is not clear. The WBCA generally requires that a “notice” be in “writing.”

There is recent case law that suggests e-mail may constitute a “writing” [Real Networks, Inc. Privacy Litigation 5 ILR (PNF) 3049 (US Dist. Ct. Ill. No. 00C1366, 5-8-00)]. There is also recent federal legislation in the area [the Electronic Signatures in Global and National Commerce Act (the “Federal Act”) which took effect on October 1, 2000]. Basically, the Federal Act provides that notwithstanding any other law (e.g. the WBCA) with respect to any transaction in interstate commerce, a signature, contract or record relating to a transaction may not be denied validity solely because it is in electronic form [§101(a)(1)]. The Federal Act may preempt state law and permit electronic notices and other communications provided that a shareholder is not a “consumer” under such law or, if a consumer, the shareholder consents to receipt of electronic notice and provided the corporation’s Articles of Incorporation or Bylaws contain no provision to the contrary. CARC determined that it is preferable to amend the WBCA to clearly provide for notice by electronic means and to draft amendments to the WBCA which are consistent with the Federal Act and remove any ambiguity that could arise under case law such as Real Networks.

It was also concluded that amendments were necessary to grant authority to the Secretary of State to allow for electronic filing, with rules and procedures to be set by the Secretary of State.

**PROPOSED AMENDMENTS RE ELECTRONIC TRANSMISSION**

The proposed amendments that CARC is submitting to the Legislative Committee substantially revise the approach to notices in the present RCW 23B.01.410. It is proposed that RCW 23B.01.410 and related sections be amended to provide for permissive electronic transmission of notices and that RCW 23B.01.200 regarding filing requirements be amended to allow for permissive system for electronic filing with the Secretary of State, subject to implementation by the Secretary of State. Briefly, the approach of these amendments to the electronic transmission matters can be described in the following parts:

- (1) As a general rule, it is proposed that “notice” under Chapter 23B must be provided in the form of a “record” (except that oral notice of a meeting of the board of directors may be given if authorized in either the Articles or the Bylaws). The concept of a “record” is a key to the revised approach. A record is defined in the proposed amendments as “information that is inscribed on a tangible medium or contained in an electronic transmission.” With the proposed revision to the definition of “electronic transmission” in the WBCA, this concept is then consistent with the “record” definition as used in the Federal Act.
- (2) The second element is to set forth the permissible means of transmission of a notice. The concept of oral notice in the amended 23B.01.410 is essentially the same as that in the present statute and is limited in its use. Notice by other means is then divided into two parts. Notice can be provided in a “tangible medium” and notice can be provided in an “electronic transmission.” Tangible medium refers to a writing, a copy of a writing, facsimile or a physical reproduction of such on paper. Notice in a tangible medium may be transmitted by mail, private carrier, personal delivery, telegraph, teletype, wire or wireless equipment which transmits a facsimile of the notice.

Notice provided in an electronic transmission is permissible under the amended 23B.01.410 and “electronic transmission” is slightly revised as follows: “Electronic transmission means an electronic communication (i) not directly involving the physical transfer of paper, and

(ii) that may be retained, retrieved and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such sender and recipient.”

CARC spent considerable time looking at the approach in the Federal Act regarding consent by consumers to receipt of electronic notice and similar provisions in other proposed state corporation laws. This is the approach that is in the proposed amended 23B.01.410. First, notice may be provided in an electronic transmission, but such electronic transmission is effective only with respect to shareholders that have consented, in the form of a “record,” to receive electronic transmitted notices under Chapter 23B, and have designated in the consent, the address, location or system to which such notices may be electronically transmitted. The amendments further make clear that notice to the shareholders can include other material that RCW 23B requires or permits to accompany the notice (e.g., the plan of merger in the case of the notice of a merger, etc.) The provisions also provide that a shareholder who has consented to receipt of electronically transmitted notices may revoke that consent by delivering the revocation to the corporation in the form of a “record.” A provision was also added to cover the situation where a shareholder’s consent is deemed to be revoked if the corporation is unable to electronically transmit two consecutive notices in accordance with such consent and the inability becomes known to the corporation, transfer agent or other person responsible for giving the notice. The proposed amendments also make it clear that notice to shareholders who have consented to receipt of electronically transmitted notices can be provided by posting the notice on an electronic network and delivering to the shareholder a separate “record” of such posting, together with instructions on how to obtain access to the posting. The amendments also address the permissible means of use of electronic transmission to a corporation. The amendments provide that notice to a domestic or foreign corporation (authorized to transact business in Washington) is effective only with respect to a corporation that has designated in a “record,” an address, location or system to which such notices may be electronically transmitted.

(3) The third element in the revised notice provisions deals with the effective time and date of the notice. These provisions track the permissible means of delivery. The provisions for the effective time of oral notice is as in the present statute. The approach taken for notice provided in a tangible medium is to have a general rule that is consistent with delivery of written notice under the present statute and then to separately update and cover the situation of a notice in tangible medium by a corporation to its shareholder, providing that such notice is effective when mailed, if mailed with first class postage prepaid and when dispatched if prepaid by air courier. The major change in the amended RCW 23B.01.410 is to provide rules for the effectiveness and timing for notice by electronic means. Notice by electronic transmission is effective when (1) it is electronically transmitted to an address, location or system designed by the recipient for that purpose, or (2) has been posted on an electronic network and a separate record of such posting has been delivered to the recipient together with instructions on how to obtain access to the posting.

(4) The fourth element to the proposal to provide for electronic transmission of notices consists of the addition of the new definitions in 23B.01.400 for the new terms used in the amendments: “execute,” “record,” “electronically transmitted,” “tangible medium,” “writing,” and “written” and to amend the existing definitions of “deliver” and “electronic transmission” to conform to the new provisions and definitions.

(5) The fifth element in the electronic transmission amendments provides authority for the Secretary of State to permit documents to be filed through electronic transmission. These provisions were developed with the Secretary of State’s Office and reflects their desired result. RCW 23B.01.200 concerning filing requirements would be amended to provide that, if permitted, the Secretary of State may adopt rules varying from these requirements to facilitate electronic filing. Such rules would detail the circumstances under which the electronic filing of documents shall be permitted and how such documents shall be filed.

Such rules may also impose additional requirements related to implementation of electronic filing processes including but not limited to: file formats; signature technologies; delivery; and the types of entities, records or documents permitted.

(6) Because of the distinction resulting from the definitions of “record,” “execute,” and “tangible medium,” and the addition of definitions of “writing,” “written,” and “delivered,” it was necessary to review all of Chapter 23 to make conforming changes.

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**Laws 2008, ch. 59, §1 (eff. 6-12-2008)** *(amends subsection (2)(c)(ii)(A) and adds new subsection (2)(d)*

(2)(c)(ii)(A) Notice to shareholders or directors for this purpose includes material that this title requires ~~or permits~~ to accompany the notice.

(2)(d) Materials accompanying notice to shareholders of public companies. Notwithstanding anything to the contrary in this section or any other section of this title, if this title requires that a notice to shareholders be accompanied by certain material, a public company may satisfy such a requirement, whether or not a shareholder has consented to receive electronically transmitted notice, by (i) posting the material on an electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law) at or prior to the time that the notice is delivered to the public company's shareholders entitled to receive the notice, and (ii) delivering to the public company's shareholders entitled to receive the notice a separate record of the posting (which record may accompany, or be contained in, the notice), together with comprehensible instructions regarding how to obtain access to the posting on the electronic network. In such a case, the material is deemed to have been delivered to the public company's shareholders at the time the notice to the shareholders is effective under this section. A public company that elects pursuant to this section to post on an electronic network any material required by this title to accompany a notice to shareholders is required, at its expense, to provide a copy of the material in a tangible medium (alone or in combination or as part of any other materials the public company has posted on the electronic network in compliance with federal law) to any shareholder entitled to such a notice who so requests.

**CARC COMMENTARY**

In July 2007, the SEC adopted amendments to the federal proxy rules (referred to as the “*e-proxy rules*”) which will permit a public company to satisfy requirements relating to the delivery of proxy statements, annual reports and related materials required under federal law (referred to collectively as “*proxy materials*”) by:

- posting its proxy materials on a designated web site; and
- mailing a notice (referred to as a “*notice of internet availability of proxy materials*”) to securityholders at least 40 days before the meeting date that, among other things, advises them how to access the proxy materials electronically and includes instructions about how to obtain physical copies of the proxy materials from the corporation (at the corporation's expense).

This method of satisfying proxy material delivery requirements under the federal proxy rules is referred to as the “*notice only option*”. A public company that wants to use the notice only option is not required to obtain any sort of consent from its securityholders to post its proxy materials on a web site instead of sending physical copies. However, a securityholder who wants a paper copy of the proxy materials may request one, and the company is required to provide the paper copy at its own expense within three business days after receiving the request.

Although the SEC's proxy rules govern a public company's obligations to provide proxy materials in connection with annual or special meetings, the Washington Business Corporation Act, Title 23B of the Revised Code of Washington (the “*Business Corporation Act*”) imposes separate requirements on a Washington corporation to provide shareholders a notice of annual and special meetings and, in some cases, requires that other materials be included with the meeting notice. For example, if the shareholder meeting agenda includes a proposed amendment to (or amendment and restatement of) the corporation's articles of incorporation, the Business Corporation Act requires the meeting notice to be accompanied by a copy of the proposed amendment. Other

examples of materials required to accompany a meeting notice include a plan of merger or share exchange or description of a sale of all or substantially all of the assets, when such matters are on the meeting agenda, and a complete copy of Chapter 13 of the Business Corporation Act if a matter giving rise to dissenters' rights is on the agenda).

RCW 23B.01.410 provides that a notice to shareholders may be transmitted by mail, private carrier or personal delivery, among other methods. RCW 23B.01.410 requires a Washington corporation to have the consent of the shareholder if it wants to provide notices electronically. This is referred to as the "*opt-in requirement*" for electronic notification. The opt-in requirement currently applies not only to the notice itself, but also to materials that are required or permitted to accompany the notice under the Business Corporation Act. A public company's shareholder base is typically large and fluid and the company lacks adequate means of obtaining consent from all its shareholders to receive notices and other materials required by the Business Corporation Act electronically. Consequently, as a practical matter a Washington public company must currently provide a meeting notice, *and all other materials that the Business Corporation Act requires to accompany the notice*, by mail – even if it otherwise chooses to use the notice only option for making its proxy materials available to shareholders.

Under the e-proxy rules, the notice of internet availability of proxy materials may be accompanied by or incorporate any notice required under state corporate law. Consequently, a Washington public company can satisfy the Business Corporation Act's requirement to provide a notice of annual or special meetings by including the meeting notice with the notice of internet availability mailed to shareholders. For routine annual meetings, RCW 23B.01.410's opt-in requirement for electronic notification does not impede Washington public companies from using the notice only option under the e-proxy rules. However, if a Washington public company's shareholder meeting agenda includes an item for which the Business Corporation Act requires the meeting notice to be accompanied by other materials, then the opt-in requirement could be an impediment to use of the notice only option. If, for example, a company is required to include a paper copy of an extensive amendment to its articles of incorporation with the mailing of its notice of internet availability and meeting notice, it may be dissuaded from using the notice only option for that meeting.

It is CARC's view, the notice only option under the e-proxy rules provides important potential benefits and that the Business Corporation Act should not impede Washington public companies from using this method of making proxy materials available to their shareholders. For a public company, significant potential cost savings are associated with using the notice only option. According to an estimate by Automatic Data Processing, which handles the vast majority of proxy mailings to beneficial owners of public companies, the average cost of printing and mailing a paper copy of a set of proxy materials during the 2006 proxy season was \$5.64.<sup>1</sup> In addition, the amount of paper that could be saved by using the notice only option could be significant. A random sampling of five Washington public companies with market capitalizations (based on recent stock trading data) ranging from approximately \$70 million to \$4.9 billion mailed between approximately 2,800 and 26,000 sets of proxy materials in 2007, comprised of approximately 100 to 150 total pages per set. Assuming these companies had used the notice only option and posted these materials electronically, and assuming no more than 20% of their shareholders requested physical copies of those materials, approximately 2,500,000 pages of paper could have been spared.

HB 2499 has been proposed to remove unnecessary impediments to the use of the notice only option under the e-proxy rules. The amendments to RCW 23B.01.410 contemplated by HB 2499 would:

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<sup>1</sup> See SEC Release Nos. 34-56135; IC-27911 – Shareholder Choice Regarding Proxy Materials, at page 37.

- allow a public company<sup>2</sup> incorporated in Washington to satisfy the requirement under the Business Corporation Act that a notice to shareholders include a copy of other materials by posting those materials on an electronic network (whether or not shareholders have opted to receive notices electronically) and including in or with the notice of the meeting instructions on how to obtain access to the electronic posting;
- require a corporation that relies on electronic posting of WBCA-required materials to provide, at its expense, a paper copy of such materials to any shareholder who requests one; and
- eliminate superfluous and potentially confusing language from RCW 23B.01.410(2)(c)(ii)(A) that could otherwise be construed to apply the opt in requirement for electronic notification to materials that a corporation provides on a completely voluntary basis or pursuant to legal requirements other than the WBCA (such as the SEC's proxy rules).

The e-proxy rules in their current form do not allow public companies to use the notice only option for proxy solicitations relating to business combination transactions (e.g., mergers, sales of all or substantially all of a corporation's assets, exchanges of stock, etc.). However, the SEC stated in its July 2007 adopting release that it may consider extending the e-proxy rules to business combination transactions at some point in the future. Consequently, CARC believed it prudent to draft HB 2499 broadly enough to allow for electronic posting of documents like plans of merger or share exchange or descriptions of asset sales in case the e-proxy rules are expanded to cover business combination transactions in the future.

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**Laws 2009, ch. 189, §2 (eff. 7-26-09)***(amends only subsection (2)(c)(ii)(c))*

(2)(c)(ii)(C) The consent of any shareholder or director is revoked if (I) the corporation is unable to electronically transmit two consecutive notices given by the corporation in accordance with the consent, and (II) this inability becomes known to the secretary of the corporation, the transfer agent, or any other person responsible for giving the notice. The inadvertent failure by the corporation to treat this inability as a revocation does not invalidate any meeting or other [corporate](#) action.

**CARC COMMENTARY**

The term "corporate action" is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

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**Laws 2015, ch. 176, §2108 (eff. 1-1-16)** *(amends only subsection (3)(b)(iii))*

(iii) Notice in a tangible medium to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to the corporation's registered agent (~~at its registered office~~) or to the corporation or its secretary at its principal office shown in its most recent annual report, or in the case of a foreign corporation that has not yet delivered its annual report in its (~~application for a certificate of authority~~) foreign registration statement.

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<sup>2</sup> Defined in RCW 23B.01.400(24) as "a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to Section 12 of the securities exchange act of 1934, or section 8 of the investment company act of 1940."

**RCW 23B.01.500**  
**DOMESTIC CORPORATIONS – NOTICE OF DUE DATE FOR**  
**PAYMENT OF ANNUAL LICENSE FEE AND FILING ANNUAL REPORT**

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**REPEALED Laws 2015, ch. 176, §2149 (eff. 1-1-16)**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §16 (eff. 7-1-90)**

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each domestic corporation, at its registered office within the state, by first-class mail, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation shall fail to pay its annual license fee or to file its annual report it shall be dissolved and cease to exist. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title.

**OFFICIAL LEGISLATIVE HISTORY**

None.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2011, ch. 183, §3 (eff. 7-22-11)**

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send, by postal or electronic mail as elected by the domestic corporation, to each domestic corporation, at its registered office within the state, by first class mail, or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation ~~shall fail~~s to pay its annual license fee or to file its annual report it ~~shall be~~is dissolved and ceases to exist. Failure of the secretary of state to ~~mail~~provide any such notice ~~shall~~does not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

**REPEALED SECTION**

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send, by postal or electronic mail as elected by the domestic corporation, to each domestic corporation, at its registered office within the state, or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation fails to pay its annual license fee or to file its annual report it is dissolved and ceases to exist. Failure of the secretary of state to provide any such notice does not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

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## RCW 23B.01.510

# FOREIGN CORPORATIONS – NOTICE OF DUE DATE FOR PAYMENT OF ANNUAL LICENSE FEE AND FILING ANNUAL REPORT

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REPEALED Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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### *HISTORY AND COMMITTEE COMMENTARY*

#### **ORIGINAL SECTION Laws 1989, ch. 165, §17 (eff. 7-1-90)**

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each foreign corporation qualified to do business in this state, by first-class mail addressed to its registered office, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it shall fail to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1990, ch. 178, §3 (eff. 7-1-90)**

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each foreign corporation qualified to do business in this state, by first-class mail addressed to its registered office within this state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it shall fail to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title.

#### ***CARC COMMENTARY***

Notice of annual license fees for a foreign corporation will be sent to its registered office in Washington (the Proposed Act simply sent notice to the corporation's registered office).

\* \* \* \* \*

##### **Laws 2011, ch. 183, §4 (eff. 7-22-11)**

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send by postal or electronic mail, as elected by the foreign corporation, to each foreign corporation qualified to do business in this state, by first-class mail addressed to its registered office within this state, or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it ~~shall~~ fails to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to ~~mail~~ send any such notice ~~shall~~ does not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

**REPEALED SECTION**

Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send by postal or electronic mail, as elected by the foreign corporation, to each foreign corporation qualified to do business in this state, addressed to its registered office within this state, or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it fails to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to send any such notice does not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

\* \* \* \* \*

**RCW 23B.01.520**  
**DOMESTIC CORPORATIONS -- FILING AND INITIAL LICENSE FEES**

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***CURRENT SECTION***

**For the privilege of doing business, every domestic corporation, except one for which existing law provides a different fee schedule, shall pay a fee for the filing of its articles of incorporation and its first year's license, and an annual license fee for each year following incorporation on or before the expiration of its corporate license, in an amount established by the secretary of state under RCW 23.95.260.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §18 (eff. 7-1-90)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**  
None.

\* \* \* \* \*

**Laws 2015, ch. 176, §2109 (eff. 1-1-16)**

For the privilege of doing business, every domestic corporation, except one for which existing law provides a different fee schedule, shall pay a fee for the filing of its articles of incorporation and its first year's license a fee of one hundred seventy five dollars, and an annual license fee for each year following incorporation on or before the expiration of its corporate license, in an amount established by the secretary of state under RCW 23.95.260.

\* \* \* \* \*



**RCW 23B.01.530**  
**DOMESTIC CORPORATIONS -- INACTIVE CORPORATION DEFINED -**  
**- ANNUAL LICENSE FEE**

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**REPEALED Laws 2015, ch. 176, §2149 (eff. 1-1-16)**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §19 (eff. 7-1-90)**

For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state shall collect an annual license fee of fifty dollars.

**OFFICIAL LEGISLATIVE HISTORY**

None.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1993, ch. 269, §3 (eff. 7-1-93)**

For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state shall collect an annual license fee of ten dollars for each inactive corporation and fifty dollars for other corporations. As used in this section, "inactive corporation" means a corporation that certifies at the time of filing under this section that it did not engage in any business activities during the year ending on the expiration date of its corporate license.

***CARC COMMENTARY***

Reduces annual license fee for an inactive Washington corporation from fifty dollars to ten dollars, where the corporation was inactive throughout its license-year.

\* \* \* \* \*

**Laws 2010, ch. 29, §2 (eff. 7-13-10)**

For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, ~~shall must~~ make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state ~~shall must~~ collect an annual license fee of ~~ten dollars for each inactive corporation and fifty dollars for other~~ sixty dollars for corporations that are not inactive corporations, of which ten dollars is designated to be deposited into the secretary's revolving fund per RCW 43.07.130. The secretary of state must collect an annual license fee for inactive corporations as established by the secretary of state in rule. As used in this section, "inactive corporation" means a corporation that certifies at the time of filing under this section that it did not engage in any business activities during the year ending on the expiration date of its corporate license.

***CARC COMMENTARY***

Legislative intent: "It is the intent of the legislature to restructure certain fees for the division of corporations of the office of the secretary of state corporations towards a more self-sustaining budget." Laws 2010, ch. 29, §1.

**REPEALED SECTION**

For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, must make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state must collect an annual license fee of sixty dollars for corporations that are not inactive corporations, of which ten dollars is designated to be deposited into the secretary's revolving fund per RCW 43.07.130. The secretary of state must collect an annual license fee for inactive corporations as established by the secretary of state in rule. As used in this section, "inactive corporation" means a corporation that certifies at the time of filing under this section that it did not engage in any business activities during the year ending on the expiration date of its corporate license.

\* \* \* \* \*

**RCW 23B.01.540  
FOREIGN CORPORATIONS -- FILING AND LICENSE FEES ON  
QUALIFICATION**

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***CURRENT SECTION***

**A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall pay for the privilege of so doing the same filing and annual license fee prescribed in RCW 23B.01.520 for domestic corporations.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §20 (eff. 7-1-90)**

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

\* \* \* \* \*

**Laws 2015, ch. 176, §2110 (eff. 1-1-16)**

A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall ~~((qualify so to do in the manner prescribed in this title and shall))~~ pay for the privilege of so doing the same filing and annual license fee prescribed in ~~((this title for domestic corporations, including the same fees as are prescribed in))~~ RCW 23B.01.520~~((, for the filing of articles of incorporation of a domestic corporation))~~ for domestic corporations.

\* \* \* \* \*





**RCW 23B.01.550**  
**FOREIGN CORPORATIONS -- ANNUAL LICENSE FEES**

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**REPEALED** Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §21 (eff. 7-1-90)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

**REPEALED SECTION**

All foreign corporations doing intrastate business, or hereafter seeking to do intrastate business in this state shall pay for the privilege of doing such intrastate business in this state the same fees as are prescribed by RCW 23B.01.530 for domestic corporations for annual license fees. All license fees shall be paid on or before the first day of July of each and every year or on the annual license expiration date as the secretary of state may establish under this title.

\* \* \* \* \*



**RCW 23B.01.560**  
**LICENSE FEES FOR REINSTATED CORPORATION**

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**REPEALED Laws 2015, ch. 176, §2149 (eff. 1-1-16)**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §22 (eff. 7-1-90)**

(1) A corporation seeking reinstatement shall pay the full amount of all annual corporation license fees which would have been assessed for the license years of the period of administrative dissolution had the corporation been in active status, plus a surcharge of twenty-five percent, and the license fee for the year of reinstatement.

(2) The penalties herein established shall be in lieu of any other penalties or interest which could have been assessed by the secretary of state under the corporation laws or which, under those laws, would have accrued during any period of delinquency, dissolution, or expiration of corporate duration.

**OFFICIAL LEGISLATIVE HISTORY**

None.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1993, ch. 269, §4 (eff. 7-1-93) (amends only subsection (1))**

(1) A corporation seeking reinstatement shall pay the full amount of all annual corporation license fees which would have been assessed for the license years of the period of administrative dissolution had the corporation been in active status, plus a surcharge ~~of twenty five percent~~ established by the secretary of state by rule, and the license fee for the year of reinstatement.

***CARC COMMENTARY***

Section amended to authorize the Secretary of State to fix the amount of surcharge. See CARC Comment to 1993 Amendment to RCW 23B.01.220.

**REPEALED SECTION**

(1) A corporation seeking reinstatement shall pay the full amount of all annual corporation license fees which would have been assessed for the license years of the period of administrative dissolution had the corporation been in active status, plus a surcharge established by the secretary of state by rule, and the license fee for the year of reinstatement.

(2) The penalties herein established shall be in lieu of any other penalties or interest which could have been assessed by the secretary of state under the corporation laws or which, under those laws, would have accrued during any period of delinquency, dissolution, or expiration of corporate duration.

\* \* \* \* \*



## **RCW 23B.01.570**

# **PENALTY FOR NONPAYMENT OF ANNUAL CORPORATE LICENSE FEES AND FAILURE TO FILE A SUBSTANTIALLY COMPLETE ANNUAL REPORT – PAYMENT OF DELINQUENT -- RULES**

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### ***CURRENT SECTION***

**In the event any corporation, foreign or domestic, fails to file a full and complete initial report under RCW 23.95.255 or does business in this state without having paid its annual corporate license fee and without having filed a substantially complete annual report under RCW 23.95.255 when either is due, there shall become due and owing the state of Washington a penalty as established by rule by the secretary under RCW 23.95.260.**

**A corporation organized under this title may at any time prior to its dissolution as provided in Article 6 of chapter 23.95 RCW, and a foreign corporation registered to do business in this state may at any time prior to the termination of its registration as provided in RCW 23.95.550, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty established by rule by the secretary under RCW 23.95.260.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §23 (eff. 7-1-90)**

In the event any corporation, foreign or domestic, shall do business in this state without having paid its annual license fee or substantially completed its annual report when due, there shall become due and owing the state of Washington a penalty of twenty-five dollars.

A corporation organized under this title may at any time prior to its dissolution as provided in RCW 23B.14.200, and a foreign corporation qualified to do business in this state may at any time prior to the revocation of its certificate of authority as provided in RCW 23B.15.300, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty specified in this section.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 1991, ch. 72, §30 (eff. 7-28-91)(amends only first paragraph)**

~~-In the event any corporation, foreign or domestic, shall do fails to file a full and complete initial report under RCW 23B.02.050(4) and 23B.16.220 (3) or does business in this state without having paid its annual corporate license fee or substantially completed and without having filed a substantially complete annual report under RCW 23B.16.220(1) when either is due, there shall become due and owing the state of Washington a penalty of twenty-five dollars.~~

**CARC COMMENTARY**

Change incident to 1991 Amendment of RCW 23B.01.210 which authorized the Secretary of State to mandate separate forms for initial, and annual, reports.

\* \* \* \* \*

**Laws 1994, ch. 287, §6 (eff. 6-9-94)**

In the event any corporation, foreign or domestic, fails to file a full and complete initial report under RCW 23B.02.050(4) and 23B.16.220 (3) or does business in this state without having paid its annual corporate license fee and without having filed a substantially complete annual report under RCW 23B.16.220(1) when either is due, there shall become due and owing the state of Washington a penalty ~~of twenty five dollars~~ as established by rule by the secretary.

A corporation organized under this title may at any time prior to its dissolution as provided in RCW 23B.14.200, and a foreign corporation qualified to do business in this state may at any time prior to the revocation of its certificate of authority as provided in RCW 23B.15.300, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty ~~specified in this section~~ established by rule by the secretary.

**CARC COMMENTARY**

Deletes specific dollar penalty fee in favor of fee set by Secretary of State rule. See CARC Comment to 1993 Amendment to RCW 23B.01.220.

\* \* \* \* \*

**Laws 2015, ch. 176, §2111 (eff. 1-1-16)**

In the event any corporation, foreign or domestic, fails to file a full and complete initial report under ~~((RCW 23B.02.050(4) and 23B.16.220(3))~~ RCW 23.95.255 or does business in this state without having paid its annual corporate license fee and without having filed a substantially complete annual report under ~~((RCW 23B.16.220(1))~~ RCW 23.95.255 when either is due, there shall become due and owing the state of Washington a penalty as established by rule by the secretary RCW 23.95.260.

A corporation organized under this title may at any time prior to its dissolution as provided in ~~((RCW 23B.14.200))~~ Article 6 of chapter 23.95 RCW, and a foreign corporation ~~((qualified))~~ registered to do business in this state may at any time prior to the ~~((revocation of its certificate of authority))~~ termination of its registration as provided in ~~((RCW 23B.15.300))~~ RCW 23.95.550, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty established by rule by the secretary RCW 23.95.260.

\* \* \* \* \*

## **RCW 23B.01.580**

### **WAIVER OF PENALTY FEES**

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**REPEALED Laws 2015, ch. 176, §2149 (eff. 1-1-16)**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §24 (eff. 7-1-90)**

The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees and reinstate to full active status any licensed corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, that disproportionate harm would occur to the corporation if relief were not granted, and that relief would not be contrary to the public interest expressed in this title, the secretary may issue an order allowing relief from the penalty stating the basis for the relief and specifying any terms and conditions of the relief. If the secretary of state determines the request does not comply with the requirements for relief, the secretary shall issue an order denying the requested relief and stating the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW. The secretary of state shall keep records of all requests for relief and the disposition of the requests. The secretary of state shall annually report to the legislature the number of relief requests received in the preceding year and a summary of the secretary's disposition of the requests.

##### **OFFICIAL LEGISLATIVE HISTORY**

None.

##### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1990, ch. 178, §4 (eff. 7-1-90)**

The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees and reinstate to full active status ~~due from~~ any licensed corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, ~~that disproportionate harm would occur to the corporation if relief were not granted, and that relief would not be contrary to the public interest expressed in this title,~~ the secretary of state may issue an order allowing relief from the penalty ~~stating the basis for the relief and specifying any terms and conditions of the relief.~~ If the secretary of state determines the request does not comply with the requirements for relief, the secretary of state shall issue an order denying the requested ~~deny the relief and stating state~~ the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW. ~~The secretary of state shall keep records of all requests for relief and the disposition of the requests. The secretary of state shall annually report to the legislature the number of relief requests received in the preceding year and a summary of the secretary's disposition of the requests.~~

***CARC COMMENTARY***

Under RCW 23A, and under the Proposed Act, the Secretary of State, if presented with mitigating circumstances, could waive penalty fees and reinstate a dissolved corporation. The amendments reduce the Secretary's discretion to waive penalty fees, on the theory that RCW 23B.14.220 already provides a mechanism for reinstatement following administrative dissolution. The amendments also change the grounds which the Secretary of State must consider to eliminate any inquiry into disproportionate harm, and effect on the public interest.

**REPEALED SECTION**

The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees due from any licensed corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, the secretary of state may issue an order allowing relief from the penalty. If the secretary of state determines the request does not comply with the requirements for relief, the secretary of state shall deny the relief and state the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW.

\* \* \* \* \*



## **RCW 23B.02.020**

### **ARTICLES OF INCORPORATION**

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#### ***CURRENT SECTION***

- (1) The articles of incorporation must set forth:**
  - (a) A corporate name for the corporation that satisfies the requirements of Article 3 of chapter 23.95 RCW;**
  - (b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;**
  - (c) The name and address of its initial registered agent at that office designated in accordance with Article 4 of chapter 23.95 RCW; and**
  - (d) The name and address of each incorporator in accordance with RCW 23B.02.010.**
- (2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.**
- (3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:**
  - (a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;**
  - (b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;**
  - (c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;**
  - (d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;**
  - (e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;**
  - (f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;**
  - (g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;**
  - (h) The board of directors must approve any issuance of shares under RCW 23B.06.210;**
  - (i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;**
  - (j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;**

- (k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;**
- (l) A shareholder has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;**
- (m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;**
- (n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;**
- (o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;**
- (p) Corporate action may be approved by shareholders by unanimous consent of all shareholders entitled to vote on the corporate action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040, which shareholder consent shall be in the form of a record;**
- (q) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;**
- (r) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;**
- (s) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;**
- (t) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;**
- (u) Corporate action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the corporate action exceed the votes cast opposing the corporate action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;**
- (v) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;**
- (w) Directors are elected by cumulative voting under RCW 23B.07.280;**
- (x) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280, except as otherwise provided in the articles of incorporation or a bylaw adopted pursuant to RCW 23B.10.205;**
- (y) A corporation must have a board of directors under RCW 23B.08.010;**
- (z) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;**
- (aa) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;**

- (bb) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;**
- (cc) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;**
- (dd) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;**
- (ee) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;**
- (ff) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;**
- (gg) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific approval of its board of directors, or contract under RCW 23B.08.570;**
- (hh) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder approval under RCW 23B.10.020;**
- (ii) Unless this title or the board of directors requires a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;**
- (jj) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;**
- (kk) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;**
- (ll) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;**
- (mm) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;**

**(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and**

**(oo) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020.**

**(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:**

**(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;**

**(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;**

**(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;**

**(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;**

**(e) Members of the board of directors may participate in a meeting of the board by any means of similar communication by which all directors participating can hear each other during the meeting under RCW 23B.08.200;**

**(f) Corporate action permitted or required by this title to be taken at a board of directors' meeting may be approved without a meeting if approved by all members of the board under RCW 23B.08.210;**

**(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;**

**(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;**

**(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;**

**(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;**

**(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and**

**(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.**

**(5) The articles of incorporation may contain the following provisions:**

**(a) The names and addresses of the individuals who are to serve as initial directors;**

- (b) The par value of any authorized shares or classes of shares;**
- (c) Provisions not inconsistent with law related to the management of the business and the regulation of the affairs of the corporation;**
- (d) Any provision that under this title is required or permitted to be set forth in the bylaws;**
- (e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;**
- (f) Provisions authorizing corporate action to be approved by consent of less than all of the shareholders entitled to vote on the corporate action, in accordance with RCW 23B.07.040;**
- (g) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;**
- (h) The terms of directors may be staggered under RCW 23B.08.060;**
- (i) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010;**
- (j) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320; and**
- (k) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person. However, if such provision applies to an officer or related person (as such term is defined in RCW 23B.08.700) of an officer, the board of directors, by action of qualified directors taken in compliance with the same procedures as are set forth in RCW 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.**
- (6) The articles of incorporation or the bylaws may contain the following provisions:**
  - (a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;**
  - (b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080;**
  - (c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240;**
  - (d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and**

**(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.**

**(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §27 (eff. 7-1-90)**

Current subsections (1) and (2) are the same as subsections (1) and (2) of the original section. Current subsections (3)(a) – (o) are the same as subsections (3)(a) – (o) of the original section. Current subsections (3)(q) – (oo) are the same as subsections (3)(p) – (nn) of the original section. (Current subsection (3)(p) was added in 1997, and all other subsections in subsection (3) relettered.) Subsection (3)(oo) of the original section stated: “A corporation with fewer than three hundred holders of record of its shares does not require special approval of interested shareholder transactions under RCW 23B.17.020.”

Current subsection (4) is the same as the original subsection (4). Current subsections (5)(a) – (e) are the same as original subsections (5)(a) – (e). (Current subsection (5)(f) was added in 1997 and other subsections of (5) relettered.) Current subsections (5)(g) – (j) are the same as original subsections (5)(f) – (i). Current subsections (6)(a) – (c) are the same as original subsections (6)(a) – (c). (Current subsections (6)(d) – (e) were added in 1994). Current subsection (7) is the same as original subsection (7).

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2990 (1989)**

##### *Section 2.02 Articles of Incorporation.*

Proposed subsection 2.02(a) sets forth the minimum mandatory requirements for all articles of incorporation. If the corporation is to have a board of directors (an option it need not accept, under Proposed section 8.01), either the articles of incorporation or the bylaws must state the number of directors or specify how the number is to be determined Proposed subsection 2.02(b). A corporation formed with articles of incorporation that only state these minimum requirements will have the broadest powers and least restrictions on activities permitted by the Proposed Act. The Proposed Act thus permits the creation of a "standard" corporation by a simple, one-page document.

Proposed subsections 2.02(c) and (d) list numerous situations in which the statute prescribes rules that will govern the corporation unless the articles of incorporation, or either the articles of incorporation or the bylaws, provide otherwise. The Committee felt that these provisions would provide counsel with ready check-lists for planning incorporations, and thereby would facilitate practice in the state. Such provisions derive their significance only to the extent of the rules prescribed by the statute elsewhere. They are not intended to add to or detract from the substance of the basic rules cited therein.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1994, ch. 256, §27 (eff. 6-9-94) (added current subsections (6)(d) – (e).)**

d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and

(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.

\* \* \* \* \*

**Laws 1996, ch. 155, §5 (eff. 6-6-96)** (*made minor changes in original subsections (3)(mm) – (nn), and repealed original subsection (3)(oo).*)

(mm) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and

(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020; ~~and~~

(oo) A corporation with fewer than three hundred holders of record of its shares does not require special approval of interested shareholder transactions under RCW 23B.17.020.

**CARC COMMENTARY**

See CARC Comment to 1996 Amendment of RCW 23B.19.020.

\* \* \* \* \*

**Laws 1997, ch. 19, §1 (eff. 7-27-97)** (*added current subsection (3)(p) and relettered remaining subparts in subsection (3); added current subsection (5)(f) and relettered remaining subparts in subsection (5).*)

(p) Action may be taken by shareholders by unanimous written consent of all shareholders entitled to vote on the action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040;

(q) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;

~~(r)~~ A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

~~(s)~~ Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;

~~(t)~~ A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;

~~(u)~~ Action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;

~~(v)~~ All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;

~~(w)~~ Directors are elected by cumulative voting under RCW 23B.07.280;

~~(x)~~ Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280;

~~(y)~~ A corporation must have a board of directors under RCW 23B.08.010;

~~(z)~~ All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;

~~(aa)~~ The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;

~~(bba)~~ A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;

~~(ccb)~~ A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;

~~(dde)~~ A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;

~~(eed)~~ An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;

- ~~(fee)~~ The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;
- ~~(ggff)~~ A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract under RCW 23B.08.570;
- ~~(hhgg)~~ A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder action under RCW 23B.10.020;
- ~~(iijh)~~ Unless this title or the board of directors requires a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;
- ~~(jii#)~~ A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;
- ~~(kkjj)~~ Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;
- ~~(llkk)~~ Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;
- ~~(mmll)~~ Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;
- ~~(nnmmm)~~ Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and
- ~~(oo##)~~ Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020.

\* \* \*

- (5) The articles of incorporation may contain the following provisions:
- (f) Provisions authorizing shareholder action to be taken by written consent of less than all of the shareholders entitled to vote on the action, in accordance with RCW 23B.07.040;
- (g) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;
- (hg) The terms of directors may be staggered under RCW 23B.08.060;
- (ih) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010; and
- (j#) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320.

**CARC COMMENTARY**

See CARC Comment to 1997 Amendment of RCW 23B.07.040.

\* \* \* \* \*



**Laws 2002, ch. 297, §11 (eff. 6-13-02)** (amends only subsection (3)(p) and (5)(f) as both were amended by Laws 1997)

(3)(p) ~~Action may be taken by shareholders by unanimous written consent~~ of all shareholders entitled to vote on the action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040, which consent shall be in the form of a record;

(5)(f) Provisions authorizing shareholder action to be taken by ~~written consent~~ of less than all of the shareholders entitled to vote on the action, in accordance with RCW 23B.07.040;

**CARC COMMENTARY**

See CARC Comment to 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

**Laws 2009, ch. 189, §3 (eff. 7-26-09)** (amends only subsections (3)(h), (3)(p), (3)(u), (3)(x), (3)(gg), (3)(hh), (4)(a), (4)(f) and (5)(f))

(3)(h) The board of directors must ~~authorize~~ approve any issuance of shares under RCW 23B.06.210;

(3)(p) ~~Corporate A~~ction may be ~~taken~~ approved by shareholders by unanimous consent of all shareholders entitled to vote on the corporate action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040, which shareholder consent shall be in the form of a record;

(3)(u) ~~Corporate A~~ction on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the corporate action exceed the votes cast opposing the corporate action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;

(3)(x) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280, except as otherwise provided in the articles of incorporation or a bylaw adopted pursuant to RCW 23B.10.205;

(3)(gg) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific ~~action~~ approval of its board of directors, or contract under RCW 23B.08.570;

(3)(hh) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder ~~action~~ approval under RCW 23B.10.020;

(4)(a) The board of directors may ~~authorize~~ approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(4)(f) ~~Corporate A~~ction permitted or required by this title to be taken at a board of directors' meeting may be ~~taken~~ approved without a meeting if ~~action is taken~~ approved by all members of the board under RCW 23B.08.210;

(5) (f) Provisions authorizing ~~shareholder~~ corporate action to be ~~taken~~ approved by consent of less than all of the shareholders entitled to vote on the corporate action, in accordance with RCW 23B.07.040;

**CARC COMMENTARY**

All amendments except that to subsection (3)(x) are the result of adding a definition for “corporate action” to RCW 23B.01.400. The term “corporate action” is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

The amendment to subsection (3)(x) provides consistency with 2007 amendments to RCW 23B.10.205.

\* \* \* \* \*

**Laws 2015, ch. 20, §2 (eff. 7-24-15)** (*amends only subsections (5)(i), and (j) and adds (k)*)

(i) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010; ~~and~~

(j) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320; ~~and~~

(k) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person. However, if such provision applies to an officer or related person (as such term is defined in RCW 23B.08.700) of an officer, the board of directors, by action of qualified directors taken in compliance with the same procedures as are set forth in RCW 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.

**CARC COMMENTARY**

New item (k) of RCW 23B.02.020(5) allows a corporation to include in its articles of incorporation a provision that limits or eliminates the duty of a director, officer or related person to offer to the corporation a business opportunity prior to pursuing or taking the opportunity themselves. The limitation or elimination may be with respect to any and all business opportunities (a broad “blanket” provision) or may be with respect to particular classes or categories of business opportunities delineated in the articles of incorporation.

This provision may be useful in situations where a venture capital fund or a private equity group invests in a corporation. These investors typically have multiple investments in the same area of activity. They are generally willing to invest significant sums in businesses but often do so only if they are able to have a manager serve on the portfolio company’s board of directors. However, the corporate opportunity doctrine raises questions as to whether the fund managers who serve on a portfolio company’s board of directors may, by that very fact alone, have precluded themselves and their fund from making investments in other companies operating in the same industry space as the portfolio company.

Any limitation or elimination of the duty to present a business opportunity should not be viewed as affecting or modifying other duties of directors or officers. For example, while a director might be free under such a provision to pursue a business opportunity, they would still be bound by obligations not to use corporate assets, to keep confidential proprietary information of the corporation, and not to compete unfairly with the corporation.

New item (k) allows the limitation or elimination of the duty to offer business opportunities with respect to not only directors but also officers and other persons to whom the duty might apply. Although officers and related persons may be included in a provision under this item (k), the limitation or elimination of the duty with respect to an officer requires further specific board action after the inclusion of such a provision in the articles of incorporation. That further specific board action must approve of the application of the provision to a particular officer or related person and that approval may be general (a broad “blanket” provision) or may be specific and can be subject to whatever conditions the board of directors may choose to impose. Such authorization - and the related conditions - can be evidenced by a board of directors resolution or by board of directors approval of an employment agreement or other contractual arrangement with such officer.

Consistent with the provisions of the Model Business Corporation Act, RCW 23B.08.740 use the term “business opportunity,” which is intended to encompass any opportunity without regard to whether it would come within the jurisdictional definition of “corporate opportunity” as it has been defined and interpreted by court decisions.

As of early 2014, a number of other states, including Delaware, Texas, Oklahoma, New Jersey, Nevada, Missouri and Kansas, have modified their corporate statutes to include provisions generally similar to item (k) of RCW 23B.02.020(5). In addition, in 2014, the ABA Committee on Corporate Laws proposed amending the Model Business Corporation Act to include such a provision.

\* \* \* \* \*

**Laws 2015, ch. 176, §2112 (eff. 1-1-16) (amends only subsections (1)(a), (b), and (c))**

(1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of ~~RCW 23B.04.010~~ Article 3 of chapter 23.95 RCW;

(b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;

(c) ~~The street address of the corporation's initial registered office and the name~~ and address of its initial registered agent ~~at that office~~ designated in accordance with ~~((RCW 23B.05.010))~~ Article 4 of chapter 23.95 RCW; and

(d) The name and address of each incorporator in accordance RCW 23B.02.010.

\* \* \* \* \*



## **RCW 23B.02.050**

### **ORGANIZATION OF CORPORATION**

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#### ***CURRENT SECTION***

**(1) After incorporation:**

**(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;**

**(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:**

**(i) To elect directors and complete the organization of the corporation; or**

**(ii) To elect a board of directors who shall complete the organization of the corporation.**

**(2) Corporate action required or permitted by this title to be approved by incorporators at an organizational meeting may be approved without a meeting if the approval is evidenced by the consent of each of the incorporators in the form of a record describing the corporate action so approved and executed by each incorporator.**

**(3) An organizational meeting may be held in or out of this state.**

**(4) A corporation must deliver an initial report to the secretary of state in accordance with RCW 23.95.255.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §30 (eff. 7-1-90)**

(1) Within ninety days after the date on which the corporation's articles of incorporation were filed:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) Within thirty days after the date of its organizational meeting, the corporation shall file an initial report with the secretary of state containing the information described in RCW 23B.16.220(1).

**ORIGINAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2991 (1989)**

*Section 2.05 Organization of Corporation.*

The additions to Revised Model Act section 2.05 are designed to provide the secretary of state with a date certain by which a corporation's initial annual report will be filed. Thus, under Proposed section 16.22(c),

the first annual report must be delivered to the secretary of state within 120 days of the date on which the articles of incorporation were filed.

The Revised Model Act (and the Proposed Act) does not contain notice provisions for an incorporators' meeting. The Committee believes that Proposed sections 8.22(b), and 1.41 should be applied by analogy to establish such requirements.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1991, ch. 72, §31 (eff. 7-28-91)**

~~(1) Within ninety days after the date on which the corporation's articles of incorporation were filed:~~

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

~~(4) Within thirty days after the date of its organizational meeting, the corporation shall file an initial report with the secretary of state containing the information described in RCW 23B.16.220(1). A corporation's initial report containing the information described in RCW 23B.16.220(1) must be delivered to the secretary of state within one hundred twenty days of the date on which the corporation's articles of incorporation were filed.~~

##### **CARC COMMENTARY**

Resolves ambiguity in original section regarding latest date for filing a corporation's initial report.

\* \* \* \* \*

##### **Laws 2002, ch. 297, §13 (eff. 6-13-02)(amends only subsection (2))**

~~(2) Action required or permitted by this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents the consent of each of the incorporators in the form of a record describing the action taken and signed-executed by each incorporator.~~

##### **CARC COMMENTARY**

See CARC Comment to 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

##### **Laws 2009, ch. 189, §4 (eff. 7-26-09) (amends only subsection (2) as amended by Laws 2002, ch. 297)**

(2) ~~Corporate A~~action required or permitted by this title to be ~~taken-approved~~ by incorporators at an organizational meeting may be ~~taken-approved~~ without a meeting if the ~~action-takenapproval~~ is evidenced by the consent of each of the incorporators in the form of a record describing the ~~corporate~~ action ~~taken-so approved~~ and executed by each incorporator.

##### **CARC COMMENTARY**

The term "corporate action" is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

\* \* \* \* \*

**Laws 2015, ch. 176, §2113 (eff. 1-1-16)***(amends subsection (4) only)*

~~(4) A corporation's initial report containing the information described in RCW 23B.16.220(1) corporation must ((be delivered))~~ deliver an initial report to the secretary of state ~~within one hundred twenty days of the date on which the corporation's articles of incorporation were filed in~~ accordance with RCW 23.95.255.

\* \* \* \* \*





## **RCW 23B.04.010 CORPORATE NAME**

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### ***CURRENT SECTION***

**A corporate name must comply with the requirements of Article 3 of chapter 23.95 RCW.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §37 (eff. 7-1-90)**

(1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.";

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more [of the] words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state, and the proposed user corporation:

(a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

(4) This title does not control the use of assumed business names or "trade names."

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2994-95 (1989)**

*Section 4.01 Corporate Name.*

Proposed section 4.01 imposes two basic name requirements: (1) the name must indicate "corporateness," and (2) the name must be distinguishable upon the records of the secretary of state.

The Committee deleted RMA language that would have recognized words or abbreviations of corporate status in another language. It felt that the meaning of many foreign designations is not generally known in the United States, and therefore that confusion would arise as to whether the foreign words import corporateness.

Proposed section 4.01 is based on the fundamental premise that its name provisions should only ensure that each corporation has a sufficiently distinctive name so that it may be distinguished from other corporations upon the records of the secretary of state. A general business corporation statute should not be a partial substitute for a general assumed name, trademark, unfair competition, or antifraud statute. As a result, the Proposed Act does not restrict the power of a corporation to adopt or use an assumed or fictitious name with the same freedom as an individual or impose a requirement that an "official" name not be "deceptively similar" to another corporate name (a requirement of the old law.). Principles of unfair competition, not the business corporation act, provide the more effective limits on the competitive use of similar names.

The phrase "distinguishable upon the records of the secretary of state" is drawn from section 102(a)(1) of the Delaware General Corporation Law. Delaware authorities construing that subsection are reviewed in Trans-Americas Airlines, Inc. v. Kenton, 491 A.2d 1139 (Del. 1985) ("Transamerica Airlines Inc." is distinguishable from "Trans-Americas Airlines, Inc."). The principal justifications for requiring a distinguishable official name are (1) to prevent confusion within the secretary of state's office and (2) to permit accuracy in naming and serving corporate defendants in litigation. Thus, confusion in an absolute or linguistic sense is the appropriate test under the Proposed Act, not the competitive relationship between the corporations, which is the test for fraud or unfair competition. The precise scope of "distinguishable upon the records of the secretary of state" is an appropriate subject of regulation by the office of secretary of state in order to ensure uniformity of administration. Corporate names that differ only in the words used to indicate corporateness are generally not distinguishable. Thus, if ABC Corporation is in existence, the names "ABC Inc.," "ABC Co.," or "ABC Corp." should not be viewed as distinguishable. Similarly, minor variations between names that are unlikely to be noticed, such as the substitution of a "." for a ",", or the substitution of an arabic numeral for a word, such as "2" for "Two", or the substitution of a lower case letter for a capital, such as "d" for "D," should not be viewed as being distinguishable.

The elimination of the "deceptively similar" requirement that appeared in the old law and the specific recognition appearing in Proposed section 4.01(d), that corporations may use assumed business or trade names to the same extent an individual can, are based on the fact that the secretary of state does not generally police the unfair competitive use of names and, indeed, has no resources to do so.

Proposed section 4.01 contains, as old RCW 23A.08.050 did, a list of prohibited words that cannot be used in corporate names. Counsel should note that the source of the prohibitions regarding the words listed in both the old law and Proposed subsection 4.01(a)(3) are other statutes in RCW. Thus, for example, a corporation (that is not a bank) may not use as part of its name "bank," "banking," "banker," or "trust." RCW 30.04.020. A corporation (that is not a savings and loan association) may not use as part of its name words that connote operation as a savings and loan association. RCW 33.08.010. A corporation (that is not an industrial loan company) may not use any combination of the words "industrial" and "loan." RCW 31.04.010. A corporation (that is not a cooperative) may not use the word "cooperative" in its name. RCW 23.86.030. Finally, broad and general prohibitions upon certain names exist. E.g., RCW 48.30.060 prohibits any person who is not an insurer to use any name which deceptively infers or suggests that it is an insurer.

#### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 1991, ch. 72, §32 (eff. 7-28-91)** (*makes minor correction in original subsection (1)(c), and adds new subsection (5)*)

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more ~~of the~~ of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

- (5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:
- (a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;
  - (b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;
  - (c) Punctuation, capitalization, or special characters or symbols in the same name; or
  - (d) Use of abbreviation or the plural form of a word in the same name.

**Laws 1991, ch. 269, §36 (eff. 7-28-91)** (also corrects subsection (1)(c), and amends original subsection (3))

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, or of a domestic or foreign limited partnership, that is used in this state if the other corporation is incorporated or authorized to transact business in this state, or if the limited partnership is formed or authorized to transact business in the state, and the proposed user corporation:

- (a) Has merged with the other corporation or limited partnership; or
- (b) Has been formed by reorganization of the other corporation.

**CARC COMMENTARY**

The amendments contained in Chapter 72, §22, were proposed by the Office of the Secretary of State to provide specific limitations on the letter, symbol, article, number or space that would be considered by the office to make a name distinguishable on its records from other names. Note that one of the effects of these limitations is to override the Delaware Supreme Court's interpretation in Trans-Americas Airlines, Inc. cited in the Official Legislative history above under the proposed amendment that name is not distinguishable from Transamerica Airlines, Inc.

The amendments contained in Chapter 269, §36 were offered by the Partnership Law Committee of the WSBA as part of the 1991 amendments to the Limited Partnership Act. Those amendments and amendments adding RCW 23B.11.080 - .110 authorized merger of Washington corporations and foreign or domestic limited partnerships.

\* \* \* \* \*

**Laws 1994, ch. 211, §1304** (reenacts and amends subsections (1), (2), and (3), as amended by Laws 1991)

(1) A corporate name:

- (a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.";
- (b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;
- (c) Must not contain any of the following words or phrases:  
"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and
- (d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:
  - (i) The corporate name of a corporation incorporated or authorized to transact business in this state;
  - (ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;
  - (iii) The fictitious name pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;
  - (iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; ~~and~~
  - (v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.08 or 25.10 RCW; and
  - (vi) The name of any limited liability company organized or registered under chapter 25.—RCW (sections 101 through 1303 and 1312 through 1314) of this act.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, company, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, or of another domestic or foreign limited liability company, or of a domestic or foreign limited partnership, that is used in this state if the other corporation is incorporated or authorized to transact business in this state, or if the limited liability company is organized or authorized to transact business in this state, or if the limited partnership is formed or authorized to transact business in the state, and the proposed user corporation:

(a) Has merged with the other corporation, limited liability company or limited partnership; or

(b) Has been formed by reorganization of the other corporation

(4) This title does not control the use of assumed business names or "trade names."

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

***CARC COMMENTARY***

Amendments add to list of protected names those of LLC's.

\* \* \* \* \*

**Laws 1998, ch. 102, §1 (eff. 6-11-98)**

(1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.";

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Must not contain any of the following words or phrases:

"Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under ~~RCW 23B.04.020 or 23B.04.030~~ chapter 23B.04 RCW;

(iii) The fictitious name adopted ~~pursuant to~~ under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;

(v) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;

(vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter ~~25.08 or~~ 25.10 RCW; ~~and~~

(vii) The name or reserved name of any limited liability company organized or registered under chapter 25.15 RCW; and

(viii) The name or reserved name of a limited liability partnership registered under chapter 25.04 RCW.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

~~(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, or of another domestic or foreign limited liability company, or of a domestic or foreign limited partnership, or limited liability partnership, that is used in this state if the other corporation is incorporated or authorized to transact business in this state, or if the limited liability company is organized or authorized to transact business in this state, or if the limited partnership entity is formed or authorized to transact business in the state, and the proposed user corporation:~~

~~(a) Has merged with the other corporation, limited liability company or limited partnership; or~~

~~(b) Has been formed by reorganization of the other corporation~~

~~(4) This title does not control the use of assumed business names or "trade names."~~

~~(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:~~

~~(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "Ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.";~~

~~(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;~~

~~(c) Punctuation, capitalization, or special characters or symbols in the same name; or~~

~~(d) Use of abbreviation or the plural form of a word in the same name.~~

#### ***CARC COMMENTARY***

Amendments offered by the Partnership Law Committee of the WSBA incident to the adoption of the Revised Uniform Partnership Act (RCW 25.05) in Washington. See Laws 1998, ch. 103. The amendments add to the list of protected names those of registered limited liability partnerships, and clarify references in several subsections.

\* \* \* \* \*

#### **Laws 2012, ch. 215, §18 (eff. 6-7-12)**

(1) A corporate name:

(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.";

(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Must not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under chapter 23B.04 RCW;

(iii) The fictitious name adopted under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;

(v) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;

- (vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;
  - (vii) The name or reserved name of a limited liability company organized or registered under chapter 25.15 RCW; ~~and~~
  - (viii) The name or reserved name of a limited liability partnership registered under chapter 25.04 RCW; ~~and~~
  - (ix) The name or reserved name of a social purpose corporation registered under chapter 23B.25 RCW).
- (2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:
- (a) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or
  - (b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership, that is used in this state if the other entity is formed or authorized to transact business in this state, and the proposed user corporation:
- (a) Has merged with the other corporation, limited liability company, or limited partnership; or
  - (b) Has been formed by reorganization of the other corporation.
- (4) This title does not control the use of assumed business names or "trade names."
- (5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:
- (a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," ~~((&#x2122;))~~ "limited liability partnership," or "social purpose corporation," or the abbreviations "corp.," "inc.," "co.," "Ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," ~~&#x2122;~~ "L.L.C." "SPC," or "S.P.C.";
  - (b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;
  - (c) Punctuation, capitalization, or special characters or symbols in the same name; or
  - (d) Use of abbreviation or the plural form of a word in the same name.

\* \* \* \* \*

**Laws 2015, ch. 176, §2114 (eff. 1-1-16)**

- ~~(1) A corporate name: must comply with the requirements of Article 3 of chapter 23.95 RCW.~~
- ~~(a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.,";~~
  - ~~(b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;~~
  - ~~(c) Must not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and~~
  - ~~(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:
    - ~~(i) The corporate name of a corporation incorporated or authorized to transact business in this state;~~
    - ~~(ii) A corporate name reserved or registered under chapter 23B.04 RCW;~~
    - ~~(iii) The fictitious name adopted under RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;~~
    - ~~(iv) The corporate name or reserved name of a not for profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;~~~~

- ~~(v) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;~~
  - ~~(vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;~~
  - ~~(vii) The name or reserved name of a limited liability company organized or registered under chapter 25.15 RCW;~~
  - ~~(viii) The name or reserved name of a limited liability partnership registered under chapter 25.04 RCW; and~~
  - ~~(ix) The name or reserved name of a social purpose corporation registered under chapter 23B.25 RCW).~~
- ~~(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:~~
- ~~(a) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or~~
  - ~~(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.~~
- ~~(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, limited partnership, or limited liability partnership, that is used in this state if the other entity is formed or authorized to transact business in this state, and the proposed user corporation:~~
- ~~(a) Has merged with the other corporation, limited liability company, or limited partnership; or~~
  - ~~(b) Has been formed by reorganization of the other corporation.~~
- ~~(4) This title does not control the use of assumed business names or "trade names."~~
- ~~(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:~~
- ~~(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," ((or)) "limited liability partnership," or "social purpose corporation," or the abbreviations "corp.," "inc.," "co.," "Ltd.," 31 "LP," "L.P.," "LLP," "L.L.P.," "LLC," "L.L.C." "SPC," or "S.P.C.";~~
  - ~~(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;~~
  - ~~(c) Punctuation, capitalization, or special characters or symbols in the same name; or~~
  - ~~(d) Use of abbreviation or the plural form of a word in the same name.~~

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**RCW 23B.04.020  
RESERVED NAME**

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***CURRENT SECTION***

**A person may reserve the exclusive use of a corporate name in accordance with RCW23.95.310.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1989, ch. 165, §38 (eff. 7-1-90)**

Same as current.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2995 (1989)**

*Section 4.02 Reserved Name.*

The secretary of state is not equipped to determine the intent that a person has for making a reservation. Thus, Proposed section 4.02 deletes the old list of five acceptable purposes in favor of permitting "any person" to reserve a corporation name, irrespective of purpose.

The committee elected to continue the period of reservation (180 days) found in the old law, rather than to adopt the RMA period of 120 days. It felt that long-standing familiarity with the old period justified the change. It did adopt, however, the RMA approach of no renewal of the reservation on grounds that incorporation under the Proposed Act (or qualification of a foreign corporation) is a simple enough process that it is unlikely more than 180 days will be necessary for formation or qualification. In the event it is not, the original reserver can reapply for reservation of the name immediately after the name becomes available.

\* \* \* \* \*

**Laws 2015, ch. 176, §2115 (eff. 1-1-16)**

~~(1) A person may reserve the exclusive use of a corporate name ((, including a fictitious name adopted pursuant to RCW 23B.15.060 for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty day period.~~

~~(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee)) in accordance with RCW23.95.310.~~

\* \* \* \* \*



## **RCW 23B.04.030**

### **REGISTERED NAME**

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#### ***CURRENT SECTION***

**A foreign corporation may register its corporate name in accordance with RCW 23.95.315.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §39 (eff. 7-1-90)**

Same as current.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2995-96 (1989)**

###### *Section 4.03 Registered Name.*

The "registration" of a corporate name is basically a device by which a foreign corporation, not qualified to transact business in the state, can preserve the right to use its unique "real" name if it decides later to qualify in the state. In effect, registration ensures "real" name availability in areas of potential future expansion.

The committee believes it desirable to limit Proposed section 4.03 to this purpose and not allow it to become an indirect device for the preservation of trademarks, trade names, or possible assumed names. For this reason, generally only "real" names of foreign corporations may be registered (with exceptions described below). A broader approach would create issues better resolved under a trademark or similar statute, or by litigation under unfair competition principles, and might impose duties on the secretary of state that that office is generally not equipped to handle, or could handle only at increased cost.

Registration of a name other than the "real" name is permitted in only one situation: if the "real" name of a foreign corporation is not available solely because it does not comply with Proposed section 15.06, requiring the words "incorporated," "company," or "limited," or an abbreviation of one of these words, the corporation may add one of these words or abbreviations and register its "real" name as so modified under Proposed subsection 4.03(a).

Confusion sometimes exists between "reservation" of names under Proposed section 4.02 and registration of names under Proposed section 4.03. A foreign corporation that is planning to qualify as a foreign corporation and finds that its name is available in the state may either register or reserve the name. Often a foreign corporation will have to decide whether to qualify or to create a domestic subsidiary; this well may be decided after the exclusive right to use the corporate name in the state is obtained either by reservation or by registration. If the corporation registers its name, it will be kept indefinitely; if it reserves, it will be kept for 180 days. That is the foreign corporation's choice. If a foreign corporation registers its name and then elects to form a domestic or foreign subsidiary, the written consent procedure of Proposed section 4.03(e) allows the secretary of state to ascertain that the domestic subsidiary is related to the foreign corporation and that use of the registered name by that subsidiary is acceptable to the foreign parent.

If a foreign corporation's "real" name is unavailable, a foreign corporation may reserve any name--including one that is assumed or fictitious when compared with the corporation's "real" name--for 180 days. But it may not register this type of name in light of the policy against allowing the name provision of the Proposed Act to be used for purposes broader than the "unique name" issue. Nevertheless, a foreign corporation that wishes to be certain that a particular fictitious or assumed name will be available in the future may create an inactive domestic subsidiary with the desired name to preserve its future availability.

Proposed subsection 4.03(e) provides that the protection of the name provided by this section terminates when the name is used pursuant to this section by the foreign corporation, its domestic or foreign subsidiary, or a domestic or foreign limited partnership.

\* \* \* \* \*

**Laws 2015, ch. 176, §2116 (eff. 1-1-16)**

~~(1) A foreign corporation may register its corporate name ((,or its corporate name with any addition required by RCW 23B.15.060, if the name is distinguishable upon the records of the secretary of state from the names specified in RCW 23B.04.010(1).~~

~~(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by RCW 23B.15.060, by delivering to the secretary of state for filing an application that:~~

~~(a) Sets forth its corporate name, or its corporate name with any addition required by RCW 23B.15.060, and the state or country and date of its incorporation; and~~

~~(b) Is accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.~~

~~(3) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.~~

~~(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.~~

~~(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name, or consent in writing to the use of that name by a corporation thereafter incorporated under this title, by a limited partnership thereafter formed under chapter 25.10 RCW, or by another foreign corporation or limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the domestic limited partnership is formed, or the foreign corporation qualifies or consents to the qualification of another foreign corporation or limited partnership under the registered name)) **in accordance with RCW 23.95.315.**~~

\* \* \* \* \*

## **RCW 23B.05.010**

### **REGISTERED OFFICE AND REGISTERED AGENT**

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#### ***CURRENT SECTION***

**Each corporation must continuously maintain in this state a registered agent in accordance with Article 4 of chapter 23.95 RCW.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §40 (eff. 7-1-90)**

(1) Each corporation must continuously maintain in this state:

(a) A registered office that may be the same as any of its places of business. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent that may be:

(i) An individual residing in this state whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or not-for-profit foreign corporation authorized to conduct affairs in this state whose business office is identical with the registered office;

(2) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2996 (1989)**

*Section 5.01 Registered Office and Registered Agent.*

The Proposed Act assumes that formal communications to the corporation will normally be addressed to the registered agent at the registered office. If the communication itself deals with the registered office or registered agent, however, copies must be sent to the principal office of the corporation. Moreover, the Act authorizes corporations to retain records at, or to provide information to shareholders through, offices other than the registered office. The Proposed Act consistently recognizes that the registered office may be a "legal" rather than a "business" office.

Many corporations designate their registered office to be a business office of the corporation and a corporate officer at that office to be the registered agent. Since most of the communication to the registered agent at the registered office deals with legal matters, however, corporations often designate their regular legal counsel or counsel's nominee as their registered agent and the counsel's (or nominee's) office as the registered office of the corporation.

The registered agent need not be an individual. Corporation service companies often provide, as a commercial service, registered offices and registered agents at the office of the corporation service company.

The voluntary dissolution of the corporation does not of itself terminate the authority of the registered agent to accept service of process or other communications on behalf of the dissolved corporation. See section 14.05.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2002, ch. 297, §15 (eff. 6-13-02)**

(1) Each corporation must continuously maintain in this state:

(a) A registered office that may be the same as any of its places of business. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address ~~in the same city as the registered office~~ in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent that may be:

(i) An individual residing in this state whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or not-for-profit foreign corporation authorized to conduct affairs in this state whose business office is identical with the registered office;

(iv) A domestic limited liability company whose business office is identical with the registered office; or

(v) A foreign limited liability company authorized to conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent shall not be appointed without having given prior ~~written~~ consent in a record to the appointment. The ~~written~~ consent shall be filed with the secretary of state in such form as the secretary of state may prescribe. The ~~written~~ consent shall be filed with or as a part of the ~~document-record~~ first appointing a registered agent. In the event any individual ~~or~~ corporation, or limited liability company has been appointed agent without consent, that person ~~or~~ corporation, or limited liability company may file a notarized statement attesting to that fact, and the name shall ~~forthwith~~ immediately be removed from the records of the secretary of state.

***CARC COMMENTARY***

Domestic and foreign LLC's are now authorized to serve as registered agents.

Regarding the deletions of "written," see CARC Comment to the 2002 Amendment of RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2117 (eff. 1-1-16)**

~~(1) Each corporation must continuously maintain in this state:~~

~~(a) A registered office that may be the same as any of its places of business. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in~~

~~conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made;~~

~~(b) A registered agent that may be:~~

~~(i) An individual residing in this state whose business office is identical with the registered office;~~

- ~~(ii) A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office;~~
  - ~~(iii) A foreign corporation or not for profit foreign corporation authorized to conduct affairs in this state whose business office is identical with the registered office;~~
  - ~~(iv) A domestic limited liability company whose business office is identical with the registered office;~~
  - ~~or~~
  - ~~(v) A foreign limited liability company authorized to conduct affairs in this state whose business office is identical with the registered office.~~
- ~~(2) A registered agent shall not be appointed without having given prior consent in a record to the appointment. The consent shall be filed with the secretary of state in such form as the secretary of state may prescribe. The consent shall be filed with or as a part of the record first appointing a registered agent. In the event any individual, corporation, or limited liability company has been appointed agent without consent, that person, corporation, or limited liability company may file a notarized statement attesting to that fact, and the name shall immediately be removed from the records of the secretary of state a registered agent in accordance Article 4 of chapter 23.95 RCW.~~

\* \* \* \* \*





## **RCW 23B.05.020**

### **CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT**

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#### ***CURRENT SECTION***

- (1) A corporation may change its registered agent in accordance with RCW 23.95.430.**
  - (2) A registered agent may change its information on file with the secretary of state in accordance with RCW 23.95.435 or 23.95.440.**
- 

#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §41 (eff. 7-1-90)**

- (1) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:
- (a) The name of the corporation;
  - (b) If the current registered office is to be changed, the street address of the new registered office in accord with RCW 23B.05.010(1)(a);
  - (c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
  - (d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
- (2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2996-97 (1989)**

###### ***Section 5.02 Change of Registered Office or Registered Agent.***

Changes of registered office or registered agent are usually routine matters which do not affect the rights of shareholders. The purpose of Proposed section 5.02 is to permit these changes without a formal amendment of the articles of incorporation, without approval of the shareholders, and, indeed, even without formal approval of the board of directors.

Changes of registered office or registered agent are often of particular concern to corporation service companies which routinely serve as registered agent and routinely provide a registered office for literally thousands of corporations within many states.

Experience with the change of registered agent and registered office provisions in old law and the statutes of other states revealed several minor problems with these largely formal provisions that are addressed in the Proposed Act:

- (1) Changes of registered office or registered agent need not be authorized by the board of directors. Many changes (such as the name of a specific registered agent at a registered office) are so routine that they should not require action by the board of directors, particularly in publicly held corporations.
- (2) The procedure by which a registered agent may change the street address of the registered office applies to any location within the state and the agent is expressly required to notify the corporation of the change. But a facsimile signature of the agent is acceptable since a corporation

service company changing its street address may be required to file a form for each of the thousands of corporations for which it serves as registered agent and to notify each corporation of the change.

**AMENDMENTS TO ORIGINAL SECTION,  
Laws 2002, ch. 297, §16 (eff. 6-13-02)**

(1) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (a) The name of the corporation;
- (b) If the current registered office is to be changed, the street address of the new registered office in accord with RCW 23B.05.010(1)(a);
- (c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's ~~written consent~~ in a record, either on the statement or attached to it in a manner and form as the secretary of state may prescribe, to the appointment; and
- (d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

~~(2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, of the change either (a) in a written record, or (b) if the corporation has designated an address, location, or system to which the notices may be electronically transmitted and the registered agent electronically transmits the notice to the corporation at the designated address, location, or system, in an electronically transmitted record and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.~~

***CARC COMMENTARY***

See CARC Comment to 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2118 (eff. 1-1-16)**

~~(1) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:~~

- ~~(a) The name of the corporation;~~
- ~~(b) If the current registered office is to be changed, the street address of the new registered office in accord with RCW 23B.05.010(1)(a);~~
- ~~(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's consent in a record, either on the statement or attached to it in a manner and form as the secretary of state may prescribe, to the appointment; and~~
- ~~(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical in accordance with RCW 23.95.430.~~

~~(2) If a registered agent may change its information on file with the secretary of state in accordance with RCW 23.95.435 or 23.95.440, changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any corporation for which the agent is the registered agent by notifying the corporation of the change either (a) in a written record, or (b) if the corporation has designated an address, location, or system to which the notices may be electronically transmitted and the registered agent electronically transmits the notice to the corporation at the designated address, location, or system, in an electronically transmitted record and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.~~

\* \* \* \* \*

# RCW 23B.05.030

## RESIGNATION OF REGISTERED AGENT

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### *CURRENT SECTION*

A registered agent may resign as agent by delivering to the secretary of state for filing a statement of resignation in accordance with RCW 23.95.445.

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### *HISTORY AND COMMITTEE COMMENTARY*

#### **ORIGINAL SECTION Laws 1989, ch. 165, §42 (eff. 7-1-90)**

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2997 (1989)**

*Section 5.03 Resignation of Registered Agent.*

Proposed section 5.03, by requiring the secretary of state to mail one copy of the resignation after it is filed to the corporation at its principal office, eliminates possible ambiguity under the old law as to where such statement is to be mailed.

The Proposed section also permits the discontinuance of the registered office as well as the resignation of the agent. Corporation service companies desiring to resign their agency for nonpayment of fees will normally wish to discontinue the registered office as well as the registered agent.

\* \* \* \* \*

#### **Laws 2015, ch. 176, §2119 (eff. 1-1-16)**

~~(1) A registered agent may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation in accordance with RCW 23.95.445. The statement may include a statement that the registered office is also discontinued.~~

~~(2) After filing the statement the secretary of state shall mail a copy of the statement to the corporation at its principal office.~~

~~(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.~~

\* \* \* \* \*



# RCW 23B.05.040

## SERVICE ON CORPORATION

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### *CURRENT SECTION*

**Service of process, notice, or demand required or permitted by law to be served on the corporation may be in accordance with RCW 23.95.450.**

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### *HISTORY AND COMMITTEE COMMENTARY*

#### **ORIGINAL SECTION Laws 1989, ch. 165, §43 (eff. 7-1-90)**

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 2997 (1989)**

*Section 5.04 Service on Corporation.*

The Committee rejected the RMA approach regarding default service on the secretary of the corporation on the ground that courts and counsel had become accustomed to easy, objective proof regarding service in such situations. It felt that the RMA approach would lead to additional, unnecessary complications regarding proof, with no real advantages over the old law.

\* \* \* \* \*

#### **Laws 2015, ch. 176, §2120 (eff. 1-1-16)**

~~(1) A corporation's registered agent is the corporation's agent for sService of process, notice, or demand required or permitted by law to be served on the corporation may be in accordance with RCW 23.95.450.~~

~~(2) The secretary of state shall be an agent of a corporation upon whom any such process, notice, or demand may be served if:~~

~~(a) The corporation fails to appoint or maintain a registered agent in this state; or~~

~~(b) The registered agent cannot with reasonable diligence be found at the registered office.~~

~~(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at the corporation's principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.~~

~~(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.~~

~~(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.~~

\* \* \* \* \*



# **Title 23B RCW**

## **Washington Business Corporation Act**

### **Chapter 23B.08 RCW**

#### **DIRECTORS AND OFFICERS**

- 23B.08.010 Requirement For and Duties of Board of Directors.**
- 23B.08.020 Qualifications of Directors.**
- 23B.08.030 Number and Election of Directors.**
- 23B.08.040 Election of Directors by Certain Classes or Series of Shares.**
- 23B.08.050 Terms of Directors – Generally.**
- 23B.08.060 Staggered Terms for Directors.**
- 23B.08.070 Resignation of Directors.**
- 23B.08.080 Removal of Directors by Shareholders.**
- 23B.08.090 Removal of Directors by Judicial Proceeding.**
- 23B.08.100 Vacancy on Board of Directors.**
- 23B.08.110 Compensation of Directors.**
- 23B.08.200 Meetings and Action of the Board.**
- 23B.08.210 Corporate Action Without Meeting.**
- 23B.08.220 Notice of Meeting.**
- 23B.08.230 Waiver of Notice.**
- 23B.08.240 Quorum and Voting.**
- 23B.08.245 Corporate Action – Vote of Shareholders.**
- 23B.08.250 Committees.**
- 23B.08.300 General Standards for Directors.**
- 23B.08.310 Liability for Unlawful Distributions.**
- 23B.08.320 Limitation on Liability of Directors.**
- 23B.08.400 Officers.**
- 23B.08.410 Duties of Officers.**
- 23B.08.420 Standards of Conduct for Officers.**
- 23B.08.430 Resignation and Removal of Officers.**
- 23B.08.440 Contract Rights of Officers.**
- 23B.08.500 Indemnification Definitions.**
- 23B.08.510 Authority to Indemnify.**
- 23B.08.520 Mandatory Indemnification.**
- 23B.08.530 Advance for Expenses.**

**Title 23B RCW**  
**Washington Business Corporation Act**

**Chapter 23B.08 RCW**  
**DIRECTORS AND OFFICERS**  
(continued)

- 23B.08.540** Court-ordered Indemnification.
- 23B.08.550** Determination and Authorization of Indemnification.
- 23B.08.560** Shareholder Authorized Indemnification and Advancement of Expenses.
- 23B.08.570** Indemnification of Officers, Employees, and Agents.
- 23B.08.580** Insurance.
- 23B.08.590** Validity of Indemnification or Advance for Expenses.
- 23B.08.600** Report to Shareholders.
- 23B.08.603** Indemnification or Advance for Expenses – Later Amendment or Repeal of Subject Provision.
- 23B.08.700** Definitions.
- 23B.08.710** Judicial Action.
- 23B.08.720** Directors’ Action.
- 23B.08.730** Shareholders’ Action.
- 23B.08.735** Pursuit of Business Opportunities – Duty to Corporation.
- 23B.08.900** Construction – Chapter Applicable to State Registered Domestic Partnerships



## **RCW 23B.08.700**

### **DEFINITIONS**

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#### ***CURRENT SECTION***

**For purposes of RCW 23B.08.710 through 23B.08.735:**

**(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:**

**(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or**

**(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b)(i) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.**

**(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.**

**(3) "Related person" of an individual means (a)(i) the spouse, or a parent or sibling thereof, of the individual, or a child, grandchild, sibling, parent, or spouse of any thereof, of the individual, or a natural person having the same home as the individual, or a trust or estate of which a person specified in this subsection (3)(a) is a substantial beneficiary; or (ii) a trust, estate, incompetent, conservatee, or minor of which the individual is a fiduciary and (b) with respect to RCW 23B.08.735, in addition to the persons under (a) of this subsection, (i) an entity controlled by the individual or any person specified in (a)(i) or (ii) of this subsection; (ii) an entity, other than the corporation, of which the individual is a director, general partner, agent or employee; (iii) a person that controls one or more of the entities specified in (b)(ii) of this subsection or an entity that is controlled by,**

or is under common control with, one or more of the entities specified in (b)(ii) of this subsection; or (iv) a natural person who is a general partner, principal, or employer of the individual..

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction becomes effective or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §116 (eff. 7-1-90)**

Same as current except that subsection (5) read:

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3056-65 (1989)**

*Section 8.70 Definitions for Sections 8.71-8.73.*

#### **INTRODUCTORY COMMENT TO SECTIONS 8.70-8.73**

The common law, drawing by analogy on the fiduciary principles of the law of trusts, initially took the position that any transaction between X Co. and a director of X Co. was contaminated by the director's conflicting interest, that the transaction was null and void or voidable, and, at least by implication, that the interested director who benefited from the transaction could be required to disgorge any profits and be held liable for any damages. In time, this rule was perceived to be demonstrably unworkable in the real business world and contrary to the best interests of the corporation. Accordingly, some courts modified their initial rigidity, and, in addition, corrective legislation was enacted as a part of the business corporation acts.

The new statutory provisions on directors' conflicting interest transactions allowed the courts to develop the substantive content of the duty of loyalty owed by agents to their principals, by employees to their employers, and by directors to their corporations. The statutes themselves concentrated on creating procedures by which interest-conflict transactions between corporations and their directors could be salvaged while, at the same time, corporations and their shareholders could be protected against unfair dealing by self-aggrandizing directors. Section 41 of the 1969 Model Business Corporation Act was such a procedural provision; so was its successor, section 8.31 of the Model Act.

The replacement for section 8.31, now embodied as sections 8.70-8.73 of the Proposed Act, is of the same procedural character. But the new sections have some important new features.

## 1. PURPOSES AND SPECIAL CHARACTERISTICS OF PROPOSED SECTIONS 8.70-8.73.

Predecessor provisions to Proposed sections 8.70-8.73 were sweeping and generalized in character. The Proposed sections are not. Their key objectives are to increase predictability and to enhance practical administrability. To that end, the Proposed sections spell out a safe harbor procedure more meticulously than their predecessors. To the same end, the Proposed sections go further. Earlier statutes left entirely to judicial interpretation --and to the guess of corporate counsel--the central question as to what does and what does not constitute a conflicting interest of a director. Great uncertainty has arisen as to the scope of that concept. The new sections take the new step of spelling out a practical working definition of "conflicting interest" and declare that definition to be exclusive. Circumstances that fall outside the statutory definition of conflicting interest cannot constitute the basis for an attack on a transaction on grounds of a director's interest conflict, although they may, of course, afford basis for legal attack on some other ground. Finally, to a greater degree than their predecessors, the new sections specify when judicial intervention is appropriate and when it is not.

In sum, the new sections are new in that they adopt a "bright-line" statutory approach. An inevitable feature of any bright-line statute or regulation is that, no matter where the line may be set, some situations that fall outside the line will closely resemble other situations that fall inside it. Some observers find that outcome anomalous and argue that a bright-line approach is inferior to a statement of broad principles. But the legislative draftsman who chooses to suppress marginal anomalies by resorting to generalized statements of principle will pay a cost in terms of predictability. The choice between these two drafting approaches is a matter of judgment; an experienced legislative draftsman would never write a bright-line constitutional "due process" clause, nor would the draftsman provide in a business corporation act for "a reasonable period" of notice for a shareholders' meeting.

For a number of reasons, the new sections are deliberately weighted towards bright-line specificity and predictability. That there will be imaginable situations at the margin that are similar but yield different results can be anticipated and is accepted.

One consideration arguing for the bright-line approach in the new sections is that the existing case law governing interest conflicts of directors is in a state of unhealthy uncertainty, reflecting differing judicial attitudes toward and varying levels of comprehension concerning the subject. Equal uncertainty surrounds the working of the procedural machinery for dealing with transactions that involve a director's conflicting interest.

A second consideration arguing for a bright-line approach is that the fundamental perspective of the new sections is prospective. In the real business world, a decision must be made now whether or not to proceed with the transaction and legal counsel's opinion must be delivered now as to whether clearance procedures are available and have been complied with. The business executive can accept either "yes" or "no" as an answer but the executive cannot effectively function in an environment in which the law, lawyers or the courts say "Go ahead and I will tell you later--perhaps years later--whether the transaction is vulnerable to attack."

Further, the essential character of interest conflict is often, unfortunately, misunderstood by the public and the media (and sometimes misunderstood, too, by lawyers and judges). Interest conflicts can and sometimes do lead to baneful acts. The law regulates interest conflict transactions because experience shows that people often yield to the temptation to advance their self-interests and, if they do, other people may be injured. That contingent fear is sufficient reason to warrant caution and to apply special standards and procedures to interest conflict transactions.

Nonetheless, it is important to keep firmly in mind that it is a contingent risk we are dealing with--that an interest conflict is not in itself a crime or a tort or necessarily injurious to others. Contrary to much popular usage, having a "conflict of interest" is not something one is "guilty of"; it is simply a state of affairs. Indeed, in many situations, the corporation and the shareholders may secure major benefits from a

transaction despite the presence of a director's conflicting interest. Further, while history is replete with selfish acts, it is also oddly counterpointed by numberless acts taken contrary to self interest.

And, as an additional consideration, while conflicting interests surely carry potential danger, other important social values, such as economic efficiency, predictability and business finality are also at stake and should be accorded heavy countering weight in the law.

One last point. Even if one were to disregard these considerations and were to draft statutory language governing directors' interest conflicts in the most generalized form in an effort to catch the last malefactor, "anomalous" results still would not be avoided. One reason is that generalized drafting invites varying judicial and practitioner interpretation, as has in fact occurred in the cases on directors' conflicts of interest. But the ultimate unresolvable problem in seeking to regulate interest conflicts is that human beings are motivated by unimaginably varied and indeterminable mixes of ambitions, likes, dislikes, and biases. At the end of the day, who can say in respect of any matter that a particular director was in a deeper sense "disinterested" in a particular transaction and acted objectively on the merits? In regulating the conflicting interests of directors, the courts (and pertinent statutes) have limited inquiry to the financial interests of the director and the director's immediate family and associates. That is the wise course and, indeed, the only practical course. But in adopting that course, one obviously excludes a large fraction of the interests that actually drive the actions of human beings. Thus, the law may preclude a director from voting on a transaction in which the director has an economic interest even if, given the director's resources, the amount at stake will have no real impact upon the director's decision-making; yet the law does not prohibit the same director from voting on a transaction which significantly benefits a religious institution to whose creed the director is deeply devoted and that guides the director's life. Such deeper anomalies cannot be eradicated and the law should not seek to eradicate them. But it is worthwhile to be reminded that they exist, for in this field a degree of anomaly is a condition that must be accepted and lived with.

## **2. PROPOSED SCOPE OF SECTIONS 8.70-8.73.**

The focus of Proposed sections 8.70-8.73 is sharply defined and limited.

First: the Proposed sections are targeted on legal challenges based on interest conflicts only. They do not undertake to define, regulate or provide any form of procedure regarding other possible claims. For example, the Proposed sections do not address a claim that a controlling shareholder has violated a duty owed to the corporation or minority shareholders.

Second: the Proposed sections are applicable only when there is a "transaction" by or with the corporation. Many circumstances can arise in which a director has an economic interest in a particular matter that is adverse to the corporation's best interests but that does not entail a "transaction" with the corporation. Obvious examples include a director who usurps a corporate opportunity or competes with the corporation. In some situations, too, simple inaction by a board might work to a director's personal economic advantage. Without suggesting anything about other safe harbor procedures for the director and the corporation that might be available for such nontransactional matters (see paragraph 4 below), the new sections have no application unless there is a "transaction" to which the corporation is a party.

Third: Proposed sections 8.70-8.73 deal with directors only. Conflicts of interest of non-director officers or employees of the corporation are dealt with by the law of agency prescribing loyalty of agent to principal. Moreover, most large corporations today have internal regulations governing the business conduct of all personnel, including loyalty to the employer and avoidance of conflicting personal interests. A corporate employee can also deal with a personal conflict situation by going to the employee's supervisor. Thus the conflict of interest problems of all corporate personnel except directors can be satisfactorily handled by general law, internal rules and personnel procedures. For the directors, however--those who are ultimately responsible for the corporation--special provisions in the business corporation statute are required.

Fourth: it is important to stress that the voting procedures and standards prescribed in the Proposed sections deal solely with the element of the director's conflicting interest. A transaction that receives a directors' or shareholders' vote that complies with the new sections may well fail to achieve a different vote or quorum that may be requisite for substantive approval of the transaction under other applicable statutory provisions or under the articles of incorporation; and vice versa. (Under the Proposed Act, latitude is granted for setting higher voting requirements and different quorum requirements in the articles of incorporation. See sections 7.27 and 2.02(e).)

Fifth: a few corporate transactions or arrangements in which directors inherently have a special personal interest are of a unique character and are regulated by special procedural provisions of the Act. See Proposed sections 8.51 and 8.52 dealing with indemnification arrangements and Proposed section 7.40 dealing with termination of derivative proceedings by board action. Any corporate transactions or arrangements affecting directors that are governed by such regulatory sections of the Proposed Act are not governed by the new sections.

The new sections contemplate the deletion of provisions dealing specially with loans to directors; a loan to a director is simply a subspecies of directors' conflicting interest transactions and is procedurally governed by the new sections.

### **3. STRUCTURE OF PROPOSED SECTIONS 8.70-8.73**

Definitions are in Proposed section 8.70. Proposed section 8.71 prescribes what a court may or may not do in various situations. Proposed section 8.72 prescribes procedures for action by boards of directors regarding a director's conflicting interest transaction. Proposed section 8.73 prescribes corresponding procedures for shareholders. Thus the most important operative section of the subchapter is Proposed section 8.71.

### **4. OUTSIDE PROPOSED SECTIONS 8.70-8.73: NON-TRANSACTIONAL SITUATIONS**

A prudent director will be sensitive to situations that may place the director in the position of divided loyalty. To resolve doubts, the director will bring to the attention of the board of directors investment opportunities or business activities the director wishes to pursue. The board's blessing can serve as a shield if the director later should be charged with usurping corporate opportunity or engaging in improper competitive activity. Quite often, too, a director's personal financial interests can often be impacted by a non-transactional policy decision of the board--as where it decides to establish a divisional headquarters in the director's small home town. Non-transactional cases of that kind most often employ a procedure quite similar to that provided for director's conflicting interest transactions under Proposed section 8.72. In addition, a flow of ongoing business relationships between the director and the corporation may, without centering upon any discrete "transaction", raise problems of alleged favoritism or unfair dealing or undue influence.

The circumstances in which such non-transactional situations should be brought to the board or shareholders for clearance, and the legal effect of such clearance, are questions for development under the common law. While non-transactional situations are unaffected one way or the other by the provisions of sections 8.70-8.73, a court may well recognize procedures in those sections as a useful analogy for dealing with such situations. Where the procedures of sections 8.70-8.73 were followed in such situations, the court may, in its discretion, accord to them the same or similar effect to that which is provided by the new sections.

For purposes of Proposed sections 8.70-8.73, "transaction" generally connotes negotiations or a consensual bilateral act between the corporation and another party or parties that concern their respective and differing economic rights or interests--not simply a unilateral action by the corporation but rather a "deal." See discussion of "transaction" under subparagraph (2) of paragraph (2) respecting section 8.70.

**NOTE**

In the Comments to the sections of subchapter F, the director who has a conflicting interest is for convenience referred to as "the director" or "D," the corporation of which the director is a director is referred to as "the corporation" or "X Co." and another corporation dealing with X Co. is referred to as "Y Co."

**COMMENT TO PROPOSED SECTION 8.70**

The definitions set forth in Proposed section 8.70 apply to sections 8.71-8.73 only and have no application elsewhere in the Proposed Act.

**1. CONFLICTING INTEREST**

The definition of conflicting interest requires that the director know of the transaction. More than that, it requires that the director know of the director's interest conflict at the time of the corporation's commitment to the transaction. Absent that knowledge by the director, the risk to the corporation addressed by Proposed sections 8.70-8.73 is not present. In a corporation of significant size, routine transactions in the ordinary course of business, involving decision-making at lower management levels, will usually not be known to the director and will thus be excluded by the "knowledge" criterion in the definition.

The term "conflicting interest" as defined in Proposed section 8.70 is never abstract or free-standing; its use must always be linked to a particular director, to a particular transaction and to a particular corporation.

The definition of "conflicting interest" is exclusive. An interest of a director is a conflicting interest if and only if it meets the requirements of subdivision (1).

D can have a conflicting interest in only three ways.

First: a conflicting interest of D will obviously arise if the transaction is between D and X Co.

A conflicting interest will also arise under subdivision (1)(i) if D is not a party but has a beneficial financial interest in the transaction that is separate from the director's interest as a director or shareholder and is of such significance to the director that it would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the matter. The personal economic stake of the director must be in or closely linked to the transaction--that is, the director's gain must hinge directly on the transaction itself. A contingent or remote gain (such as a future reduction in tax rates in the local community) is not enough to give rise to a conflicting interest under subdivision (1)(i). See the discussion of "transaction" under the Comment to subdivision (2).

If Y Co. is a party to or interested in the transaction with X Co. and Y Co. is somehow linked to D, the matter is in general governed by subdivision (1)(ii). But D's economic interest in Y Co. could be so substantial and the impact of the transaction so important to Y Co. that D could also have a conflicting interest under subdivision (1)(i).

Note that the basic standard set by subdivision (1)(i) and throughout Proposed sections 8.70-8.73--"would reasonably be expected to exert an influence"--is an objective, not a subjective, criterion.

Second: a conflicting interest of D can arise under subdivision (1)(i) from the involvement in the transaction of a "related person" of D. "Related person" is defined in subdivision (3).

Third: in limited circumstances, subsequently discussed, a conflicting interest of D can arise through the economic involvement of certain other persons specified in subdivision (1)(ii). These are any entity (other than X Co.) of which the director is a director, general partner, agent or employee; a person

that controls, or an entity that is controlled by, or is under common control with one or more of the entities specified in the preceding clause; and any individual who is a general partner, principal or employer of D.

The terms "principal" and "employer" as used in subdivision (1)(ii) are not separately defined but should be interpreted sensibly in the context of the purpose of the new sections. The key question is whether D is, by force of an overt or covert tie to an employer or a principal who has a significant stake in the outcome of the transaction, beholden to act in the interest of that outside employer or principal rather than in the interest of X Co.

The "would reasonably be expected" criterion of subdivision (1)(i) applies also to subdivision (1)(ii).

Any director will, of course, have countless relationships and linkages to persons and institutions other than those specified in subdivision (1)(ii) and those defined in subdivision (3) to be related persons. But, for the reasons outlined in the Introduction, the subcategories of persons encompassed by subdivision (1)(ii) are expressly intended to be exclusive and to cover the field for purposes of Proposed sections 8.70-8.73 and particularly Proposed subsection 8.71(a). Thus, if, in a case involving a transaction between X Co. and Y Co., a court is presented with the argument that D, a director of X Co., is also a major creditor of Y Co. and that that stake in Y Co. gives D a conflicting interest, the court should reply that D's creditor interest in Y Co. does not fit any subcategory of subdivision (1)(ii) or subdivision (3) and therefore the conflict of interest claim must be rejected by force of Proposed subsection 8.71(a). The result would be otherwise if Y Co.'s debt to D is of such economic significance to D that it would fall under subdivision (1)(i) or put D in control of Y Co. and thus come within subdivision (1)(ii).

Subdivision (1)(ii) has a differentiated threshold keyed to the significance of the transaction. See the Official Comment to subdivision (2).

It is to be noted that under subdivision (1) of Proposed section 8.70, any interest that the director has that meets the criteria set forth is considered a "conflicting interest." If a director has an interest that meets those criteria, sections 8.70-8.73 draw no further distinction between a director's interest that clashes with the interests of the corporation and a director's interest that is parallel to the interests of the corporation. If the director's "interest" is present, "conflict" is assumed.

## **2. DIRECTOR'S CONFLICTING INTEREST TRANSACTION**

The definition of "director's conflicting interest transaction" in subdivision (2) is the key concept of Proposed sections 8.70-8.73, establishing the area that lies within--and without--the scope of the provisions. The definition operates preclusively; it not only designates the area within which the rules of Proposed sections 8.70-8.73 are to be applied but also denies the power of the court to act with respect to claims of conflict of interest of directors in circumstances that lie outside the statutory definition of "director's conflicting interest transaction." See Proposed subsection 8.71(a).

### **(1) Transaction**

To constitute a director's conflicting interest transaction, there must first be a transaction by the corporation or its subsidiary or controlled entity in which the director has a financial interest. As discussed in the Introduction, the safe harbor provisions provided by sections 8.70-8.73 have no application to circumstances in which there is no "transaction" by the corporation, however apparent the director's conflicting interest. Other strictures of the law prohibit a director from seizing corporate opportunities for personal benefit and from competing against the corporation of which the director is a director; Proposed sections 8.70-8.73 have no application to such situations. Moreover, a director might be personally benefited if the corporation takes no action, as where the corporation decides not to make a bid. Proposed sections 8.70-8.73 have no application to such instances. The limited thrust of the sections is to establish procedures which, if followed, immunize a corporate transaction and the interested director against the common law doctrine of voidability grounded on the director's conflicting interest. See the Introductory Comment for further discussion.

However, a policy decision and a transactional decision can blur and overlap. Assume X Co. operates a steel mini-mill that is running at a loss. A real estate developer offers to buy the land on which the mill is located and the X Co. board, having no other use for the land, accepts the offer. This corporate action can readily be characterized either as a transaction--the sale of the land--or as a business policy decision--to go out of an unprofitable business. If D is a partner of the real estate developer, D has a stake in the sale transaction and subdivisions (1)(i) and (1)(ii) and all of Proposed sections 8.70-8.73 apply. But what if D, having no such interest, is in the local trucking business and a predictable consequence of closing the local mini-mill is that D will benefit from a future increase in demand for hauling services to bring in steel from more distant supply sources? An intent of the words "in or so closely linked to the transaction" in subdivisions (1)(i) and (1)(ii) is to focus Proposed sections 8.70-8.73 on the transaction itself. D's financial stake as a trucker in this situation lies not in the transaction, which is governed by Proposed sections 8.70-8.73, but in the corporate business decision, which is not; accordingly, Proposed subsection 8.71(a) is inapplicable and imposes no bar to the court's discretion. Board action, though in compliance with Proposed section 8.72, will not, ipso facto, yield safe harbor protection for D or the transaction under Proposed subsection 8.71(b). The matter will be treated as provided in paragraph 4 of the Introduction.

As another feature of the key term "transaction," the text of subdivision (1) emphasizes that the term implies and is limited to action by the corporation itself. The language of Proposed sections 8.70-8.73 have no application one way or the other to economic actions by the director in which the corporation is not a party or in which the corporation takes no action. Thus, a purchase by the director of the corporation's shares on the open market or from a third party is not a "transaction" within the scope of Proposed sections 8.70-8.73 and the sections do not govern an attack made on the propriety of such a share purchase.

If the board of directors of X Co. decides to distribute "poison pill" rights in order to fend off a possible takeover, that occurrence does not constitute a "transaction" as contemplated by Proposed sections 8.70-8.73. See the discussion in paragraph 4 of the Introductory Comment as to the character of a "transaction." If, on the other hand, a board of directors commits the corporation to a "crown jewel" option granted to a third party, there would be a "transaction."

But as noted earlier, for the transaction to be covered by Proposed sections 8.70-8.73, the director (or other person designated by Section 8.60(i)) must have a beneficial interest respecting the transaction. Proposed sections 8.70-8.73 would obviously govern such a crown jewel contract if a director was (or had a defined relationship to) the third party. But the fact that the crown jewel contract was in part motivated by the directors' desire to keep themselves on the board would not, taken alone, constitute a sufficiently direct interest in the transaction to bring it within Proposed sections 8.70-8.73.

(2) Party to the transaction--the corporation

Transaction by what entity? In the usual case, the transaction in question would be by X Co. But assume that X Co. is the controlling corporation of S Co. (i.e., it controls the vote for directors of S Co.). D wishes to sell a building D owns to X Co. and X Co. is willing to buy it. As a business matter, it will often make no difference to X Co. whether it takes the title itself or places it with its subsidiary S or another entity that X Co. controls. The applicability of Proposed sections 8.70-8.73 cannot be allowed to depend upon that formal distinction. The Proposed sections 8.70-8.73 therefore include within their operative framework transactions by a subsidiary or controlled entity of X Co. See the Note on Parent Companies and Subsidiaries below.

(3) Party to the transaction--the director

Subdivision (1)(i) and subdivision (1)(ii) differ as to the persons covered and as to the threshold of transactional significance. Subdivision (1)(i), addressed to D and related persons of D, includes as directors' conflicting interest transactions all transactions that meet the substantive criteria prescribed. By contrast, subdivision (1)(ii), addressed to transactions involving other designated persons, excludes from its



coverage transactions that are not sufficiently significant to the corporation to warrant decision at the boardroom level.

As a generalization, the linkage between a director and a "related person" is closer than that between the director and those persons and entities specified in subdivision (1)(ii). Correspondingly, the threshold of conflicting interest under subdivision (1)(i) is lower than that set for subdivision (1)(ii). Thus, all routine transactions of X Co. are excluded from the definition of director's conflicting interest transaction unless they fall within subdivision (1)(i). If Y Co., a computer company of which D is also an outside director, sells office machinery to X Co., the transaction will not normally give rise to a conflicting interest for D from the perspective of either company since the transaction is a routine matter that would not come before either board. If, however, the transaction is of such significance to one of the two companies that it would come before the board of that company, then D has a conflicting interest in the transaction with respect to that company.

Implicit in subdivision (1)(ii) is a recognition that X Co. and Y Co., particularly if large enterprises, are likely to have routine, perhaps frequent, business dealings with each other as they buy and sell goods and services in the marketplace. The terms of these dealings are dictated by competitive market forces and the transactions are conducted at personnel levels far below the board room. The fact that D has some relationship with Y Co. is not in itself sufficient reason to open these smaller scale impersonal business transactions to challenge if not passed through the board in accordance with the procedures of Proposed section 8.72. It would be doubly impractical to do so twice where X Co. and Y Co. have a common director.

Proposed section 8.70 takes the practical position. The definition in subdivision (1)(ii) excludes most such transactions both by its "knowledge" requirement and by its higher threshold of economic significance. In almost all cases, any such transaction, if challenged, would in any case be easily defensible as being "fair." In respect of day-to-day business dealings, the main practical risk of impropriety that could arise would be that a director having a conflicting interest might seek to exert inappropriate influence upon the interior operations of the enterprise--might try to use the director's status as a director to pressure lower level employees to divert their business out of ordinary channels to the director's advantage. But a director's affirmative misconduct goes well beyond a claim that the director has a conflicting interest and judicial action against such improper behavior remains available. See also the Comment to Proposed subsection 8.72(b) regarding common directors.

The absence of the significance threshold in subdivision (1)(i) does not impose an inappropriate burden on directors and related persons. The commonplace and oftentimes recurring transaction will involve purchase of the corporation's product line, it will usually not be difficult for D to show that the transaction was on commercial terms and was fair, or indeed, that D had no knowledge of the transaction. As a result, these transactions do not invite harassing lawsuits against the director. A purchase by D of a product of X Co. at a usual "employee's discount", while technically assailable as a conflicting interest transaction, would customarily be viewed as "fair" to the corporation as a routine incident of the office of director. For other transactions between the corporation and the director or those close to the director, D can, and should, have the burden of establishing the fairness of the transaction if it is not passed upon by the arm's-length review of qualified directors or the holders of qualified shares. If there are any reasons to believe that the terms of the transaction might be questioned as unfair to X Co., D is well advised to pass the transaction through the safe harbor procedures of Proposed sections 8.70-8.73.

#### Note on Parent Companies and Subsidiaries

If a subsidiary is wholly owned there is no outside holder of shares of the subsidiary to be injured with respect to transactions between the two corporations.

Transactions between a parent corporation and a partially-owned subsidiary may raise the possibility of abuse of power by a majority shareholder to the disadvantage of a minority shareholder. Proposed sections 8.70-8.73 have no relevance as to how a court should in the circumstances deal with that claim.

If there are not at least two outside directors of the subsidiary, the subsidiary and the board of directors must operate on the basis that any transaction between the subsidiary and the parent that reaches the significance threshold in subdivision (1)(ii) may, as a technical matter, be challengeable by a minority shareholder of the subsidiary on grounds that it is a director's conflicting interest transaction. In that case, the directors of the subsidiary will have to establish the fairness of the transaction to the subsidiary. In practice, however, the case law has dealt with such claims under the rubric of the duties of a majority shareholder and that is, in reality, the better approach. See the Comment to Proposed subsection 8.71(b).

### **3. RELATED PERSON**

Two subcategories of "related person" of the director are set out in subdivision (3). These subcategories are specified, exclusive and preemptive.

The first subcategory is made up of closely related family, or near-family, individuals, trusts and estates as specified in clause (i). The clause is exclusive insofar as family relationships are concerned. The references to a "spouse" are intended to include a common-law spouse or unrelated cohabitant.

The second subcategory is made up of persons specified in clause (ii) to whom or which the director is linked in a fiduciary capacity as, for example, in the director's status as trustee or administrator. (Note that the definition of "person" in the Proposed Act includes both individuals and entities. See Proposed subsection 1.40(16).) From the perspective of X Co., D's fiduciary relationships are always a sensitive concern. A conscientious director may be able to control the director's own greed arising from a conflicting personal interest. And the director may resist the temptation to assist the director's spouse or child. But the director can never escape the legal obligation to act in the best interests of another person for whom the director is a trustee or other fiduciary.

### **4. REQUIRED DISCLOSURE**

Two separate elements together make up the defined term "required disclosure". They are disclosure of the existence of the conflicting interest and then disclosure of the material facts known to D about the subject of the transaction.

Subdivision (4) calls for disclosure of all facts known to D about the subject of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment by the person acting for the corporation as to whether to proceed or not to proceed with the transaction. If a director knows that the land the corporation is buying from the director is sinking into an abandoned coal mine, the director must disclose not only that the director is the owner and that the director has an interest in the transaction but also that the land is subsiding; as a director of X Co. the director may not invoke caveat emptor. But in the same circumstances the director is not under an obligation to reveal the price the director paid for the property ten years ago, or that the director inherited it, since that information is not material to the corporation's business judgment as to whether or not to proceed with the transaction. Further, while material facts that pertain to the subject of the transaction must be disclosed, a director is not required to reveal personal or subjective information that bears upon the director's negotiating position (such as, for example, the director's urgent need for cash, or the lowest price the director would be willing to accept. This is true despite the fact that such information would obviously be relevant to the corporation's decision-making in the sense that, if known to the corporation, it could equip the corporation to hold out for terms more favorable to it.

Underlying the definition of the twin components of "required disclosure" is the critically important provision contained in subdivision (1) that a basic precondition for the existence of a "conflicting interest" is that the director know of the transaction and also that the director know of the existence of the director's conflicting interest.

## 5. TIME OF COMMITMENT

The time of the commitment by the corporation (or its subsidiary or other controlled entity) to the transaction is defined in operational terms geared to change of economic position.

### AMENDMENTS TO ORIGINAL SECTION

**Laws 2009, ch. 189, §30 (eff. 7-26-09)**(*amends only subsection (5)*)

(5) "Time of commitment" respecting a transaction means the time when the transaction ~~is consummated~~ becomes effective or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

### *CARC COMMENTARY*

The term "corporate action" is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

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### **Laws 2015, ch. 20, §3 (eff. 7-24-15)**

For purposes of RCW 23B.08.710 through ~~23B.08.730~~23B.08.735:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b)(i) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of ~~a director~~ an individual means (a)(i) the spouse, or a parent or sibling thereof, of the ~~director~~ individual, or a child, grandchild, sibling, parent, or spouse of any thereof, of the ~~director~~ individual, or ~~an individual~~ a natural person having the same home

as the ~~director~~ individual, or a trust or estate of which ~~an individual~~ a person specified herein in this subsection (3)(a) is a substantial beneficiary; or ~~(b) (ii)~~ (i) a trust, estate, incompetent, conservatee, or minor of which the ((director))individual is a fiduciary and (b) with respect to RCW 23B.08.735, in addition to the persons under (a) of this subsection, (i) an entity controlled by the individual or any person specified in (a)(i) or (ii) of this subsection; (ii) an entity, other than the corporation, of which the individual is a director, general partner, agent or employee; (iii) a person that controls one or more of the entities specified in (b)(ii) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(ii) of this subsection; or (iv) a natural person who is a general partner, principal, or employer of the individual.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction becomes effective or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

***CARC COMMENTARY***

The term "related person" is used at RCW 23B.08.735 and item (k) of RCW 23B.02.020(5), two provisions that deal with disclaimers of business opportunities. RCW 23B.08.740 creates a safe harbor for directors or officers with respect to specific business opportunities that they or "related persons" may elect to pursue, while item (k) of RCW 23B.02.020(5) allows a corporation to disclaim in advance business opportunities, with a further requirement that as to officers or "related persons," there be action by the board of directors allowing application of that advance disclaimer to that director or "related persons." For purposes of these business opportunity provisions, "related persons" include not only the individuals and persons covered by item (a) of the definition of "Related Persons" but also (i) entities controlled by the relevant individual or persons specified in item (a) of the definition, (ii) entities, other than the corporation itself, of which the relevant individual is a director, general partner, agent or employee, (iii) a person that controls an entity specified by item (ii) or an entity that controls, is controlled by or is under common control with any entity specified by item (ii), or (iv) a natural person who is a general partner, principal or employer of the relevant individual.

\* \* \* \* \*

## **RCW 23B.08.720**

### **DIRECTORS' ACTION**

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#### ***CURRENT SECTION***

**(1) Directors' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section, provided that action by a committee is so effective only if:**

**(a) All its members are qualified directors; and**

**(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.**

**(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director specified in RCW 23B.08.700(3)(a) (i) and (ii) is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in RCW 23B.08.700(4)(b), then disclosure is sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (b) plays no part, directly or indirectly, in their deliberations or vote.**

**(3) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §118 (eff. 7-1-90)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY** Senate Journal 51<sup>st</sup> Legis. 3069-70 (1989)

*Section 8.72 Directors' Action.*

Proposed section 8.72 provides the procedure for action of the board of directors under Proposed sections 8.70-8.73. In the normal course, this section, taken together with Proposed subsection 8.71(b), will be the key provision for dealing with directors' conflicting interest transactions. All discussion of Proposed section 8.72 must be conducted in light of the overarching provisions of Proposed subsection 8.30(a) prescribing the criteria for decisions by directors. Board action that does not comply with the requirements of Proposed subsection 8.30(a) will not, of course, be given effect under Proposed section 8.72. See the Comment to Proposed subsection 8.71(b).

### **1. PROPOSED SUBSECTION 8.72(a)**

A transaction in which a director has a conflicting interest is approved under Proposed section 8.72 if and only if it is approved by qualified directors, as defined in Proposed subsection 8.72(d). Action by the board of directors as a whole is effective if approved by the affirmative vote of a majority (but not less than two) of the qualified directors on the board. Action may also be taken by a duly authorized committee of the board but, to be effective, all members of the committee must be qualified directors and the committee must either contain all of the qualified directors on the board or must have been appointed by the affirmative vote of a majority of the qualified directors on the board. The effect of the limitation on committee action is to make it impossible to handpick as committee members a favorably inclined minority from among the qualified directors.

Except to the limited extent provided in subsection (b), approval by the board or committee must be preceded by required disclosure.

Action complying with Proposed subsection 8.72(a) may be taken by the board of directors at any time, before or after the transaction, and may deal with a single transaction or a specified category of similar transactions.

### **2. PROPOSED SUBSECTION 8.72(b)**

Proposed subsection (b) is a new provision designed to deal, in a practical way, with situations in which a director who has a conflicting interest is not able to comply fully with the disclosure requirement of Proposed subsection (a) because of an extrinsic duty of confidentiality. The director may, for example, be prohibited from making full disclosure because of restrictions of law that happen to apply to the transaction (e.g., grand jury seal or national security statute) or professional canon (e.g., lawyers' or doctors' client privilege). The most frequent use of Proposed subsection (b), however, will undoubtedly be in connection with common directors who find themselves in a position of dual fiduciary obligations that clash. If D is also a director of Y Co., D may have acquired privileged confidential information from one or both sources relevant to a transaction between X Co. and Y Co. that the director cannot reveal to one without violating the director's fiduciary relationship to the other. In such circumstance, Proposed subsection (b) makes it possible for such a matter to be brought to the board for consideration under Proposed subsection (a) and thus enable X Co. to secure the protection afforded by Proposed sections 8.70-8.73 for the transaction despite the fact that D cannot make the full disclosure usually required.

To comply with Proposed subsection (b), D must disclose that D has a conflicting interest, inform the directors who vote on the transaction of the nature of the director's duty of confidentiality (e.g., inform them that it arises out of an attorney-client privilege or the director's duty as a director of Y Co. that prevents the director from making the disclosure called for by clause (ii) of Proposed subsection 8.70(4)) and then play no personal part in the board's deliberations. The point of Proposed subsection (b) is simply to make clear that the provisions of Proposed sections 8.70-8.73 may be employed with regard to a transaction in circumstances where an interested director cannot, because of enforced fiduciary silence, make disclosure of the facts known to the director. Of course, if D invokes Proposed subsection (b) and then remains silent before leaving the boardroom, the remaining directors may decline to act on the transaction if troubled by a concern that D knows (or may know) something they do not. On the other hand, if D is subject to an extrinsic duty of confidentiality but has no knowledge of facts that should be disclosed, D would normally so state and disregard Proposed subsection (b), and (having disclosed the existence and nature of D's conflicting interest) thereby comply with Proposed subsection 8.70(4).

A director could, of course, encounter the same problem of mandated silence with regard to any matter that comes before the board; that is, the problem of forced silence is not linked at all to the problems of transactions involving a conflicting interest of a director. It could easily happen that at the same board meeting of X Co. at which D, the interested director, invokes Proposed subsection 8.72(b) and excuses himself, another director who has absolutely no financial interest in the transaction might conclude that under local law the other director is bound to silence (because of attorney-client privilege, for example) and would under general principles of sound director conduct withdraw from participation in the board's deliberations and action.

While subchapter F explicitly contemplates the application of Proposed subsection (b) to the frequently recurrent problem of common directors and officers, it should not otherwise be read as attempting to define the scope or mandate the consequences of various silence-privileges; that is a topic for local law.

Proposed subsection (b) is not available to D if the transaction is directly between the corporation and D or the director's related person--if, that is, the director or a related person is a party to the transaction. If D or a related person is a party to the transaction, the director's only options are required disclosure on an unqualified basis, abandonment of the transaction, or acceptance of the risk of establishing fairness in a court proceeding if the transaction is challenged.

Whenever D proceeds as provided in Proposed subsection 8.72(b), the board should recognize that D may well have information that in usual circumstances D would be required to reveal to the board--information that may well indicate that the transaction is a favorable or unfavorable one for X Co.

### 3. PROPOSED SUBSECTION 8.72(c)

Proposed subsection (c) contains technical provisions dealing with quorum and superfluous votes by interested directors.

### 4. PROPOSED SUBSECTION 8.72(d)

Obviously, a director's conflicting interest transaction and D cannot be provided safe harbor protection by fellow directors who themselves have conflicting interests; only "qualified directors" can provide such safe harbor protection pursuant to Proposed subsection (a). "Qualified director" is defined in Proposed subsection (d). The definition is broad: it excludes not only any director who has a conflicting interest respecting the matter, but also--going significantly beyond the persons specified in the subcategories of Proposed subsection 8.70(1)(ii) for purposes of the "conflicting interest" definition--any director whose familial or financial relationship with D or whose employment or professional relationship with D would be likely to influence the director's vote on the transaction.

The determination of whether there is a financial, employment or professional relationship should be based on the practicalities of the situation rather than formalistic circumstances. For example, a director employed by a corporation controlled by D should be regarded as having an employment relationship with D.

\* \* \* \* \*

### **Laws 2015, ch. 20, §4 (eff. 7-24-15) (amends subsection (2) and deletes subsection (4))**

(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director specified in RCW 23B.08.700(3)(a) **(i) and (ii)** is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in RCW 23B.08.700(4)(b), then disclosure is sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

~~(4) For purposes of this section "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (a) a conflicting interest respecting the transaction, or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.~~

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## **RCW23B.08.735**

### **PURSUIT OF BUSINESS OPPORTUNITIES – DUTY TO CORPORATION.**

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#### ***CURRENT SECTION***

**(1) If a director or officer or related person of either pursues or takes advantage, directly or indirectly, of a business opportunity, that action may not be enjoined or set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if:**

**(a) Before the director, officer, or related person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation: and**

**(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in RCW 23B.08.720, as if the decision being made concerned a director's conflicting interest transaction; or**

**(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in RCW 23B.08.730, as if the decision being made concerned a director's conflicting interest transaction; except that, in the case of both (a)(i) and (ii) of this subsection, rather than making "required disclosure" as defined in RCW 23B.08.700(4), in each case the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director or officer; or**

**(b) the duty to offer the corporation the right to have or participate in the particular business opportunity or the class or category in to which that particular business opportunity falls has been limited or eliminated pursuant to a provision of the articles of incorporation (and in the case of officers and their related persons, made effective by action of qualified directors) in accordance with RCW 23B.02.020(5)(k).**

**(2) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (ii) of this section before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 20 §5 (eff. 7-24-15)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

**CARC COMMENTARY**

The provisions of RCW 23B.08.735(1)(a) provide a safe harbor for a director or officer considering a specific prospective business opportunity that might constitute a ‘business opportunity.’ Under this provision, the board of directors or shareholders of the corporation can disclaim the opportunity through a procedure comparable to the safe harbor provisions of RCW 23B.23.700 to .730 for conflicting interest director transactions (because a ‘business opportunity’ does not involve a transaction between the interested director or other person and the corporation, the provisions of RCW 23B.23.700 to .730 cannot serve to disclaim a corporation’s interest in a particular opportunity).

The provisions of RCW 23B.08.735(1)(a) do not need to be followed if the corporation has included in its articles of incorporation an advance disclaimer of business opportunities as permitted by RCW 23B.02.020(k) and the business opportunity falls within the scope of that disclaimer (and if, in the case of officers and related persons, the board of directors has approved the application of such provision to the particular officer in that particular circumstance). RCW 23B.08.735(1)(b) confirms that a safe harbor exists for directors and officers in the foregoing circumstances.

When presented with a request to disclaim a business opportunity in a particular circumstance under RCW 23B.08.735(1)(a), the board of directors is free, in addition to agreeing with or denying the request for a disclaimer, to delay the decision pending, among other things, receiving more information from the director or officer, or to attach conditions to the disclaimer that the board of directors may grant.

Under RCW 23B.08.735(1)(a), the directors or officer must present the opportunity and secure director or shareholder action disclaiming it before acting on the opportunity and becoming legally obligated to accept it. If the director or officer could seek ratification after acting on the opportunity, the option of taking over the opportunity would in most cases be foreclosed. In sum, the benefits of the safe harbor of RCW 23B.08.735(1)(a) are available only when the corporation can entertain the opportunity in a fully objective way.

The information to be provided by the director or officer seeking a disclaimer under RCW 23B.08.735(1)(a) must be all material facts known to the director or officer regarding the business opportunity instead of the broader requirements imposed by the definition of ‘required disclosure’ at RCW 23B.08.700(4) with respect to conflicting interest director transactions. ‘Required disclosure’ imposes on a director an objective materiality standard, in part because a director proposing an interested director transaction will have completed due diligence and made an informed decision to pursue the transaction. In contrast, the director or officer proffering a business opportunity will often have not undertaken due diligence and made an informed judgment to pursue the opportunity. Thus, RCW 23B.08.735(1)(a) requires that a director or officer disclose only material facts known to such person and shields them from a failure to disclose other material facts as long as the director or officer had no knowledge of such facts.

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**RCW 23B.08.900**  
**CONSTRUCTION – CHAPTER APPLICABLE TO STATE REGISTERED**  
**DOMESTIC PARTNERSHIPS**

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***CURRENT SECTION***

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

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***HISTORY***

**ORIGINAL SECTION** Laws 2009, ch. 521, §63 (eff. 12-2-09)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

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**Title 23B RCW**  
**Washington Business Corporation Act**

**Chapter 23B.09 RCW**  
**CORPORATE ENTITIES — CONVERSIONS**

- 23B.09.005**    **Definitions**
- 23B.09.010**    **Entity conversion**
- 23B.09.020**    **Plan of entity conversion**
- 23B.09.030**    **Approval of a plan of entity conversion**
- 23B.09.040**    **Articles of entity conversion**
- 23B.09.050**    **Effect of entity conversion**
- 23B.09.060**    **Abandonment of entity conversion**



## **RCW 23B.09.005**

### **DEFINITIONS**

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#### ***CURRENT SECTION***

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Converting entity" means the domestic corporation that adopts a plan of entity conversion or the other entity converting to a domestic corporation.

(2) "Domestic other entity" means an other entity organized under the laws of this state.

(3) "Foreign other entity" means an other entity organized under a law other than the laws of this state.

(4) "Interest holder" means a person who holds of record:

(a) A right to receive distributions from an other entity either in the ordinary course of business or upon liquidation, other than as an assignee; or

(b) A right to vote on issues involving an other entity's internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

(5) "Interests" means the interests in an other entity held by its interest holders.

(6) "Organic document" means a public organic document or a private organic document.

(7) "Organic law" means the statute governing the internal affairs of a domestic corporation or other entity.

(8) "Other entity" means any association or entity other than a domestic corporation, a domestic or foreign nonprofit corporation, a domestic or foreign mutual corporation or miscellaneous corporation, or a governmental or quasi-governmental organization. The term includes, but is not limited to, foreign corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, and profit unincorporated associations.

(9) "Owner liability" means personal liability for a debt, obligation, or liability of an entity that is imposed on a person:

(a) Solely by reason of the person's status as a shareholder or interest holder; or

(b) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

(10) "Private organic document" means any document, other than the public organic document, if any, that determines the internal governance of an other entity.

(11) "Public organic document" means the document, if any, that is filed of public record to create an other entity, including amendments and restatements thereof.

**(12) "Surviving entity" means the domestic corporation or other entity that is in existence immediately after consummation of an entity conversion pursuant to this chapter.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2014 c 83 §8 (eff. 6-12-14)**

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

The term "organic document" includes both public organic documents and private organic documents. The term "public organic document" includes such documents as the certificate of incorporation or articles of incorporation of a foreign corporation, the certificate of limited partnership of a limited partnership, the certificate of formation or articles of organization of a limited liability company, the deed of trust of a business trust and comparable documents, however denominated, that are publicly filed to create other types of profit unincorporated associations. An election of limited liability partnership status is not itself a public organic document because it does not create the underlying general or limited partnership filing the election, although the election may be made part of the public organic document of the partnership by its organic law. The term "private organic document" includes such documents as bylaws of a foreign corporation, a partnership agreement of a general or limited partnership, a limited liability company agreement or an operating agreement of a limited liability company and comparable documents, however denominated, of profit unincorporated associations.

The term "owner liability" is used in the context of provisions in this chapter that preserve the personal liability of shareholders, members and interest holders when the entity in which they hold shares, memberships or interests is the subject of a conversion. The term includes only liabilities that are imposed pursuant to statute on shareholders, members or interest holders. Liabilities that a shareholder, member or interest holder incurs by contract are not included. Thus, for example, if a state's business corporation law were to make shareholders personally liable for unpaid wages, that liability would be an "owner liability." If, on the other hand, a shareholder were to guarantee payment of an obligation of a corporation, that liability would not be an "owner liability." The reason for excluding contractual liabilities from the definition of "owner liability" is because those liabilities are constitutionally protected from impairment and thus do not need to be separately protected in this chapter.

The term "business trust" includes any trust carrying on a business, such as a Massachusetts trust, real estate investment trust, or other common law or statutory business trust. The term "profit unincorporated association" excludes estates and trusts (i.e., trusts that are not business trusts), whether or not they would be considered artificial persons under the governing jurisdiction's law, to make it clear that they are not eligible to participate in a conversion under this chapter. The term "profit unincorporated association" also excludes a domestic or foreign business or nonprofit corporation, a state, the United States, or a foreign government.

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## **RCW 23B.09.010 ENTITY CONVERSION**

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### ***CURRENT SECTION***

**(1) A domestic corporation may become an other entity pursuant to a plan of entity conversion if the entity conversion is permitted by the organic law of the other entity by:**

- (a) Complying with RCW 23B.09.030; and**
- (b) Filing articles of entity conversion with the secretary of state.**

**(2) An other entity may become a domestic corporation if the entity conversion is permitted by the organic law of the other entity by:**

- (a) Complying with the procedures for the approval of an entity conversion provided in the organic law of the other entity; and**
  - (b) Filing articles of entity conversion with the secretary of state.**
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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 2014 c 83 §9 (eff. 6-12-14)**

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

The procedures in this chapter permit a domestic corporation to become a domestic or foreign other entity (including a foreign corporation), and also permit a domestic or foreign other entity (including a foreign corporation) to become a domestic corporation. Each of the foregoing transactions could previously be accomplished by a merger under chapter 23B.11 with a wholly-owned subsidiary of the appropriate type. An important purpose of this chapter is to permit the transactions to be accomplished directly.

The provisions of this chapter apply only if a domestic corporation is present either immediately before or immediately after a conversion. This chapter does not provide for the conversion of a domestic or foreign other entity to a domestic or foreign other entity as these transactions would be outside the scope of this title.

The procedures of this chapter do not permit the combination of two or more entities into a single entity. Transactions of that type must continue to be conducted under chapters 23B.11.

The concept of entity conversion as authorized by this chapter may not be found in laws governing the incorporation or organization of other entities. An other entity may convert to a domestic corporation pursuant to this chapter only if the law under which the other entity is organized permits the conversion. Similarly, a domestic corporation may convert to an other entity pursuant to this chapter only if the law under which the other entity would be organized permits the conversion.

This chapter does not specify the procedures that an other entity must follow to approve a conversion under this chapter under the assumption that if the law under which the other entity is organized authorizes the conversion that law will also provide the applicable procedures for approval of the conversion and any safeguards considered necessary to protect the interest holders of the other entity.

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**RCW 23B.09.020**  
**PLAN OF ENTITY CONVERSION**

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***CURRENT SECTION***

**A plan of entity conversion must be in a record and must include:**

- (1) The name of the domestic corporation before conversion;**
  - (2) The name and form of the surviving entity after conversion;**
  - (3) The terms and conditions of the conversion, including the manner and basis for converting interests in the domestic corporation into any combination of the interests, shares, obligations, or other securities of the surviving entity or any other entity or into cash or other property in whole or part; and**
  - (4) The organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2014 c 83 §10 (eff. 6-12-14)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

This chapter imposes virtually no restrictions or limitations on the terms and conditions of an entity conversion. Shares of a domestic corporation that converts into an other entity may be reclassified into interests or other securities, cash or other property. The capitalization of the domestic corporation will need to be restructured in the conversion and its organic documents may be amended by the articles of entity conversion in any way deemed appropriate. When an other entity converts to a domestic corporation, the laws under which the other entity is organized determine which of the foregoing actions may be taken.

Although this chapter imposes virtually no restrictions or limitations on the terms and conditions of an entity conversion, subsection (3) requires that the terms and conditions be set forth in the plan of entity conversion. The list in this section of required provisions in a plan of entity conversion is not exhaustive and the plan of entity conversion may include any other provisions that may be desired.

The plan of entity conversion is not required to be publicly filed, and the articles of entity conversion that are filed with the secretary of state are not required to include the plan of entity conversion. See RCW 23B.09.040(3).

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## **RCW 23B.09.030**

### **APPROVAL OF A PLAN OF ENTITY CONVERSION**

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#### ***CURRENT SECTION***

**In the case of an entity conversion of a domestic corporation to an other entity:**

**(1) The plan of entity conversion must be adopted by the board of directors of the converting entity and the shareholders entitled to vote must approve the plan.**

**(2) After adopting a plan of entity conversion, the board of directors of the converting entity must submit the plan of entity conversion for approval by its shareholders.**

**(3) The board of directors must recommend the plan of entity conversion to the shareholders, unless (a) the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or (b) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders.**

**(4) The board of directors may condition its submission of the plan of entity conversion on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate voting group on the plan of entity conversion.**

**(5) In the case of an entity conversion of a domestic corporation to a foreign corporation, in addition to any other voting conditions imposed by the board of directors acting pursuant to subsection (4) of this section, approval of the plan of entity conversion requires the affirmative vote of shareholders that would be required to approve a plan of merger under RCW 23B.11.030, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on a plan of merger. Separate voting by additional voting groups is required on a plan of entity conversion if such voting group or groups would be entitled to vote on a plan of merger under the circumstances described in RCW 23B.11.035. The articles of incorporation may require a greater or lesser vote to approve a plan of entity conversion than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on the plan.**

**(6) In the case of an entity conversion of a domestic corporation to an other entity that is not a foreign corporation, approval of the plan of entity conversion requires the approval of all shareholders of the domestic corporation, whether or not entitled to vote under this title or the articles of incorporation.**

**(7) If as a result of the conversion one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, in addition to the approval requirements under subsections (5) and (6) of this section, approval of the plan of entity conversion must also require each such shareholder to execute a separate record consenting to become subject to such owner liability.**

**(8) If the approval of the shareholders is to be given at a meeting, the domestic corporation must notify each shareholder, whether or not entitled to vote, of the proposed meeting of shareholders at which the plan of entity conversion is to be submitted for approval in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of entity conversion and must contain or be accompanied by a copy or summary of the plan of entity conversion. The notice must include or be accompanied by a copy of the organic documents of the surviving entity as they will be in effect immediately after the conversion.**

**(9) If any provision of the articles of incorporation, bylaws, or an agreement to which any of the directors or shareholders of the domestic corporation are parties, adopted, or entered into before June 12, 2014, applies to a merger of the domestic corporation, other than a provision that limits or eliminates voting or dissenters' rights, and the document does not refer to an entity conversion of the domestic corporation, the provision is deemed to apply to an entity conversion of the domestic corporation until the provision is subsequently amended.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 2014 c 83 §11 (eff. 6-12-14)**

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

The provisions of this section control the manner in which the conversion of a domestic corporation to an other entity must be adopted and approved and follow generally the rules in chapter 23B.11 for adoption and approval of a plan of merger or share exchange. The manner in which the conversion of an other entity to a domestic corporation must be adopted and approved will be controlled by the laws under which the other entity is organized.

A plan of entity conversion must be approved by the board of directors. Subsection (3) permits the board of directors to either refrain from making a recommendation, subject to the desired circumstances, or if RCW 23B.08.245 applies, to change its recommendation that the shareholders approve the plan of entity conversion. Subsection (3) does not change the underlying requirement that the board of directors adopt the plan of entity conversion before it is submitted to the shareholders. Clauses (a) and (b) of subsection (3) are not intended to relieve the board of directors of its duty to consider carefully the proposed conversion and the interests of shareholders. Approval by the shareholders of a plan of entity conversion is always required.

Subsection (5) provides that a plan of entity conversion for the conversion of domestic corporation to a foreign corporation must be approved by the same shareholder vote that would be required to approve a plan of merger under RCW 23B.11.030. If the articles of incorporation provide for a lesser vote than two-thirds to approve a plan of merger, or for a lesser vote by separate voting groups, as permitted in RCW 23B.11.030(7), then such lesser vote would apply to the approval of a plan of entity conversion. The articles of incorporation may also provide for a greater or lesser vote than that required to approve a plan of merger to approve a plan of entity conversion, or a greater or lesser vote by separate voting groups than that required to approve a plan of merger to

approve a plan of entity conversion, in each case so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of entity conversion and of each other voting group entitled to vote separately on a the plan of entity conversion.

Subsection (6) provides that a plan of entity conversion of a domestic corporation to an other entity that is not a foreign corporation must be approved by all shareholders. The Committee believes a unanimous shareholder approval requirement for the conversion of a corporation into a non-corporation other entity is warranted because of the fundamental differences between a corporation, on the one hand, and an other entity (such as a limited partnership, a general partnership, a limited liability partnership, a limited liability company, a joint venture, a joint stock company, a business trust, and a profit unincorporated association) on the other hand, including how the business form can affect the owners' personal assets and tax liabilities.

Because the concept of entity conversion is relatively new, persons who drafted and negotiated special rights for directors or shareholders before the enactment of this chapter should not be charged with the consequences of not having dealt with the concept of entity conversion in the context of those special rights. Subsection (9) accordingly provides a transition rule that is intended to protect such special rights. Other documents, in addition to special rights, may include shareholder agreements, voting trust agreements, vote pooling arrangements or other similar arrangements. For example, if the articles of incorporation provide that the corporation cannot participate in a merger without a supermajority vote of the shareholders, that supermajority requirement will also apply to the conversion of the corporation to an other entity. Conversely, because RCW 23B.11.035(4) permits provisions to eliminate or limit voting rights in mergers in certain circumstances, the transitional rule excludes the application of such provisions.

\* \* \* \* \*





## **RCW 23B.09.040**

### **ARTICLES OF ENTITY CONVERSION**

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#### ***CURRENT SECTION***

**(1) After a plan of entity conversion by a domestic corporation converting into an other entity has been adopted and approved as required by this chapter, articles of entity conversion must be signed on behalf of the domestic corporation by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.**

**(2) After the conversion of an other entity into a domestic corporation has been adopted and approved as required by the organic law of the converting entity, articles of entity conversion must be signed on behalf of the converting entity by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.**

**(3) The articles of entity conversion must set forth:**

**(a) A statement that the converting entity has been converted into the surviving entity;**

**(b) The name and form of the converting entity before conversion;**

**(c) The name and form of the surviving entity after conversion, which must be a name that satisfies the requirements of Article 3 of chapter 23.95 RCW if the surviving entity after conversion is a domestic corporation;**

**(d) Articles of incorporation that comply with RCW 23B.02.020 if the surviving entity after conversion is a domestic corporation;**

**(e) The date the conversion is effective under the organic law of the surviving entity;**

**(f) If the converting entity is a domestic corporation, a statement that the conversion was duly approved by the shareholders of the domestic corporation pursuant to RCW 23B.09.030;**

**(g) If the converting entity is an other entity, a statement that the conversion was duly approved as required by the organic law of the converting entity; and**

**(h) If the surviving entity is a foreign other entity not authorized to transact business in this state: (i) A statement that the surviving entity consents to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation; and (ii) the street and mailing address of the entity's principal office that may be used for service of process under RCW 23.95.450.**

**(4) The articles of entity conversion take effect at the effective time provided in RCW 23.95.210. Articles of entity conversion under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the other entity if the combined filing satisfies the requirements of both this section and the organic law of the other entity.**

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## ***HISTORY AND COMMITTEE COMMENTARY***

### **ORIGINAL SECTION Laws 2014 c 83 §12 (eff. 6-12-14)**

- (1) After a plan of entity conversion by a domestic corporation converting into an other entity has been adopted and approved as required by this chapter, articles of entity conversion must be signed on behalf of the domestic corporation by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.
- (2) After the conversion of an other entity into a domestic corporation has been adopted and approved as required by the organic law of the converting entity, articles of entity conversion must be signed on behalf of the converting entity by any officer or other duly authorized representative and must be delivered to the secretary of state for filing.
- (3) The articles of entity conversion must set forth:
  - (a) A statement that the converting entity has been converted into the surviving entity;
  - (b) The name and form of the converting entity before conversion;
  - (c) The name and form of the surviving entity after conversion, which must be a name that satisfies the requirements of RCW 23B.04.010 if the surviving entity after conversion is a domestic corporation;
  - (d) Articles of incorporation that comply with RCW 23B.02.020 if the surviving entity after conversion is a domestic corporation;
  - (e) The date the conversion is effective under the organic law of the surviving entity;
  - (f) If the converting entity is a domestic corporation, a statement that the conversion was duly approved by the shareholders of the domestic corporation pursuant to RCW 23B.09.030;
  - (g) If the converting entity is an other entity, a statement that the conversion was duly approved as required by the organic law of the converting entity; and
  - (h) If the surviving entity is a foreign other entity not authorized to transact business in this state: (i) A statement that the surviving entity appoints the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation; and (ii) the street and mailing address of an office which the secretary of state may use for the purposes of RCW 23B.15.100.
- (4) The articles of entity conversion take effect at the effective time provided in RCW 23B.01.230. Articles of entity conversion under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the other entity if the combined filing satisfies the requirements of both this section and the organic law of the other entity.

### **OFFICIAL LEGISLATIVE HISTORY**

None.

### ***CARC COMMENTARY***

The filing of articles of entity conversion makes the conversion a matter of public record. Where the surviving entity is a domestic corporation, the filing also makes its articles of incorporation a matter of public record.

The filing requirements for articles of entity conversion are set forth in RCW 23B.01.200. Under RCW 23B.01.230, a record may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified, except that a delayed effective date may not be later than the 90th day after the date the record is filed. In cases where an entity is changing the jurisdiction in which it is incorporated or otherwise organized, it is recommended that the entity use a delayed effective date provision in its entity conversion filings in both this state and the foreign jurisdiction, or otherwise coordinate the timing of those filings, so that the filings become effective at the same time. This will avoid any question about a gap in the continuity of the entity's existence that might otherwise arise as a result of those filings taking effect at different times.

If a conversion involves a domestic other entity whose organic law also requires a filing to effectuate the conversion, subsection (4) permits the filings under that organic law and RCW 23B to be combined so that only one document need be filed with the secretary of state.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2015, ch. 176, §2121 (eff. 1-1-16)** (*amends original subsection 3(c), (h) and 4*)

(3) The articles of entity conversion must set forth:

(a) A statement that the converting entity has been converted into the surviving entity;

(b) The name and form of the converting entity before conversion;

(c) The name and form of the surviving entity after conversion, which must be a name that satisfies the requirements of ~~RCW 23B.04.010~~ Article 3 of chapter 23.95 RCW if the surviving entity after conversion is a domestic corporation;

(d) Articles of incorporation that comply with RCW 23B.02.020 if the surviving entity after conversion is a domestic corporation;

(e) The date the conversion is effective under the organic law of the surviving entity;

(f) If the converting entity is a domestic corporation, a statement that the conversion was duly approved by the shareholders of the domestic corporation pursuant to RCW 23B.09.030;

(g) If the converting entity is an other entity, a statement that the conversion was duly approved as required by the organic law of the converting entity; and

(h) If the surviving entity is a foreign other entity not authorized to transact business in this state: (i) A statement that the surviving entity ~~appoints the secretary of state as its agent for~~ consents to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation; and (ii) the street and mailing address of ~~an office which the secretary of state may use for the purposes of~~ RCW 23B.15.100 ~~the entity's principal office that may be used for service of process under RCW 23.95.450.~~

(4) The articles of entity conversion take effect at the effective time provided in ~~RCW 23B.01.230~~ RCW 23.95.210. Articles of entity conversion under subsection (1) or (2) of this section may be combined with any required conversion filing under the organic law of the other entity if the combined filing satisfies the requirements of both this section and the organic law of the other entity.

\* \* \* \* \*



## **RCW 23B.09.050**

### **EFFECT OF ENTITY CONVERSION**

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#### ***CURRENT SECTION***

(1) An entity that has been converted pursuant to this chapter is, for all purposes of the laws of the state of Washington, deemed to be the same entity that existed before the conversion and, unless otherwise agreed or as required under applicable non-Washington law, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion is not deemed to constitute a dissolution of the converting entity.

(2) When any conversion becomes effective under this chapter:

(a) The title to all real estate and other property, both tangible and intangible, owned by the converting entity remains vested in the surviving entity without reversion or impairment;

(b) All rights of creditors and all liens upon any property of the converting entity must be preserved unimpaired, and all debts, liabilities, and other obligations of the converting entity continue as obligations of the surviving entity, remain attached to the surviving entity, and may be enforced against it to the same extent as if the debts, liabilities, and other obligations had originally been incurred or contracted by it in its capacity as the surviving entity;

(c) An action or proceeding pending by or against the converting entity may be continued by or against the surviving entity as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the surviving entity; and

(e) Except as otherwise provided in the plan of entity conversion, the terms and conditions of the plan of entity conversion take effect.

(3) When a conversion of a domestic corporation to a foreign other entity becomes effective, the surviving entity is deemed:

(a) To consent to the jurisdiction of the courts of this state to enforce any obligation owed by the converting entity, if before the conversion the converting entity was subject to suit in this state on the obligation;

(b) To consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation in connection with the conversion; and

(c) To agree that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they are entitled under chapter 23B.13 RCW.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2014 c 83 §13 (eff. 6-12-14)

(1) An entity that has been converted pursuant to this chapter is, for all purposes of the laws of the state of Washington, deemed to be the same entity that existed before the conversion and, unless otherwise agreed

or as required under applicable non-Washington law, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion is not deemed to constitute a dissolution of the converting entity.

(2) When any conversion becomes effective under this chapter:

(a) The title to all real estate and other property, both tangible and intangible, owned by the converting entity remains vested in the surviving entity without reversion or impairment;

(b) All rights of creditors and all liens upon any property of the converting entity must be preserved unimpaired, and all debts, liabilities, and other obligations of the converting entity continue as obligations of the surviving entity, remain attached to the surviving entity, and may be enforced against it to the same extent as if the debts, liabilities, and other obligations had originally been incurred or contracted by it in its capacity as the surviving entity;

(c) An action or proceeding pending by or against the converting entity may be continued by or against the surviving entity as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the surviving entity; and

(e) Except as otherwise provided in the plan of entity conversion, the terms and conditions of the plan of entity conversion take effect.

(3) When a conversion of a domestic corporation to a foreign other entity becomes effective, the surviving entity is deemed:

(a) To consent to the jurisdiction of the courts of this state to enforce any obligation owed by the converting entity, if before the conversion the converting entity was subject to suit in this state on the obligation;

(b) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation in connection with the conversion; and

(c) To agree that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they are entitled under chapter 23B.13 RCW.

(4) Service of process on the secretary of state under this section is made in the same manner and with the same consequences as in RCW 23B.15.100

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

An entity conversion is not a conveyance, transfer or assignment. It does not give rise to claims of reverter or impairment of title based on a prohibited conveyance, transfer or assignment. Nor does it give rise to a claim that a contract with the converting entity is no longer in effect on the ground of nonassignability, unless the contract specifically provides that it does not survive an entity conversion.

When a conversion becomes effective, the surviving entity is deemed to be the same entity without interruption as the converting entity, and the surviving entity is deemed to have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or otherwise organized.

This section does not address the issue that could arise in an entity conversion where a person who had authority to bind the converting entity loses that authority because of the conversion and yet purports to act to bind the surviving entity. For example, in a conversion of a general partnership to a domestic corporation, a person who is a general partner of the general partnership but does not become an officer of the domestic corporation will lose the authority of the general partner to bind the business to obligations incurred in the ordinary course of business, but might purport to commit the domestic corporation to such an obligation in dealing with a person who does not have knowledge of the conversion. General principles of agency law should address the issues created in such instances.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2015, ch. 176, §2122 (eff. 1-1-16)** (*amends original subsection 3(b) and 4*)

(3) When a conversion of a domestic corporation to a foreign other entity becomes effective, the surviving entity is deemed:

(a) To consent to the jurisdiction of the courts of this state to enforce any obligation owed by the converting entity, if before the conversion the converting entity was subject to suit in this state on the obligation;

(b) To ~~appoint the secretary of state as its agent for consent to~~ service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of the domestic corporation in connection with the conversion; and

(c) To agree that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they are entitled under chapter 23B.13 RCW.

~~(4) Service of process on the secretary of state under this section is made in the same manner and with the same consequences as in RCW 23B.15.100.~~

\* \* \* \* \*





## **RCW 23B.09.060**

### **ABANDONMENT OF ENTITY CONVERSION**

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#### ***CURRENT SECTION***

(1) Unless otherwise provided in a plan of entity conversion of domestic corporation, after the plan of entity conversion has been adopted and approved as required by this chapter, and at any time before the articles of entity conversion have become effective, the planned conversion may be abandoned by the board of directors without action by the shareholders.

(2) If any entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the entity conversion and in accordance with RCW 23.95.215. Upon filing, the statement takes effect and the entity conversion is deemed abandoned and may not become effective.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 2014 c 83 §14 (eff. 6-12-14)**

(1) Unless otherwise provided in a plan of entity conversion of a domestic corporation, after the plan of entity conversion has been adopted and approved as required by this chapter, and at any time before the articles of entity conversion have become effective, the planned conversion may be abandoned by the board of directors without action by the shareholders.

(2) If any entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, signed by an officer or other duly authorized representative, must be delivered to the secretary of state for filing prior to the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is deemed abandoned and may not become effective.

##### **OFFICIAL LEGISLATIVE HISTORY**

None.

##### ***CARC COMMENTARY***

This section provides for the abandonment of a proposed conversion of a domestic corporation to an other entity. Whether or not the proposed conversion of an other entity to a domestic corporation may be abandoned is determined by the law under which the other entity is organized.

##### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 2015, ch. 176, §2123 (eff. 1-1-16)** (*amends original subsection 2*)

(1) Unless otherwise provided in a plan of entity conversion of domestic corporation, after the plan of entity conversion has been adopted and approved as required by this chapter, and at any time before the articles of entity conversion have become effective, the planned conversion may be abandoned by the board of directors without action by the shareholders.

(2) If any entity conversion is abandoned after articles of entity conversion have been filed with the secretary of state but before the entity conversion has become effective, a statement that

the entity conversion has been abandoned in accordance with this section, signed by an officer or other duly authorize representative, must be delivered to the secretary of state for filing prior to the effective date of the entity conversion and in accordance with RCW 23.95.215. Upon filing, the statement takes effect and the entity conversion is deemed abandoned and may not become effective.

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## **RCW 23B.11.070**

# **MERGER OR SHARE EXCHANGE WITH FOREIGN CORPORATION**

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### ***CURRENT SECTION***

**(1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:**

**(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;**

**(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;**

**(c) The foreign corporation complies with RCW 23B.11.050 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and**

**(d) Each domestic corporation complies with the applicable provisions of RCW 23B.11.010 through 23B.11.040 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with RCW 23B.11.050.**

**(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:**

**(a) To consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and**

**(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under chapter 23B.13 RCW.**

**(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §137 (eff. 7-1-90)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY SENATE JOURNAL 51<sup>ST</sup> LEGIS. 3083-84 (1989)**

*Section 11.07 Merger or Share Exchange With Foreign Corporation.*

Proposed section 11.07 permits mergers or share exchanges between domestic and foreign corporations.

In connection with a plan of merger, the plan must be permitted under the law of the state or country of incorporation of the foreign corporation as well as under the law of the domestic state. The surviving corporation, if it is a foreign corporation, must file articles of merger to accomplish the disappearance of the domestic corporation or corporations, and thereby irrevocably appoints the secretary of state of agent for service of process and agrees to pay dissenters in accordance with chapter 13.

A plan of share exchange, unlike a plan of merger, need not be authorized by the state or country of incorporation of the acquiring foreign corporation. If the domestic law authorizes a compulsory share exchange to acquire a class or series of shares of a domestic corporation, it makes no difference whether the

acquiring corporation is foreign or domestic. This kind of transaction does not affect the separate corporate existence of, or impose the liabilities of the disappearing corporation on, the acquiring foreign corporation.

\* \* \* \* \*

**Laws 2015, ch. 176, §2124 (eff. 1-1-16)** *(changes to subsection (2)(a) only)*

(a) To ~~appoint the secretary of state as its agent for consent to~~ service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

\* \* \* \* \*

## **RCW 23B.11.080 MERGER**

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### ***CURRENT SECTION***

**(1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:**

**(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030;**

**(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.781;**

**(c) The partners of each partnership approve the plan of merger as required by RCW 25.05.375; and**

**(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.421.**

**(2) The plan of merger must set forth:**

**(a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnership, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;**

**(b) The terms and conditions of the merger; and**

**(c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests in each partnership and each limited partnership into shares, limited liability company member interests, partnership interests, obligations, or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.**

**(3) The plan of merger may set forth:**

**(a) Amendments to the articles of incorporation of the surviving corporation;**

**(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and**

**(c) Other provisions relating to the merger.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 1991, ch. 269, §38 (eff. 7-28-91)**

**(1) One or more domestic corporations may merge with one or more limited partnerships if:**

**(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030; and**

**(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.810;**

**(2) The plan of merger must set forth:**

- (a) The name of each corporation, and limited partnership planning to merge and the name of the surviving corporation, or limited partnership into which each other corporation, or limited partnership plans to merge;
  - (b) The terms and conditions of the merger; and
  - (c) The manner and basis of converting the shares of each corporation and the partnership interests of each limited partnership into shares, partnership interests, obligations or other securities of the surviving corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.
- (3) The plan of merger may set forth:
- (a) Amendments to the articles of incorporation of the surviving corporation;
  - (b) Amendments to the certificate of limited partnership of the surviving limited partnership; and
  - (c) Other provisions relating to the merger.

***CARC COMMENTARY***

RCW 23B.11.080-.110 were added to RCW 23B in 1991 by the Partnership Law Committee of the WSBA, to coordinate with merger provisions added to RCW 25.10 (Limited Partnerships) by Laws 1991, ch. 269.

\* \* \* \* \*

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1998, ch. 103, §1310 (eff. 6-11-98)**

- (1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:
- (a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030; ~~and~~
  - (b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.810;
  - (c) The partners of each partnership approve the plan of merger as required by RCW 25.05.375; and
  - (d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.400.
- (2) The plan of merger must set forth:
- (a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnerships, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;
  - (b) The terms and conditions of the merger; and
  - (c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests ~~of in each partnership and~~ each limited partnership into shares, limited liability company member interests, partnership interests, obligations or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.
- (3) The plan of merger may set forth:
- (a) Amendments to the articles of incorporation of the surviving corporation;
  - (b) Amendments to the certificate of limited partnership of the surviving limited partnership; and
  - (c) Other provisions relating to the merger.

***CARC COMMENTARY***

RCW 23B.11.080-.110 were amended in 1998 by the Partnership Law Committee of the WSBA, to facilitate the adoption of the Revised Uniform Partnership Act in 1998. See generally Laws 1998, ch. 103.

\* \* \* \* \*

**Laws 2009, ch. 188, §1401 (eff. 7-1-10)** *(amends only subsection (1)(b) and inserts a comma following the first reference to “obligations” in subsection (2)(c))*

(b) The partners of each limited partnership approve the plan of merger as required by RCW ~~25.10.810~~25.10.781;

**CARC COMMENTARY**

Amends the cross reference to the appropriate section of the Uniform Limited Partnership Act.

\* \* \* \* \*

**Laws 2015, ch. 188, §110 (eff. 1-1-16)** *(changes to subsection (1)(d) only)*

(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.400~~421~~.

\* \* \* \* \*





## **RCW 23B.11.090**

### **ARTICLES OF MERGER**

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#### ***CURRENT SECTION***

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by RCW 25.15.421, the surviving entity must:

- (1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:
    - (a) The plan of merger;
    - (b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and
    - (c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.781.
  - (2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.
  - (3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.
  - (4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.426.
- 

#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1991, ch. 269, §39 (eff. 7-28-91)**

After a plan of merger for one or more corporations and one or more limited partnerships is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), and is approved by the partners for each limited partnership as required by RCW 25.10.810, the surviving entity must:

- (1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:
  - (a) The plan of merger;
  - (b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and
  - (c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.810.
- (2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.820.

##### ***CARC COMMENTARY***

See CARC Comment to the 1991 Amendment adding RCW 23B.11.080.

\* \* \* \* \*

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1998, ch. 103, §1311 (eff. 6-11-98)**

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), ~~and~~ is approved by the partners for each limited partnership as required by RCW 25.10.810, is approved by the partners of each partnership as required by section 907 of this act, or is approved by the members of each limited liability company as required by RCW 25.15.400, the surviving entity must:

- (1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:
  - (a) The plan of merger;
  - (b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and
  - (c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.810.
- (2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.820.
- (3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.
- (4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.405.

***CARC COMMENTARY***

See CARC Comment to 1998 Amendment of RCW 23B.11.080.

\* \* \* \* \*

**Laws 2009, ch. 188, §1402 (eff. 7-1-10)**

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW ~~25.10.810~~ 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by RCW 25.15.400, the surviving entity must:

- (1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:
  - (a) The plan of merger;
  - (b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and
  - (c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW ~~25.10.810~~ 25.10.781.
- (2) If the surviving entity is a limited partnership, comply with the requirements in RCW ~~25.10.820~~ 25.10.786.
- (3) If the surviving entity is a partnership, comply with the requirements in RCW ~~25.05.380~~.
- (4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.405.

***CARC COMMENTARY***

Amends the cross reference to the appropriate section of the Uniform Limited Partnership Act.

\* \* \* \* \*

**Laws 2015, ch. 188, §111 (eff. 1-1-16)**

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the

- members of each limited liability company as required by RCW 25.15.400421, the surviving entity must:
- (1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:
    - (a) The plan of merger;
    - (b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and
    - (c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.781.
  - (2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.
  - (3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.
  - (4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.405426.

\* \* \* \* \*



## **RCW 23B.11.110**

### **MERGER WITH FOREIGN AND DOMESTIC ENTITIES – EFFECT**

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#### ***CURRENT SECTION***

(1) One or more foreign limited partnerships, foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.786;

(d) Each domestic corporation complies with RCW 23B.11.080;

(e) Each domestic limited partnership complies with RCW 25.10.781;

(f) Each domestic limited liability company complies with RCW 25.15.421; and

(g) Each domestic partnership complies with RCW 25.05.375.

(2) Upon the merger taking effect, a surviving foreign corporation, foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

(a) To consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.05 RCW, in the case of dissenting partners.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1991, ch. 269, §41 (eff. 7-28-91)**

(1) One or more foreign limited partnerships and one or more foreign corporations may merge with one or more domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.820;

(d) Each domestic corporation complies with RCW 23B.11.080;

- (e) Each domestic limited partnership complies with RCW 25.10.810;
- (2) Upon the merger taking effect, a surviving foreign corporation or limited partnership is deemed:
  - (a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger; and
  - (b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10 RCW, in the case of dissenting partners.

**CARC COMMENTARY**

See CARC Comment to 1991 Amendment adding RCW 23B.11.080.

\* \* \* \* \*

**AMENDMENT TO ORIGINAL SECTION**

**Laws 1998, ch. 103, §1313 (eff. 6-11-98)**

(1) One or more foreign limited partnerships and one or more, foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

- (a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;
- (b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;
- (c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.820;
- (d) Each domestic corporation complies with RCW 23B.11.080; ~~and~~
- (e) Each domestic limited partnership complies with RCW 25.10.810;
- (f) Each domestic limited liability company complies with RCW 25.15.400; and
- (g) Each domestic partnership complies with section 906 of this act.

(2) Upon the merger taking effect, a surviving foreign corporation ~~or~~, foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

- (a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation or ~~or~~, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and
- (b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation or ~~or~~, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.—(sections 101 through 1307 of this act) RCW, in the case of dissenting partners.

**CARC COMMENTARY**

See CARC Comment to 1998 Amendment of RCW 23B.11.080.

\* \* \* \* \*

**Laws 2009, ch. 188, §1403 (eff. 7-1-10)(amends only subsections (1)(c) and (1)(e))**

(1)(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW ~~25.10.820~~ 25.10.786;

(1)(e) Each domestic limited partnership complies with RCW ~~25.10.810~~ 25.10.781;

**CARC COMMENTARY**

Amends cross references to appropriate sections in the Uniform Limited Partnership Act.

\* \* \* \* \*

**Laws 2015, ch. 176, §2125 (eff. 1-1-16) (changes to subsection (2)(a) only)**

(a) To ~~appoint the secretary of state as its agent for~~ consent to service of process pursuant to RCW 23.95.450 in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

\* \* \* \* \*

**Laws 2015, ch. 188, §110 (eff. 1-1-16) (changes to subsection (1)(f) only)**

(f) Each domestic limited liability company complies with RCW 25.15.400421; and

\* \* \* \* \*





## **RCW 23B.13.020**

### **RIGHT TO DISSENT**

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#### ***CURRENT SECTION***

**(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:**

**(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;**

**(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;**

**(c) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;**

**(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;**

**(e) Any action described in RCW 23B.25.120;**

**(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or**

**(g) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation, which has become effective, to which the domestic corporation is a party as the converting entity, if: (i) The shareholder was entitled to vote on the plan; and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.**

**(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.**

**(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:**

**(a) The proposed corporate action is abandoned or rescinded;**

**(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or**

**(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §141 (eff. 7-1-90)**

1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by RCW 23B.11.030 or the articles of incorporation, and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under RCW 23B.11.040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RCW 23B.06.040; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3087-88 (1989)**

##### *Section 13.02 Right to Dissent.*

Proposed subsection 13.02(a) establishes the scope of a shareholder's right to dissent (and the shareholder's resulting right to obtain payment for the shareholder's shares) by defining the transactions with respect to which a right to dissent exists. These transactions are:

(1) A plan of merger if the shareholder (i) is entitled to vote on the merger under Proposed section 11.03 or pursuant to provisions in the articles of incorporation, or (ii) is a shareholder of a subsidiary that is merged with a parent under Proposed section 11.04. The right to vote on a merger under Proposed section

11.03 extends to corporations whose separate existence disappears in the merger and to the surviving corporation if the number of its authorized shares is increased as a result of the merger.

(2) A share exchange under Proposed section 11.02 if the corporation is a party whose shares are being acquired by the plan and the shareholder is entitled to vote on the exchange.

(3) A sale or exchange of all or substantially all of the property of the corporation not in the usual course of business under Proposed section 12.02 if the shareholder is entitled to vote on the sale or exchange. Proposed subsection 13.02(a)(3) generally grants dissenters' rights in connection with sales in the process of dissolution but excludes them in connection with sales by court order and sales for cash that require substantially all the net proceeds to be distributed to the shareholders within one year. The inclusion of sales in dissolution is designed to ensure that the right to dissent cannot be avoided by characterizing sales as made in the process of dissolution long before distribution is made. An exception is provided for sales for cash pursuant to a plan that provides for distribution within one year. These transactions are unlikely to be unfair to minority shareholders since majority and minority are being treated in precisely the same way and all shareholders will ultimately receive cash for their shares. A sale other than for cash gives rise to a right of dissent since property sometimes cannot be converted into cash until long after receipt and a minority shareholder should not be compelled to assume the risk of delays or market declines. Similarly, a plan that provides for a prompt distribution of the property received gives rise to the right of dissent since the minority shareholder should not be compelled to accept for the shareholder's shares different securities or other property that may not be readily marketable.

The exclusion of court-ordered sales from the dissenter's right is based on the view that court review and approval ensures that an independent appraisal of the fairness of the transaction has been made.

(4) The Committee rejected the extension made by RMA §13.02 of dissenters' rights to a significant number of amendments to articles of incorporation. The committee concluded that significant overreaching in such transactions would be limited by equity courts' investigations into the fairness of the exercise of majority power. It did preserve dissenters' rights for reverse stock splits resulting in fractions of shares, where the corporation is to pay cash for the shares. It felt that providing the dissenters' right in such circumstances would afford minority shareholders additional protection from such transactions, while enhancing the majority's freedom to make such changes.

(5) Any corporate action to the extent the articles, bylaws, or a resolution of the board of directors grant a right of dissent. Corporations may wish to grant on a voluntary basis dissenters' rights in connection with important transactions (e.g., those submitted for shareholder approval). The grant may be to nonvoting shareholders in connection with transactions that give rise to dissenters' rights with respect to voting shareholders. The grant of dissenters' rights may add to the attractiveness of preferred shares, and may satisfy shareholders who would, in the absence of dissenters' rights, sue to enjoin the transaction. Also, in situations where the existence of dissenters' rights may otherwise be disputed, the voluntary offer of those rights under this section will avoid a dispute.

Generally, only shareholders who are entitled to vote on the transaction are entitled to assert dissenters' rights with respect to the transaction. The right to vote may be based on the articles of incorporation or other provisions of the Proposed Act. For example, a class of nonvoting shares may nevertheless be entitled to vote (either as a separate voting group or as part of the general voting group) on an amendment to the articles of incorporation that affects them as provided in one of the ways set forth in Proposed section 10.04; such a class is entitled to vote under Proposed section 11.03 and to assert dissenters' rights if the transaction effecting such amendment to the articles also falls within Proposed section 13.02. On the other hand, such a class does not have the right to vote on a sale of substantially all the corporation's assets not in the ordinary course of business, and therefore, that class is not entitled to assert dissenters' rights with respect to that sale. One exception to this principle is the merger of a subsidiary into its parent under Proposed section 11.04 in which minority shareholders of the subsidiary have the right to assert dissenters' rights even though they have no right to vote.

Proposed subsection 13.02(b) basically adopts the New York formula as to exclusivity of the dissenters' remedy of this chapter. The remedy is the exclusive remedy unless the transaction fails to comply with procedural requirements or is "fraudulent." The theory underlying this section is as follows: when a majority of shareholders has approved a corporate change, the corporation should be permitted to proceed even if a minority considers the change unwise or disadvantageous, and persuades a court that this is correct. Since dissenting shareholders can obtain the fair value of their shares, they are protected from pecuniary loss. Thus in general terms an exclusivity principle is justified. But the prospect that shareholders may be "paid off" does not justify the corporation in proceeding without complying with procedural requirements or fraudulently. If the corporation attempts an action in violation of the corporation law on voting, in violation of clauses in articles of incorporation prohibiting it, by deception of shareholders, or in violation of a fiduciary duty--to take some examples--the court's freedom to intervene should be unaffected by the presence or absence of dissenters' rights under this chapter. Because of the variety of situations in which procedural defects and fraud may appear, this section makes no attempt to specify particular illustrations. Rather, it is designed to recognize and preserve the principles that have developed in the case law of Delaware, New York and other states with regard to the effect of dissenters' rights on other remedies of dissident shareholders. See Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983)(appraisal remedy may not be adequate "where fraud, misrepresentation, self-dealing, deliberate waste of corporate assets, or gross or palpable overreaching are involved"); Walter J. Schloss Associates v. Arkwin Industries, Inc., 455 N.Y.S.2d 844, 847-52 (App. Div. 1982)(dissenting opinion), reversed, with adoption of dissenting opinion, 460 N.E.2d 1090 (Ct. App. 1984). See also Vorenberg, "Exclusiveness of the Dissenting Stockholders' Appraisal Right," 77 HARV. L. REV. 1189 (1964).

The Committee added Proposed subsection 13.02(c) to retain the substance of the provisions in the old law related to circumstances in which a dissenting shareholder's right to obtain payment terminated.

#### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 1991, ch. 269, §37 (eff. 7-28-91)** (*amends original subsection (1)(a) to add " , RCW 23B.11.080," following "RCW 23B.11.030" and amends subsection (2) to add "RCW 25.10.900 through 25.10.955," following "by this title."*)

#### **CARC COMMENTARY**

The current statute (in RCW 23B.13.020(1)(d)) grants dissenters' rights to minority shareholders who have been squeezed out by means of a reverse stock split and subsequent repurchase of their fractional shares. This provision originally represented a Washington variation from the comparable section of the Revised Model Business Corporation Act, but has now been adopted as the model approach in the latest revisions to the RMBCA. Under the proposed changes to RCW 23B.13.020(1)(d), this same basic stance is maintained, but the statutory language is conformed to that of proposed subsection RCW 23B.10.040(1)(i). Thus, any shareholder whose relationship to the corporation is being terminated via an articles amendment will continue to have at least a right to dissent and seek appraisal, even though the squeezed-out minority may not have been afforded separate voting group rights under proposed subsection RCW 23B.10.040(1)(i), or may not have had voting rights at all with respect to the squeeze-out.

\* \* \* \* \*

**Laws 2003, ch. 35, §9 (eff. 7-27-03)** (*amends only subsection (1)(d) of the original section to read:*)

(d) An amendment of the articles of incorporation that materially reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RCW 23B.06.040, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; or

#### **CARC COMMENTARY**

See CARC Comment to 2003 addition of RCW 23B.11.035.

\* \* \* \* \*

**Laws 2009, ch. 189, §41 (eff. 7-26-09) (amends only subsection (1))**

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) ~~Consummation of a~~ plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval ~~is was~~ required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder ~~is was~~ entitled to vote on the merger, or (ii) if the corporation ~~is was~~ a subsidiary that ~~is has been~~ merged with its parent under RCW 23B.11.040;

(b) ~~Consummation of a~~ plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares ~~will be~~ have been acquired, if the shareholder ~~is was~~ entitled to vote on the plan;

(c) ~~Consummation of a~~ sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder ~~is was~~ entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; or

(e) Any corporate action ~~taken approved~~ pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

**CARC COMMENTARY**

The term "corporate action" is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

\* \* \* \* \*

**Laws 2009, ch. 188, §1404 (eff. 7-1-10) (amends only subsection (2))**

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW ~~25.10.900 through 25.10.955~~ 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

**CARC COMMENTARY**

Amends cross references to appropriate sections in the Uniform Limited Partnership Act.

\* \* \* \* \*

**Laws 2013, ch. 97, §1 (eff. 7-28-13) (amends only subsection (1))**

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary ~~that has been merged~~ and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on

the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; ~~or~~

(e) Any action described in RCW 23B.25.120; or

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

**CARC COMMENTARY**

The first amendment to this section is a non-substantive change to the language of RCW 23B.13.020(1)(b) relating to short-form mergers between a parent and subsidiary corporation under RCW 23B.11.040. The second amendment to this section is to add a reference to the dissenters' rights established by RCW 23B.25.120. Pursuant to House Bill 2239, which became effective on June 7, 2012, Chapter 25 was added to the Washington Business Corporation Act relating to "social purpose corporations". RCW 23B.25.120 creates dissenters' rights for (i) an election by an existing for profit corporation to become a social purpose corporation, (ii) an election by a social purpose corporation to cease to be a social purpose corporation, and (iii) an amendment of a social purpose corporation's articles that materially changes one or more of the corporation's social purposes. The Committee determined it would be appropriate to amend RCW 23B.13.020 to include these matters in the list of corporate actions giving rise to dissenters' rights so that it is clear that dissenters' rights under RCW 23B.20.700 are subject to all the same procedural and other actions set forth in Chapter 13 as other corporate actions giving rise to dissenters' rights.

\* \* \* \* \*

**Laws 2014, ch. 83, §15 (eff. 6-12-14) (amends only subsection (1))**

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;

(e) Any action described in RCW 23B.25.120; ~~or~~

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(g) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation, which has become effective, to which the domestic corporation is a party as the converting entity, if: (i) The shareholder was entitled to vote on the plan; and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.

\* \* \* \* \*





## **RCW 23B.13.220**

### **DISSENTERS' RIGHTS – NOTICE**

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#### ***CURRENT SECTION***

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection (5) of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(2) shall comply with subsection (5) of this section.

(3) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (5) of this section.

(4) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection (5) of this section.

(5) Any notice under subsection (1), (2), (3), or (4) of this section must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), or (4) of this section is delivered; and

(e) Be accompanied by a copy of this chapter.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §145 (eff. 7-1-90)

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of RCW 23B.13.210.

- (2) The dissenters' notice must be sent within ten days after the effective date of the corporate action, and must:
- (a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
  - (b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
  - (c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;
  - (d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1) of this section is delivered; and
  - (e) Be accompanied by a copy of this chapter.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3090 (1989)**

*Section 13.22 Dissenters' Notice.*

The basic purpose of Proposed section 13.22 is to require the corporation to tell all actual or potential dissenters what they must do in order to take advantage of their right of dissent. The requirements of what this notice (called a "dissenters' notice") must contain are spelled out in detail to ensure that this notice serves this basic purpose.

In the case of an action that is submitted to the vote of shareholders, the dissenters' notice must be sent only to those persons who gave notice of their intention to dissent under Proposed section 13.21 and who refrained from voting in favor of the proposed actions (sic). In the case of a transaction not involving a vote by shareholders, the dissenters' notice must be sent to all persons who are eligible to dissent and demand payment. In either case the dissenters' notice must be sent within 10 days after the effective date of the corporate action and must be accompanied by a copy of this chapter.

The notice must contain or be accompanied by a form which a person asserting dissenters' right (sic) may use to complete the demand for payment under Proposed section 13.23. The form must specify the date by which it must be received by the corporation, which date must be not less than 30 days nor more than 60 days after the effective date of the notice of how to demand payment.

The dissenters' notice must also specify where and when share certificates must be deposited, or, in the case of uncertificated shares, when restrictions on transfer will become effective under Proposed section 13.24. The date for deposit of share certificates may not be set at a date earlier than the date for receiving the demand for payment.

Proposed subsection 13.22(b)(3) requires the corporation to specify the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. This is the critical date for determining the rights of shareholder-transferees: persons who became shareholders prior to that date are entitled to the full right to dissent and obtain payment for their shares, while persons who became shareholders on or after that date are entitled only to the more limited rights provided by Proposed section 13.27. It is appropriate for the corporation to furnish this critical date since it knows when information relating to the transaction was publicly released. The date selected should be the date the terms were announced, not the earlier date when consideration of the proposed transaction may have been announced.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 2002, ch. 297, §38 (eff. 6-13-02)**

- (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is authorized at a shareholders' meeting, the corporation shall deliver a ~~written dissenters'~~ notice to all shareholders who satisfied the requirements of RCW 23B.13.210.

- (2) The ~~disenters~~<sup>2</sup> notice must be sent within ten days after the effective date of the corporate action, and must:
- (a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
  - (b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
  - (c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;
  - (d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1) of this section is delivered; and
  - (e) Be accompanied by a copy of this chapter.

**CARC COMMENTARY**

See CARC Comment on 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

**Laws 2009, ch. 189, §44 (eff. 7-26-09)**

- (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is ~~authorized~~<sup>approved</sup> at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver ~~a notice~~ to all shareholders who satisfied the requirements of RCW 23B.13.210 210(1) a notice in compliance with subsection (3) of this section.
- ~~(2) The~~ If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(2) shall comply with subsection (3) of this section.
- (3) Any notice under subsection (1) or (2) of this section must ~~be sent within ten days after the effective date of the corporate action, and:~~
- (a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
  - (b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
  - (c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;
  - (d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1) or (2) of this section is delivered; and
  - (e) Be accompanied by a copy of this chapter.

**CARC COMMENTARY**

See comment to 2009 amendment to RCW 23B.07.040 regarding changes in procedures for obtaining shareholder approval without a vote.

The term “corporate action” is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

\* \* \* \* \*

**Laws 2013, ch. 97, §2 (eff. 7-28-13)**

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection ~~3~~5 of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(2) shall comply with subsection ~~3~~5 of this section.

(3) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (5) of this section.

(4) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW 23B.13.020(1)(d) a notice in compliance with subsection (5) of this section.

~~(5)~~ Any notice under subsection (1), ~~(2)~~, (3), or (4) of this section must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), ~~(2)~~, (3), or (4) of this section is delivered; and

(e) Be accompanied by a copy of this chapter.

**CARC COMMENTARY**

Certain corporate actions that give rise to dissenters' rights - namely, the merger of a 90% or greater owned subsidiary into its parent under RCW 23B.11.040 (a "short-form merger") and certain reverse stock splits involving the cash-out of holders of less than one whole share - do not require shareholder approval. Short-form mergers need only be approved by the board of directors of the parent corporation and do not require approval either by the shareholders of the parent corporation or minority shareholders of the subsidiary corporation. Under RCW 23B.10.020(4)(b), a reverse split cash-out may be accomplished with board approval alone so long as the corporation has only one class of shares outstanding and the number of authorized shares is reduced in proportion to the reverse split affecting the outstanding shares.

Until 2009, RCW 23B.13.200 addressed the initial dissenters' rights notice that a corporation is required to provide for both (i) corporate actions approved by shareholder consent in lieu of a meeting under RCW 23B.07.040 and (ii) corporate actions that did not require shareholder approval. In particular, RCW 23B.13.200 previously provided that, in either case, the corporation was required to provide the notice under RCW 23B.13.220. RCW 23B.13.200 and .220 were amended in 2009 in connection with the amendments to RCW 23B.07.040 regarding changes in procedures for obtaining shareholder approval without a vote. The 2009 amendments inadvertently dropped substantive requirements relating to the initial dissenters' rights notice required in the case of corporate actions that do not require shareholder approval. To rectify this oversight, the Committee proposed an amendment to RCW 23B.13.220, as well as certain conforming changes to RCW 23B.13.230. The Committee concluded that this issue was better addressed in RCW 23B.13.220 rather than in RCW 23B.13.200, where it was previously addressed.

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## **RCW 23B.13.230**

### **DUTY TO DEMAND PAYMENT**

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#### ***CURRENT SECTION***

- (1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220(5)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.**
  - (2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.**
  - (3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the notice, is not entitled to payment for the shareholder's shares under this chapter.**
- 

#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §146 (eff. 7-1-90)**

- (1) A shareholder sent a dissenters' notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to RCW 23B.13.220(2)(c), and deposit the shareholder's certificates in accordance with the terms of the notice.
- (2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.
- (3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3090-91 (1989)**

###### ***Section 13.23 Duty to Demand Payment.***

The demand for payment required by Proposed section 13.23 is the definitive statement by the dissenter. In the case of a transaction involving a vote by shareholders, it is a confirmation of the "intention" expressed earlier; in the case of any other transaction, it is the person's first statement of position. In either event, the filing of these demands informs the corporation of the extent of the potential cash drain if it proceeds with the proposed corporate action.

The demand for payment must include a certified statement as to whether the date on which the dissenter acquired ownership of the shares was before (or on or after) the announcement date. See Proposed subsection 13.22(b)(3). This information permits the issuer to detect acquisitions made for speculative or obstructive purposes and to exercise its right under Proposed section 13.27 to defer payment of compensation for these shares.

Proposed subsection 13.23(a) also requires a person who files a demand for payment to deposit the person's share certificates as directed by the corporation in its dissenters' notice. The deposit of share certificates is necessary to prevent dissenters from giving themselves a 30-day option to take payment if the market price of the shares goes down, but sell their shares on the open market if the price goes up. If this kind of speculation were possible, all sophisticated investors might be expected to file demands that they would not intend to carry through unless the price should fall. If the shares are not represented by certificates, the corporation can prevent speculation by restricting their transfer, as authorized by Proposed section 13.24.

With respect to certificated shares, this provision differs from the old law in that the certificates are "deposited" for retention, rather than "submitted for notation." This change assumes that the corporation will retain the certificates unless it fails to effect the proposed corporate action; it thus avoids the need of sending the certificates back to the shareholders, only to be surrendered again when payment is made. In most cases, payment will be made promptly, and the shuttling of certificates back and forth is unnecessary.

A person who fails to file the demand for payment or does not deposit the person's share certificates as required by Proposed subsection 13.23(a) loses the person's status as a dissenter. But a person who fails to certify whether the person acquired the shares before (or on or after) the announcement date does not lose the person's right to dissent; if the person does not thereafter establish that he or she acquired the shares before the announcement date, the corporation may treat the person as an after-acquiring shareholder under Proposed section 13.27.

A shareholder who deposits shares retains all other rights of a shareholder until the effective date of the proposed corporate action. See Proposed subsection 13.23(b).

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 2002, ch. 297, §39 (eff. 6-13-02)**

- (1) A shareholder sent a ~~dissenters'~~ notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the ~~dissenters'~~ notice pursuant to RCW 23B.13.220(2)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.
- (2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.
- (3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the ~~dissenters'~~ notice, is not entitled to payment for the shareholder's shares under this chapter.

##### ***CARC COMMENTARY***

See CARC Comment on 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

##### **Laws 2013, ch. 97, §3 (eff. 7-28-13)**

- (1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220(~~52~~)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.
- (2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.
- (3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the notice, is not entitled to payment for the shareholder's shares under this chapter.

##### ***CARC COMMENTARY***

See CARC Comment on 2013 Amendment to RCW 23B.13.220.

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# **Title 23B RCW Washington Business Corporation Act**

## **Chapter 23B.14 RCW DISSOLUTION**

- 23B.14.010**    **Dissolution by Initial Directors, Incorporators or Board of Directors.**
- 23B.14.020**    **Dissolution by Board of Directors and Shareholders.**
- 23B.14.030**    **Articles of Dissolution – Publication of Notice.**
- 23B.14.040**    **Revocation of Dissolution.**
- 23B.14.050**    **Effect of Dissolution.**
- 23B.14.060**    **Known Claims Against a Dissolved Corporation.**
- 23B.14.065**    **Form and Adequacy of Satisfaction of Claims – Application To and Determination by Court.**
- 23B.14.070**    **Holder of an Unpaid Claim – Proceeding Against Dissolved Corporation to Collect Amount of Claim.**
- 23B.14.200**    **Administrative Dissolution – Grounds.**
- 23B.14.203**    **Administrative Dissolution or Revocation of a Certificate of Authority – Corporation Name Not Distinguishable from Name of Governmental Entity – Application by Governmental Entity. [REPEALED]**
- 23B.14.210**    **Administrative Dissolution – Procedure and Effect. [REPEALED]**
- 23B.14.220**    **Reinstatement Following Administrative Dissolution -- Application.**
- 23B.14.300**    **Judicial Dissolution – Grounds.**
- 23B.14.310**    **Judicial Dissolution or Supervision of Voluntary Dissolution - Procedure.**
- 23B.14.320**    **General or Custodial Receivership.**
- 23B.14.330**    **Decree of Dissolution – Other Orders, Decrees, and Injunctions – Revenue Clearance Certificate.**
- 23B.14.340**    **Survival of Remedy After Dissolution.**
- 23B.14.390**    **Secretary of State – List of Dissolved Corporations.**
- 23B.14.392**    **Certificate of Authority as Insurance Company – Filing of Records.**
- 23B.14.394**    **Certificate of Authority from Department of Financial Institutions – Filing of Records.**
- 23B.14.400**    **Deposit with State Treasurer.**





## **RCW 23B.14.040**

### **REVOCATION OF DISSOLUTION**

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#### ***CURRENT SECTION***

- (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.**
- (2) Revocation of dissolution must be approved in the same manner as the dissolution was approved unless that approval permitted revocation upon approval by the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder approval.**
- (3) After the revocation of dissolution is approved, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
  - (a) The name of the corporation and a statement that such name satisfies the requirements of Article 3 of chapter 23.95 RCW; if the name is not available, the corporation must deliver to the secretary of state for filing articles of amendment changing its name with the articles of revocation of dissolution;**
  - (b) The effective date of the dissolution that was revoked;**
  - (c) The date that the revocation of dissolution was approved;**
  - (d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;**
  - (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and**
  - (f) If shareholder approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with subsection (2) of this section and RCW 23B.14.020.****
- (4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.**
- (5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §157 (eff. 7-1-90)**

- (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.**
- (2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.**
- (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
  - (a) The name of the corporation and a statement that such name satisfies the requirements of RCW 23B.04.010; if the name is not available, the corporation must file articles of amendment changing its name with the articles of revocation of dissolution;****

- (b) The effective date of the dissolution that was revoked;
  - (c) The date that the revocation of dissolution was authorized;
  - (d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;
  - (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
  - (f) If shareholder action was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with RCW 23B.14.040(2) and 23B.14.020.
- (4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3094-95 (1989)**

*Section 14.04 Revocation of Dissolution.*

Voluntary dissolution may be revoked within 120 days of the effective date of the dissolution. Because of the importance and finality of dissolution, the decision to revoke dissolution generally requires shareholder authorization (unless the dissolution was approved solely by the initial director [sic] or incorporators under Proposed section 14.01). Proposed subsection 14.04(b), however, contemplates that the board of directors may revoke dissolution if specifically granted that authority in advance by the shareholders when approving the dissolution. Such authorization is often included in proposals to dissolve that are contingent upon the effectuation of another transaction, such as a sale of corporate assets not in the ordinary course of business.

Certain other action requiring shareholder approval may be revoked by the board of directors without express shareholder approval. (See Proposed sections 11.03 and 12.02). By contrast, dissolution under Proposed section 14.04 may not be revoked by the board of directors without approval of the shareholders.

Articles of revocation of dissolution must be filed to reflect the decision to resume the business of the corporation. The information required in these articles parallels the information required in the original articles of dissolution.

The effect of articles of revocation of dissolution is to eliminate the requirement that the corporation cease to conduct its business except as part of the winding-up process and permit it to resume its business without limitation and as if dissolution had never occurred.

\* \* \* \* \*

**Laws 2009, ch. 189, §52 (eff. 7-26-09)(amends only subsections (2) and (3))**

- (2) Revocation of dissolution must be ~~authorized~~ approved in the same manner as the dissolution was ~~authorized~~ approved unless that ~~authorization~~ approval permitted revocation upon approval by ~~action of~~ the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder ~~action~~ approval.
- (3) After the revocation of dissolution is ~~authorized~~ approved, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
- (a) The name of the corporation and a statement that such name satisfies the requirements of RCW 23B.04.010; if the name is not available, the corporation must file articles of amendment changing its name with the articles of revocation of dissolution;
  - (b) The effective date of the dissolution that was revoked;
  - (c) The date that the revocation of dissolution was ~~authorized~~ approved;
  - (d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;
  - (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder ~~action~~ approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with RCW 23B.14.040(2) and 23B.14.020.

***CARC COMMENTARY***

The term “corporate action” is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

\* \* \* \* \*

**Laws 2015, ch. 176, §2126 (eff. 1-1-16) (changes to subsection (3)(a) and (f) only)**

(a) The name of the corporation and a statement that such name satisfies the requirements of ~~((RCW 23B.04.010))~~ Article 3 of chapter 23.95 RCW; if the name is not available, the corporation must ~~((file))~~ deliver to the secretary of state for filing articles of amendment changing its name with the articles of revocation of dissolution;

(f) If shareholder approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with ~~RCW 23B.14.040(2)~~~~[subsection (2) of this section]~~ subsection (2) of this section and RCW 23B.14.020.

\* \* \* \* \*



## **RCW 23B.14.200**

### **ADMINISTRATIVE DISSOLUTION – GROUNDS**

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#### ***CURRENT SECTION***

**The secretary of state may administratively dissolve a corporation under the circumstances and procedures provided in Article 6 of chapter 23.95 RCW.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §160 (eff. 7-1-90)**

The secretary of state may commence a proceeding under RCW 23B.14.210 to administratively dissolve a corporation if:

- (1) The corporation does not pay within sixty days after they are due any license fees or penalties imposed by this title;
- (2) The corporation does not deliver its completed annual report to the secretary of state within sixty days after it is due;
- (3) The corporation is without a registered agent or registered office in this state for sixty days or more;
- (4) The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or
- (6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title, has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3096 (1989)**

###### ***Section 14.20 Grounds For Administrative Dissolution.***

Involuntary dissolution in earlier versions of the Model Act (and the Washington Business Corporation Act prior to 1980) required a judicial order upon suit filed by the state attorney general. In the comment to section 95 of the 1969 Model Act, this decision was explained on the basis that the Model Act "provides for judicial review in protection of rights that might otherwise be lost." This position, however, was not generally accepted. In 1980, Washington adopted old RCW 23A.28.125. By 1982 only three jurisdictions limited involuntary dissolution to judicial action; all other jurisdictions permitted administrative dissolution for a variety of reasons, usually including a failure to pay franchise taxes and often including failure to file annual reports or otherwise comply with similar requirements of the corporation statutes. Some of these administrative dissolution statutes appeared in the tax statutes rather than the corporation statutes of the states.

The experience in most states has been that administrative dissolution, or the threat thereof, is an effective enforcement mechanism for a variety of statutory obligations. Judicial dissolution is inappropriate for many of these violations because of its cost and the diversion of limited legal resources, particularly since most violations reflect the abandonment of the corporation by its owners.

The advantages of administrative dissolution in these circumstances are compelling: it not only reduces the number of records maintained by the secretary of state, but also avoids further wasteful attempts to compel compliance by the abandoned corporations and returns the corporate name promptly to the status of available names. Therefore, the Proposed Act includes, in Proposed sections 14.20 through 14.22, provisions for the administrative dissolution of corporations in certain limited circumstances. These circumstances are set forth in Proposed section 14.20 and closely parallel provisions found in the old law and in most state statutes on this subject.

Old RCW 23A did not clearly state when a corporation whose period of duration had expired was dissolved. (Old RCW 23A.28.135(1) begins with the words "a corporation which has been dissolved by reason of the expiration of its period of duration"; but expiration of duration was not mentioned as a ground for administrative dissolution under old RCW 23A.28.125.) Proposed subsections 14.20(5) and (6) are designed to clarify this situation. If a corporation has a limited duration which expires after July 1, 1990, that corporation continues to exist until the secretary of state administratively dissolves it. If a corporation whose limited duration expired prior to July 1, 1990 has continued to satisfy annual report, fees and registered agent/office requirements, such corporation continues to exist until the secretary of state administratively dissolves it. If the corporation had a limited duration which expired prior to July 1, 1990, and has failed to satisfy any of such requirements, it has been dissolved prior to the effective date of the Proposed Act, and since it was not administratively dissolved, it is not eligible for reinstatement under Proposed section 14.22.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1990, ch. 178, §5 (eff. 7-1-90)**

The secretary of state ~~may commence a proceeding under RCW 23B.14.210 to~~ administratively dissolve a corporation under RCW 23B.14.210 if:

- (1) The corporation does not pay ~~within sixty days after they are due~~ any license fees or penalties, imposed by this title, when they become due;
- (2) The corporation does not deliver its completed annual report to the secretary of state ~~within sixty days after~~ when it is due;
- (3) The corporation is without a registered agent or registered office in this state ~~for sixty days or more~~;
- (4) The corporation does not notify the secretary of state ~~within sixty days~~ that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or
- (6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change.

**CARC COMMENTARY**

RCW 23B.14.200, as amended, authorized the secretary of state to dissolve administratively (under the procedures in RCW 23B.14.210) corporations that fail to pay license fees when due, to file an annual report when due, or to maintain a registered agent or office. Under RCW 23A.28.125, and under the proposed section, the secretary could not act (i.e., notify the corporation) until 60 days after such defaults. Then, under RCW 23A.28.125, and proposed section 14.21, the corporation had 60 days after the effective date of notice to cure the default. The Committee concluded that a single 60-day grace period was sufficient and deleted the references to sixty days in RCW 23B.14.200.

\* \* \* \* \*

**Laws 1991, ch. 72, §37 (eff. 7-28-91) (amends only subsection (2))**

- (2) The corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

**CARC COMMENTARY**

See CARC Comment to 1991 Amendment to RCW 23B.01.210.

\* \* \* \* \*

**Laws 1994, ch. 287, §7 (eff. 6-9-94) (amends only subsection (6))**

(6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title and set by rule by the secretary, has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change.

**CARC COMMENTARY**

See CARC Comment to 1993 Amendment to RCW 23B.01.220.

\* \* \* \* \*

**Laws 2015, ch. 176, §2127 (eff. 1-1-16)**

The secretary of state may administratively dissolve a corporation under ~~RCW 23B.14.210~~ if:

- ~~(1) The corporation does not pay any license fees or penalties, imposed by this title, when they become due;~~
- ~~(2) The corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;~~
- ~~(3) The corporation is without a registered agent or registered office in this state;~~
- ~~(4) The corporation does not notify the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;~~
- ~~(5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or~~
- ~~(6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title and set by rule by the secretary [of state], has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change the circumstances and procedures provided in Article 6 of chapter 23.95 RCW.~~

\* \* \* \* \*





**RCW 23B.14.203**

**ADMINISTRATIVE DISSOLUTION OR REVOCATION OF A  
CERTIFICATE OF AUTHORITY – CORPORATION NAME NOT  
DISTINGUISHABLE FROM NAME OF GOVERNMENTAL ENTITY –  
APPLICATION BY GOVERNMENTAL ENTITY**

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**REPEALED** Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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***CURRENT SECTION***

(1) Any county, city, town, district, or other political subdivision of the state, or the state of Washington or any department or agency of the state, may apply to the secretary of state for the administrative dissolution, or the revocation of a certificate of authority, of any corporation using a name that is not distinguishable from the name of the applicant for dissolution. The application must state the precise legal name of the governmental entity and its date of formation and the applicant shall mail a copy to the corporation's registered agent. If the name of the corporation is not distinguishable from the name of the applicant, then, except as provided in subsection (4) of this section, the secretary shall commence proceedings for administrative dissolution under RCW 23B.14.210 or revocation of the certificate of authority.

(2) A name may not be considered distinguishable by virtue of:

(a) A variation in any of the following designations, or in the order in which the designation appears with respect to other words in the name: "County"; "city"; "town"; "district"; or "department";

(b) The addition of any of the designations listed in RCW 23B.04.010(1)(a);

(c) The addition or deletion of an article or conjunction such as "the" or "and" [to or]from the same name;

(d) Punctuation, capitalization, or special characters or symbols in the same name;  
or

(e) Use of an abbreviation or the plural form of a word in the same name.

(3)(a) The following are not distinguishable for purposes of this section:

(i) "City of Anytown" and "City of Anytown, Inc."; and

(ii) "City of Anytown" and "Anytown City."

(b) The following are distinguishable for purposes of this section:

(i) "City of Anytown" and "Anytown, Inc.";

(ii) "City of Anytown" and "The Anytown Company"; and

(iii) "City of Anytown" and "Anytown Cafe, Inc."

(4) If the corporation that is the subject of the application was incorporated or certified before the formation of the applicant as a governmental entity, then this section applies only if the applicant for dissolution provides a certified copy of a final judgment of a court of competent jurisdiction determining that the applicant holds a superior property right to the name than does the corporation.

(5) The duties of the secretary of state under this section are ministerial.

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RCW 23B.14.203

ADMINISTRATIVE DISSOLUTION OR REVOCATION OF A CERTIFICATE OF AUTHORITY –  
CORPORATION NAME NOT DISTINGUISHABLE FROM NAME OF GOVERNMENTAL ENTITY –  
APPLICATION BY GOVERNMENTAL ENTITY

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## **HISTORY AND COMMITTEE COMMENTARY**

**ORIGINAL SECTION** Laws 1997, ch. 12, §1 (eff. 7-27-97)

Same as current.

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## **RCW 23B.14.210**

### **ADMINISTRATIVE DISSOLUTION – PROCEDURE AND EFFECT**

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**REPEALED** Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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#### ***CURRENT SECTION***

(1) If the secretary of state determines that one or more grounds exist under RCW 23B.14.200 or 23B.14.203 for dissolving a corporation, the secretary of state shall give the corporation written notice of the determination by first-class mail, postage prepaid.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall administratively dissolve the corporation and give the corporation written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs in a manner consistent with RCW 23B.14.050.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION** Laws 1989, ch. 165, §161 (eff. 7-1-90)

Same as current, except subsection (1) did not refer to RCW 23B.14.203, and subsection (3) read:

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RCW 23B.14.050 and notify claimants under RCW 23B.14.060.

##### **OFFICIAL LEGISLATIVE HISTORY** Senate Journal 51<sup>st</sup> Legis. 3096-97 (1989)

*Section 14.21 Procedure For and Effect of Administrative Dissolution.*

Many failures to comply with statutory requirements that may give rise to administrative dissolution under Proposed section 14.20 occur because of oversight or inadvertence by responsible corporate officers of corporations that are continuing in business. Such failures are usually corrected promptly when brought to the corporation's attention. Proposed subsections 14.21(a) and (b) therefore provide a mandatory notice by the secretary of state to each corporation subject to administrative dissolution and a 60-day grace period following the notice before administrative dissolution may be ordered.

In most instances, the issue whether the corporation is subject to administrative dissolution will not be controverted. If a corporation is administratively dissolved, it may petition the secretary of state for reinstatement under Proposed section 14.22 and, if this is denied, it may seek judicial review of the denial under Proposed section 1.26.

##### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 2006, ch. 52, §12 (eff. 6-7-06)** (*amends only subsection (1) and (3)*).

(1) If the secretary of state determines that one or more grounds exist under RCW 23B.14.200 [or 23B.14.203](#) for dissolving a corporation, the secretary of state shall give the corporation written notice of the determination by first-class mail, postage prepaid.

~~(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under in a manner consistent with RCW 23B.14.050 and notify claimants under RCW 23B.14.060.~~

***CARC COMMENTARY***

Amendments necessary to conform section with other 2006 amendments. See general commentary on amendments to RCW 23B.14 under RCW 23B.14.010.

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## **RCW 23B.14.220 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION – APPLICATION**

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### ***CURRENT SECTION***

**(1) A corporation administratively dissolved under RCW 23.95.610 may apply to the secretary of state for reinstatement in accordance with RCW 23.95.615.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §162 (eff.7-1-90)**

(1) A corporation administratively dissolved under RCW 23B.14.210 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

- (a) Recite the name of the corporation and the effective date of its administrative dissolution;
- (b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (c) State that the corporation's name satisfies the requirements of RCW 23B.04.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and give the corporation written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3097 (1989)**

*Section 14.22 Reinstatement Following Administrative Dissolution.*

Proposed section 14.22 provides a two-year period during which a corporation may seek reinstatement following administrative dissolution. This section may apply when a corporation through inadvertence or a failure to maintain a registered agent fails to receive or respond to the predissolution notice of default required by Proposed section 14.21. A corporation that is reinstated pursuant to this section resumes carrying on its business as before dissolution.

In order to be eligible for reinstatement, a corporation must comply with all statutory requirements at the time it seeks reinstatement. It must establish, for example, that its name is available when it files the application for reinstatement. If its name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

The Committee did not adopt RMA §14.23 (Appeal from denial of reinstatement). The Committee felt that the subject was better dealt with under the more general provisions in Proposed section 1.26.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1995, ch. 47, §2 (eff. 7-23-95)**

(1) A corporation administratively dissolved under RCW 23B.14.210 may apply to the secretary of state for reinstatement within ~~two~~ five years after the effective date of dissolution. The application must:

- (a) Recite the name of the corporation and the effective date of its administrative dissolution;
- (b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (c) State that the corporation's name satisfies the requirements of RCW 23B.04.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and

give the corporation written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(4) The application must be authorized either by action of the shareholders, or of the corporation's board of directors, membership in both groups determined as of the date of administrative dissolution. If vacancies in the board of directors occur after the date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of authorizing the application for reinstatement, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the time of administrative dissolution.

**Laws 2006, ch. 52, §13 (eff. 6-7-06) (deletes subsection (4)).**

**CARC COMMENTARY**

Amendment deletes subsection as surplusage given 2006 amendments to RCW 23B.14.050. See general commentary on 2006 amendments to RCW 23B.14 under RCW 23B.14.010.

\* \* \* \* \*

**Laws 2015, ch. 176, §2128 (eff. 1-1-16)**

(1) A corporation administratively dissolved under RCW ~~23B.14.210~~ 23.95.610 may apply to the secretary of state for reinstatement ~~within five years after the effective date of dissolution. The application must:~~

- ~~(a) Recite the name of the corporation and the effective date of its administrative dissolution;~~
- ~~(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and~~
- ~~(c) State that the corporation's name satisfies the requirements of RCW 23B.04.010.~~

~~(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and give the corporation written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.~~

~~(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred in accordance with RCW 23.95.615.~~

\* \* \* \* \*

**RCW 23B.14.390**  
**SECRETARY OF STATE – LIST OF DISSOLVED CORPORATIONS**

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***CURRENT SECTION***

**On the first day of each month, the secretary of state shall prepare a list of corporations dissolved during the preceding month pursuant to RCW 23B.14.030, 23B.14.330, and 23.95.610.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1995, ch. 47, §8 (eff. 7-23-95)

Same as current.

***CARC COMMENTARY***

The Committee has received numerous comments from creditors' groups and from credit-rating agencies regarding the need for notice of the dissolution of a corporation. The proposed amendment provides a relatively inexpensive means by which such information will be broadly disseminated.

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**Laws 2015, ch. 176, §2129 (eff. 1-1-16)**

On the first day of each month, the secretary of state shall prepare a list of corporations dissolved during the preceding month pursuant to RCW 23B.14.030, ~~23B.14.210, and~~ 23B.14.330, and 23.95.610.

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**Title 23B RCW**  
**Washington Business Corporation Act**

**Chapter 23B.15 RCW**  
**FOREIGN CORPORATIONS**

- 23B.15.010 Authority to Transact Business Required.**
- 23B.15.015 Foreign Degree-Granting Institution Branch Campus – Acts Not Deemed Transacting Business in State. [REPEALED]**
- 23B.15.020 Consequences of Transacting Business Without Authority.**
- 23B.15.030 Application for Certificate of Authority.**
- 23B.15.032 Certificate of Authority as Insurance Company – Filing of Records.**
- 23B.15.040 Amended Certificate of Authority.**
- 23B.15.050 Effect of Certificate of Authority.**
- 23B.15.060 Corporate Name of Foreign Corporation.**
- 23B.15.070 Registered Office and Registered Agent of Foreign Corporation.**
- 23B.15.080 Change of Registered Office or Registered Agent of Foreign Corporation.**
- 23B.15.090 Resignation of Registered Agent of Foreign Corporation.**
- 23B.15.100 Service on Foreign Corporation.**
- 23B.15.200 Withdrawal of Foreign Corporation.**
- 23B.15.300 Revocation – Grounds.**
- 23B.15.310 Revocation – Procedure and Effect. [REPEALED]**



## **RCW 23B.15.010**

### **AUTHORITY TO TRANSACT BUSINESS REQUIRED**

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#### ***CURRENT SECTION***

- (1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it registers with the secretary of state in accordance with Article 5 of chapter 23.95 RCW.**
- (2) A nonexhaustive list of activities that do not constitute transacting business in this state is provided in RCW 23.95.520.**
- 

#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §169 (eff. 7-1-90)**

Same as current, except original subsection (1) did not include the first clause of current section, original subsection (2) did not include subsection (2)(m) of the current section, and original subsection (3) referred to "subsection (2) of this act" instead of "subsection 2 of this section."

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3099-101 (1989)**

###### ***Section 15.01 Authority To Transact Business Required.***

A state may prescribe the terms and conditions upon which a foreign corporation is permitted to transact business within the state, subject, of course, to the restrictions of the United States Constitution. Chapter 15 requires that a foreign corporation seeking to transact business within Washington must (1) obtain a certificate of authority from the secretary of state and (2) maintain a registered office and appoint a registered agent within the state.

Proposed subsection 15.01(a) states the basic requirement that a foreign corporation must obtain a certificate of authority before it transacts business within the state. Proposed section 15.05 describes the scope of the privilege obtained by a certificate of authority while Proposed section 15.02 describes the consequences of transacting business in the state without first obtaining the certificate of authority.

The Proposed Act does not attempt to formulate an inclusive definition of what constitutes the transaction of business. Rather, the concept is defined in a negative fashion by Proposed subsection 15.01(b), which states that certain activities do not constitute the transaction of business. In general terms, any conduct more regular, systematic, or extensive than that described in Proposed subsection 15.01(b) constitutes the transaction of business and requires the corporation to obtain a certificate of authority. Typical conduct requiring a certificate of authority includes maintaining an office to conduct local intrastate business, selling personal property not in interstate commerce, and owning or using real estate for general corporate purposes. But the passive owning of real estate for investment purposes does not constitute transacting business. See Proposed subsection 15.01(b)(9).

The test of "transacting business" defined in a negative way in Proposed subsection 15.01(b) applies only to the question whether the corporation's contacts with the state are such that it must obtain a certificate of authority. It is not applicable to other questions such as whether the corporation is amenable to service of process under state "long-arm" statutes or liable for state or local taxes. A corporation that has obtained (or is required to obtain) a certificate of authority to transact business under chapter 15 will generally be subject to suit and state taxation in the state, while a corporation that is subject to service of process or state taxation in a state will not necessarily be required to obtain a certificate of authority under chapter 15.

The list of activities set forth in Proposed subsection 15.01(b) is not exhaustive. See Proposed subsection 15.01(c). The list excludes several different types of activities from the definition of "transacting business," which are discussed below.

Proposed subsection 15.01(b)(1) excludes "maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes." Thus, a corporation is not "transacting business" solely because it resorts to the courts of the state to recover an indebtedness, enforce an obligation, recover possession of personal property, obtain the appointment of a receiver, intervene in a pending proceeding, bring a petition to compel arbitration, file an appeal bond, or pursue appellate remedies. Similarly, a foreign corporation is not required to obtain a certificate of authority merely because it files a complaint with the state securities commission or other governmental agency or participates in an administrative proceeding within the state.

A corporation does not "transact business" within a state under Proposed section 15.01 merely because some of its internal affairs occur within a state. Thus, a corporation may hold meetings of its board of directors or shareholders within a state without first obtaining a certificate of authority (Proposed subsection 15.01(b)(2)). It also may maintain offices or agencies within a state relating solely to the transfer, registration, or exchange of its shares without obtaining a certificate of authority (Proposed subsection 15.01(b)(4)). Other activities relating to the internal affairs of the corporation that do not constitute the transaction of business under Proposed subsection 15.01(b) include having officers or representatives of a corporation who reside within or are physically present in the state; while there, the officers or representatives may make executive decisions relating to the affairs of the corporation without imposing on the corporation the requirement that it obtain a certificate of authority in the state, provided these activities are not so regular and systematic as to cause the residence to be viewed as a business office.

A foreign corporation may maintain a bank account with a bank within the state, make deposits and write checks on the account without obtaining a certificate of authority (Proposed subsection 15.01(b)(3)). It may also maintain share accounts in a savings and loan association, stock or bond brokerage accounts, or certain custodial arrangements without obtaining a certificate of authority.

A corporation is not "transacting business" within the meaning of Proposed subsection 15.01(a) if it is transacting business in interstate commerce (Proposed subsection 15.01(b)(10)) or soliciting or obtaining orders that must be accepted outside the state before they become contracts (Proposed subsection 15.01(b)(6)). These limitations reflect the provisions of the United States Constitution that grant to the United States Congress exclusive power over interstate commerce, and preclude states from imposing restrictions or conditions upon this commerce. These sections should be construed in a manner consistent with judicial decisions under the United States Constitution. Under these decisions, a foreign corporation is not required to obtain a certificate of authority even though it sells goods within the state if they are shipped to the purchasers in interstate commerce. A corporation need not obtain a certificate of authority even if it also does work and performs acts within the state incidental to the interstate business, e.g., if it takes or enforces a security interest incidental to these transactions. Nor is it required to obtain a certificate of authority merely because it sends traveling salesmen or solicitors into a state so long as contracts are not made within the state. Similarly, an office may be maintained by a corporation in a state without obtaining a certificate of authority if the office's functions relate solely to interstate commerce.

Purchases of goods may of course be in interstate commerce as readily as sales. Thus, the purchase of personal property by a foreign corporation for shipment in interstate commerce out of the state does not require the corporation to obtain a certificate of authority.

A foreign corporation does not need to obtain a certificate of authority if it sells goods in the state through independent contractors (Proposed subsection 15.01(b)(5)). These transactions are viewed as transactions by the independent contractors, not by the corporation itself, even though the corporation sets some limits or ground rules for its contractors. If these controls are sufficiently pervasive, however, the corporation

may be deemed to be selling for itself in intrastate commerce, and not through the independent contractors, and therefore engaged in the transaction of business in the state.

The mere act of making a loan by a foreign corporation does not constitute transacting business in the state in which the loan is made. On the same theory a foreign corporation may obtain security for the repayment of a loan, and foreclose or enforce the lien or security interest to collect the loan, without being deemed to be transacting business. See Proposed subsections 15.01(b)(7) and (8). Similarly, a refunding or "roll over" of a loan or its adjustment or compromise does not involve the transaction of business.

The concept of "transacting business" involves regular, repeated, and continuing business contacts of a local nature. A single agreement or isolated transaction within a state does not constitute the transaction of business if there is no intention to repeat the transaction or engage in similar transactions. Since the question is entirely one of fact, Proposed subsection 15.01(b)(10) retains the partially objective test from the old law that a transaction completed within 30 days does not constitute "transacting business" if it is not one in the course of "repeated transactions of a like nature." A continuing transaction that is not completed within 30 days will likely require obtaining a certificate of authority, whether or not it is one of a number of repeated transactions, but that issue is not addressed by the Proposed Act. The 30-day provision is, in other words, a "safe harbor" for not requiring a certificate of authority.

The Committee added Proposed subsection 15.01(b)(12) to the RMA list (*i.e.*, owning and controlling a subsidiary corporation incorporated in or transacting business within the state is not considered transacting business by the parent). This item was identified in the RMA Comment as a transaction not requiring that a certificate of authority be obtained, under the general provisions of RMA section 15.01(c). The Committee felt the item sufficiently important to add it to the statute.

Proposed subsection 15.01(c) makes clear that the list of transactions in Proposed subsection 15.01(b) is not exhaustive. Among the large number of other transactions which do not give rise to the requirement that a certificate of authority be obtained are the participation as a limited partner in a limited partnership engaged in local business, or taking ministerial actions such as filing financing statements or registering trademarks.

#### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 1990, ch. 178, §7 (eff. 7-1-90)** (*amended only original subsections (1) and (3)*)

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(3) The list of activities in subsection (2) of this ~~act~~ section is not exhaustive.

#### **CARC COMMENTARY**

The corporate authorization of federally chartered banks, savings institutions, and similar corporations is treated as being outside title 23B consistent with current laws.

\* \* \* \* \*

**Laws 1993, ch. 181, §11 (eff. 7-25-93)** (*makes minor changes in original subsection (2)(k) and (l); adds subsection (2)(m) to original.*)

(k) Transacting business in interstate commerce; ~~or~~

(l) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state; or

(m) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with RCW 23B.15.015-

\* \* \* \* \*

**Laws 2015, ch. 176, §2130 (eff. 1-1-16)**

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it ~~obtains a certificate of authority from registers with the secretary of state in accordance with Article 5 of chapter 23.95 RCW.~~

(2) ~~The following activities, among others, A nonexhaustive list of activities that do not constitute transacting business within the meaning of subsection (1) of this section:~~

~~(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;~~

~~(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;~~

~~(c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;~~

~~(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;~~

~~(e) Selling through independent contractors;~~

~~(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;~~

~~(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;~~

~~(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;~~

~~(i) Owning, without more, real or personal property;~~

~~(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;~~

~~(k) Transacting business in interstate commerce;~~

~~(l) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state; or~~

~~(m) Operating an approved branch campus of a foreign degree granting institution in compliance with chapter 28b.90 RCW and in accordance with RCW 23B.15.015.~~

~~(3) The list of activities in subsection (2) of this section is not exhaustive. in this state is provided in RCW 23.95.520.~~

\* \* \* \* \*

**RCW 23B.15.015**  
**FOREIGN DEGREE-GRANTING INSTITUTION BRANCH CAMPUS –**  
**ACTS NOT DEEMED TRANSACTING BUSINESS IN STATE**

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**REPEALED** Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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***CURRENT SECTION***

**In addition to those acts that are specified in RCW 23B.15.010(2), a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.90 RCW shall not be deemed to transact business in the state solely because it:**

- (1) Owns and controls an incorporated branch campus in this state;**
  - (2) Pays the expenses of tuition, or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof; or**
  - (3) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution.**
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1993, ch. 181, §5 (eff. 7-25-93)  
Same as current.

\* \* \* \* \*





## **RCW 23B.15.020**

### **CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY**

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#### ***CURRENT SECTION***

**Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation transacting business in this state without registering with the secretary of state is subject to RCW 23.95.505.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §170 (eff. 7-1-90)**

Same as current, except original subsection (1) did not include the first clause of the current subsection (1)

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3101-02 (1989)**

*Section 15.02 Consequences of Transacting Business Without Authority.*

Washington law imposes two sanctions on a foreign corporation that does business within the state without obtaining a certificate of authority: (1) such corporation is guilty of a gross misdemeanor (RCW 9.24.040); and (2) such corporation may not maintain a proceeding in any Washington court until it obtains a certificate of authority (see old RCW 23A.32.190 and Proposed subsection 15.02(a)).

Proposed section 15.02 closes Washington courts to suits maintained by corporations which should have but which have not obtained a certificate of authority. However, this sanction is not a punitive one: Proposed subsection 15.02(e) states that the failure of the corporation to qualify does not affect the validity of corporate acts, including contracts. Thus, a contract made by a nonqualified corporation may be enforced by the corporation simply by obtaining a certificate. Further, Proposed subsection 15.02(c) authorizes a court to stay a proceeding to determine whether a corporation should have qualified to transact business and, if it concludes that qualification is necessary, it may grant a further stay to permit the corporation to do so. Thus, the corporation will not be compelled to refile a suit if the corporation qualifies to transact business within a reasonable period. The purpose of these provisions is to encourage corporations to obtain certificates of authority and to eliminate the temptation to raise Proposed section 15.02 defenses only after applicable statutes of limitation have run.

Proposed subsection 15.02(e) does not prevent a foreign corporation that has failed to obtain a certificate of authority from "defending any proceeding." The distinction between "maintaining" a proceeding under Proposed subsection 15.02(a) and "defending any proceeding" under Proposed subsection 15.02(e) is determined on the basis of whether affirmative relief is sought. A nonqualified corporation may interpose any defense or permissive or mandatory counterclaim to defeat a claimed recovery, but may not obtain an affirmative judgment or decree based on the counterclaim unless it has obtained a certificate of authority.

In addition to closing the courts of the state to a nonqualified foreign corporation, many states follow the approach of Proposed subsection 15.02(d) and the old law and impose a penalty equal to all fees for which the foreign corporation would have been liable had it qualified to transact business when it was first required to do so.

Proposed subsection 15.02(b) prevents evasion of Proposed subsection 15.02(a) by an assignment of a claim on which the foreign corporation is barred from bringing suit under Proposed subsection 15.02(a). If the successor has acquired all or substantially all of the assets of the foreign corporation, the successor may maintain suit after it has qualified. In the case of all other assignments, the foreign corporation itself must obtain a certificate of authority before the assignee may maintain suit on the claim. The phrase "all or substantially all" has the meaning set forth in the Comment to Proposed section 12.01.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1990, ch. 178, §8 (eff. 7-1-90)** (*amends only original subsection (1)*)

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

**CARC COMMENTARY**

The corporate authorization of federally chartered banks, savings institutions, and similar corporations is treated as being outside the act, consistent with current law. (Senate Bill Report, SB 6389)

\* \* \* \* \*

**Laws 2015, ch. 176, §2131 (eff. 1-1-16)**

~~(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.~~

~~(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.~~

~~(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.~~

~~(4) A foreign corporation which transacts business in this state without a certificate of authority is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this title upon such corporation had it applied for and received a certificate of authority to transact business in this state as required by this title and thereafter filed all reports required by this title, plus all penalties imposed by this title for failure to pay such fees.~~

~~(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state. registering with the secretary of state is subject to RCW 23.95.505.~~

\* \* \* \* \*

# RCW 23B.15.030

## APPLICATION FOR CERTIFICATE OF AUTHORITY

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### *CURRENT SECTION*

**A foreign corporation may register to transact business in this state by delivering a foreign registration statement to the secretary of state for filing in accordance with RCW 23.95.510.**

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### *HISTORY AND COMMITTEE COMMENTARY*

#### **ORIGINAL SECTION Laws 1989, ch. 165, §171 (eff. 7-1-90)**

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3102 (1989)**

*Section 15.03 Application For Certificate of Authority.*

Proposed section 15.03 provides that a foreign corporation seeking a certificate of authority to transact business in the state must file an application that contains the information set forth in this section. These disclosure requirements are supplemented by the requirements of other sections in this chapter--15.04, 15.06, and 15.07--which require amended or supplemental filings in certain circumstances, and by Proposed section 16.22, which requires every qualified foreign corporation to file annual reports containing specified information. Generally, the Proposed Act eliminates repetitious filings, so that information need be submitted to the secretary of state in only one document.

The purposes of these disclosure requirements are: (1) to ensure that Washington citizens have adequate information about foreign corporations in their transactions with them; (2) to put foreign corporations in a status of equality with domestic corporations with respect to information required to be furnished; (3) to facilitate their subjection to the jurisdiction of Washington courts, thereby removing any disadvantage citizens of the state may have when dealing with them; and (4) to provide readily accessible evidence of their existence.

The information required to be included in the application for a certificate of authority by Proposed section 15.03 is the minimum needed to administer the filing requirements of the Proposed Act. The application must also be accompanied by a certificate of existence and the filing fee required by section 1.22.

\* \* \* \* \*

#### **Laws 2015, ch. 176, §2132 (eff. 1-1-16)**

~~(1) A foreign corporation may register apply for a certificate of authority to transact business in this state by delivering an application a foreign registration statement to the secretary of state for filing in accordance with RCW 23.95.510. The application must state:~~

- ~~(a) That the name of the foreign corporation meets the requirements stated in RCW 23B.15.060;~~
  - ~~(b) The name of the state or country under whose law it is incorporated;~~
  - ~~(c) Its date of incorporation and period of duration;~~
  - ~~(d) The street address of its principal office;~~
  - ~~(e) The street address of its registered office in this state and the name of its registered agent at that office, in accordance with RCW 23B.15.070; and~~
  - ~~(f) The names and usual business addresses of its current directors and officers.~~
- ~~(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, issued no more than sixty days before the date of the application and duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.~~

\* \* \* \* \*



# RCW 23B.15.040

## AMENDED CERTIFICATE OF AUTHORITY

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### *CURRENT SECTION*

**A foreign corporation registered to transact business in this state must amend its foreign registration statement under the circumstances specified in RCW 23.95.515.**

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### *HISTORY AND COMMITTEE COMMENTARY*

#### **ORIGINAL SECTION Laws 1989, ch. 165, §172 (eff. 7-1-90)**

(1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

- (a) Its corporate name; or
- (b) The period of its duration.

(2) The requirements of RCW 23B.15.030 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3102 (1989)**

*Section 15.04 Amended Certificate of Authority.*

Proposed section 15.04 requires a foreign corporation to obtain an amended certificate of authority if it changes its corporate name, its duration, or the state or country of its incorporation. An amendment is not necessary to reflect changes in its principal office address or in its current officers or directors since that information is supplied in the annual report. In addition, Proposed section 15.07 requires an immediate filing if the foreign corporation changes its registered office or registered agent within the state.

Other fundamental changes by a foreign corporation do not require amendments to the certificate of authority. The secretary of state will be advised of most of these changes through the annual report. See Proposed section 16.22. Thus, a person seeking to obtain current information about a foreign corporation should examine the annual reports of the corporation as well as the application for certificate of authority and amendments to it. This procedure of requiring most changes to be reported in the annual reports rather than as amendments to the certificate of authority should eliminate many unnecessary filings with the secretary of state without reducing the information available through the secretary of state's office.

#### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 1991, ch. 72, §38 (eff. 7-28-91) (amends only subsection (2))**

~~(2) The requirements of RCW 23B.15.030 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section. A foreign corporation may apply for an amended certificate of authority by delivering an application to the secretary of state for filing that sets forth:~~

- ~~(a) The name of the foreign corporation and the name in which the corporation is authorized to transact business in Washington, if different;~~
- ~~(b) The name of the state or country under whose law it is incorporated;~~
- ~~(c) The date it was authorized to transact business in this state;~~
- ~~(d) A statement of the change or changes being made;~~
- ~~(e) In the event the change or changes include a name change to a name that does not meet the requirements of RCW 23B.15.060, a fictitious name for use in Washington, and a copy of the resolution of the board of directors, certified by the corporation's secretary, adopting the fictitious name; and~~
- ~~(f) A copy of the document filed in the state or country of incorporation showing that jurisdiction's "filed" stamp.~~

**CARC COMMENTARY**

The proposed amendment, offered at the request of the Office of the Secretary of State, prescribes different contents for an application to amend a certificate of authority than those requested for an application for certificate of authority.

\* \* \* \* \*

**Laws 2015, ch. 176, §2133 (eff. 1-1-16)**

~~(1) A foreign corporation authorized-registered to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:~~

~~(a) Its corporate name; or~~

~~(b) The period of its duration.~~

~~(2) A foreign corporation may apply for an amended certificate of authority by delivering an application to the secretary of state for filing that sets forth:~~

~~(a) The name of the foreign corporation and the name in which the corporation is authorized to transact business in Washington, if different;~~

~~(b) The name of the state or country under whose law it is incorporated;~~

~~(c) The date it was authorized to transact business in this state;~~

~~(d) A statement of the change or changes being made;~~

~~(e) In the event the change or changes include a name change to a name that does not meet the requirements of RCW 23B.15.060, a fictitious name for use in Washington, and a copy of the resolution of the board of directors, certified by the corporation's secretary, adopting the fictitious name; and~~

~~(f) A copy of the document filed in the state or country of incorporation showing that jurisdiction's "filed" stamp amend its foreign registration statement under the circumstances specified in RCW 23.95.515.~~

\* \* \* \* \*

# RCW 23B.15.050

## EFFECT OF CERTIFICATE OF AUTHORITY

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### *CURRENT SECTION*

- (1) A registered foreign corporation may transact business in this state subject, however, to the right of the state to terminate the registration as provided in Article 5 of chapter 23.95 RCW.
  - (2) A foreign corporation registered to transact business in this state is subject to RCW 23.95.500 relating to the effect of registration and the governing law for registered foreign corporations.
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### *HISTORY AND COMMITTEE COMMENTARY*

#### **ORIGINAL SECTION Laws 1989, ch. 165, §173 (eff. 7-1-90)**

Same as current, except subsection (3) referred to sections 202 through 205 of this act.

**\*Reviser's note:** The reference to "sections 202 through 205 of this act" has been translated to "chapter 23B.19 RCW," dealing with significant business transactions. A literal translation would be "RCW 23B.900.010 through 23B.900.040" which appears to be erroneous.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3102-03 (1989)**

*Section 15.05 Effect of Certificate of Authority.*

A certificate of authority authorizes a foreign corporation to transact business in the state subject to the right of the state to revoke the certificate. The privileges of this status are defined in Proposed subsection 15.05(b): a qualified foreign corporation has no greater privileges than a domestic corporation of like character. Such statement is consistent with the limitation appearing in Wash. Const. art. 12 section 7.

On the other hand, Proposed subsection 15.05(b) also contains a restriction or limitation: a qualified foreign corporation is subject to the same restrictions as a domestic corporation, including the same duties, penalties, and liabilities. This latter aspect of Proposed subsection 15.05(b) has declined in importance as states have eliminated unnecessary or outdated restrictions on domestic corporations and, as a consequence of Proposed subsection 15.05(b), on qualified foreign corporations as well. In particular, Proposed subsection 15.05(b) makes Proposed section 3.01 (corporate purposes) applicable to a qualified foreign corporation, and grants substantially the same powers to it as are possessed by a domestic corporation.

With the major exception of provisions in Proposed chapter 19, Proposed subsection 15.05(c) preserves the judicially developed doctrine that internal corporate affairs are governed by the state of incorporation even when the corporation's business and assets are located primarily in other states.

\* \* \* \* \*

#### **Laws 2015, ch. 176, §2134 (eff. 1-1-16)**

- (1) A ~~certificate of authority authorizes the~~ registered foreign corporation to which it is issued to ~~may~~ transact business in this state subject, however, to the right of the state to ~~revoke the certificate as provided in this title~~ terminate the registration as provided in Article 5 of chapter 23.95 RCW.
- (2) ~~A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation of like character. Except as otherwise provided by this title, a foreign corporation is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.~~

~~(3) Except as otherwise provided in \*chapter 23B.19 RCW, this title does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state~~ A foreign corporation registered to transact business in this state is subject to RCW 23.95.500 relating to the effect of registration and the governing law for registered foreign corporations.

\* \* \* \* \*



## **RCW 23B.15.060**

### **CORPORATE NAME OF FOREIGN CORPORATION**

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#### ***CURRENT SECTION***

**The corporate name of a foreign corporation registered in this state must comply with the provisions of RCW 23.95.525 and Article 3 of chapter 23.95 RCW.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §174 (eff. 7-1-90)**

(1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

- (a) Contains the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.";
- (b) Does not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RCW 23B.03.010 and its articles of incorporation;
- (c) Does not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and
- (d) Except as authorized by subsections (3) and (4) of this section, is distinguishable upon the records of the secretary of state from:
  - (i) The corporate name of a corporation incorporated or authorized to transact business in this state;
  - (ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;
  - (iii) The fictitious name adopted pursuant to subsection (2) of this section by a foreign corporation authorized to transact business in this state because its real name is unavailable;
  - (iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and
  - (v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW.

(2) If the corporate name of a foreign corporation does not satisfy the requirements of subsection (1) of this section, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

- (a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.," to its corporate name for use in this state; or
- (b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(3) A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if:

- (a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or
- (b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

- (a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of subsection (1) of this section, it may not transact business in this state under the changed name until it adopts a name satisfying such requirements and obtains an amended certificate of authority under RCW 23B.15.040.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3103 (1989)**

*Section 15.06 Corporate Name of Foreign Corporation.*

A foreign corporation applying for a certificate of authority must apply under its true corporate name if that name qualifies under Proposed subsections 15.06(a) or (c). If the true corporate name qualifies except that it does not contain one of the words of corporateness set forth in Proposed subsection 15.06(a), the corporation may simply add one of those words to its true corporate name and apply under that name as modified. Proposed subsection 15.06(b)(1). If the true corporate name is unavailable because it is indistinguishable upon the records of the secretary of state from a name already in use or reserved, the corporation may use a fictitious name (if available) under Proposed subsection 15.06(b)(2) simply by delivering to the secretary of state for filing, together with its application for a certificate of authority, a certified copy of a resolution of its board of directors authorizing the use of the fictitious name in the state. Finally, the otherwise unavailable name of a foreign corporation may be augmented by the name of the state of its incorporation so as to make it distinguishable upon the records of the secretary of state. For example, a Delaware corporation, "Utopian Products, Inc." which finds that a domestic corporation is using that name, may qualify under the name "Utopian Products, Inc. (Delaware)."

A corporation that qualifies to transact business in the state may do business under an assumed name to the same extent as a domestic corporation. The name requirements of Proposed section 15.06, including the fictitious name of a corporation whose real name is unavailable, are designed to ensure that each corporation qualified to transact business in this state has a unique official name.

If a foreign corporation changes its name it may (1) file an amended certificate of authority under its new name or, if the new name is not available, (2) continue to conduct business under its former name as an assumed name, or (3) adopt a new assumed name, by filing a certified resolution of its board of directors authorizing it to do so.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1998, ch. 102, §2 (eff. 6-11-98)**

(1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Contains the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.,";

(b) Does not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Does not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (3) and (4) of this section, is distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under ~~RCW 23B.04.020 or 23B.04.030~~ chapter 23B.04 RCW;

(iii) The fictitious name adopted pursuant to subsection (3) of this section by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name or reserved name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW; ~~and~~

- (v) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;
- (vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW.
- (vii) The name or reserved name of any limited liability company organized or registered under chapter 25.15 RCW; and
- (viii) The name or reserved name of any limited liability partnership registered under chapter 25.04 RCW.
- (2) A name shall not be considered distinguishable under the same grounds as provided under RCW 23B.04.010.
- ~~(3)~~ If the corporate name of a foreign corporation does not satisfy the requirements of subsection (1) of this section, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:
- (a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state; or
- (b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
- ~~(4)~~ A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if:
- (a) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or
- (b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- ~~(5)~~ A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:
- (a) Has merged with the other corporation; or
- (b) Has been formed by reorganization of the other corporation.
- ~~(6)~~ If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of subsection (1) of this section, it may not transact business in this state under the changed name until it adopts a name satisfying such requirements and obtains an amended certificate of authority under RCW 23B.15.040.

**CARC COMMENTARY**

These amendments were offered by the Office of the Secretary of State to align the list of impermissible names for foreign corporations seeking authority to do business in Washington with the list of such names for domestic corporations under RCW 23B.04.010.

\* \* \* \* \*

**Laws 2015, ch. 176, §2135 (eff. 1-1-16)**

- ~~(1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:~~
- ~~(a) Contains the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.";~~
- ~~(b) Does not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RCW 23B.03.010 and its articles of incorporation;~~
- ~~(c) Does not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and~~

~~(d) Except as authorized by subsections (4) and (5) of this section, is distinguishable upon the records of the secretary of state from:~~

- ~~(i) The corporate name of a corporation incorporated or authorized to transact business in this state;~~
- ~~(ii) A corporate name reserved or registered under chapter 23B.04 RCW;~~
- ~~(iii) The fictitious name adopted pursuant to subsection (3) of this section by a foreign corporation authorized to transact business in this state because its real name is unavailable;~~
- ~~(iv) The corporate name or reserved name of a not for profit corporation incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW;~~
- ~~(v) The name or reserved name of a mutual corporation or miscellaneous corporation incorporated or authorized to do business under chapter 24.06 RCW;~~
- ~~(vi) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW;~~
- ~~(vii) The name or reserved name of any limited liability company organized or registered under chapter 25.15 RCW; and~~
- ~~(viii) The name or reserved name of any limited liability partnership registered under chapter 25.04 RCW.~~

~~(2) A name shall not be considered distinguishable under the same grounds as provided under RCW 23B.04.010.~~

~~(3) If the corporate name of a foreign corporation does not satisfy the requirements of subsection (1) of this section, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:~~

- ~~(a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.," to its corporate name for use in this state; or~~
- ~~(b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.~~

~~(4) A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if:~~

- ~~(a) The other corporation, company, holder, limited liability partnership, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or~~
- ~~(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.~~

~~(5) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:~~

- ~~(a) Has merged with the other corporation; or~~
- ~~(b) Has been formed by reorganization of the other corporation.~~

~~(6) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of subsection (1) of this section, it may not transact business in this state under the changed name until it adopts a name satisfying such requirements and obtains an amended certificate of authority under RCW 23B.15.040 The corporate name of a foreign corporation registered in this state must comply with the provisions of RCW 23.95.525 and Article 3 of chapter 23.95 RCW.~~

\* \* \* \* \*

# **RCW 23B.15.070**

## **REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION**

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### ***CURRENT SECTION***

**Each foreign corporation registered to transact business in this state must continuously maintain in this state a registered agent in accordance with Article 4 of chapter 23.95 RCW.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §175 (eff. 7-1-90)**

(1) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, building address, or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office to be used in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(b) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office;

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business or conduct affairs in this state whose business office is identical with the registered office;

(2) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records.

#### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3101 (1989)**

*Section 15.07 Registered Office and Registered Agent of Foreign Corporation.*

A foreign corporation that obtains a certificate of authority in a state thereby agrees that it is amenable to suit in the state. Proposed section 15.07 requires every such corporation continuously to maintain a registered office and registered agent within the state upon whom service of process may be made. As is the case with a domestic corporation, the registered office may, but need not be, a business office of the foreign corporation.

Proposed section 15.07 is patterned after Proposed section 5.01, relating to the registered office and registered agent of a domestic corporation.

#### **AMENDMENTS TO ORIGINAL SECTION**

**Laws 2002, ch. 297, §43 (eff.6-13-02)**

(1) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any,

and street, building address, or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office to be used in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(b) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office;

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business or conduct affairs in this state whose business office is identical with the registered office;

(iv) A domestic limited liability company whose business office is identical with the registered office; or

(v) A foreign limited liability company authorized to conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent shall not be appointed without having given prior ~~written~~ consent in a record to the appointment. The ~~written~~ consent shall be filed with the secretary of state in such form as the secretary of state may prescribe. The ~~written~~ consent shall be filed with or as a part of the ~~document-record~~ first appointing a registered agent. In the event any individual ~~or~~ corporation, or limited liability company has been appointed agent without consent, that person ~~or~~ corporation, or limited liability company may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records.

#### **CARC COMMENTARY**

See CARC Comment to 2002 Amendment of RCW 23B.01.410.

\* \* \* \* \*

#### **Laws 2015, ch. 176, §2136 (eff. 1-1-16)**

~~(1) Each foreign corporation authorized registered to transact business in this state must continuously maintain in this state:~~

~~(a) A registered office which may be, but need not be, the same as its place of business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, building address, or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office to be used in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.~~

~~(b) A registered agent, who may be:~~

~~(i) An individual who resides in this state and whose business office is identical with the registered office;~~

~~(ii) A domestic corporation or not for profit domestic corporation whose business office is identical with the registered office;~~

~~(iii) A foreign corporation or foreign not for profit corporation authorized to transact business or conduct affairs in this state whose business office is identical with the registered office;~~

~~(iv) A domestic limited liability company whose business office is identical with the registered office; or~~

~~(v) A foreign limited liability company authorized to conduct affairs in this state whose business office is identical with the registered office.~~

~~(2) A registered agent shall not be appointed without having given prior consent in a record to the appointment. The consent shall be filed with the secretary of state in such form as the secretary of state may prescribe. The consent shall be filed with or as a part of the record first appointing a registered agent. In the event any individual, corporation, or limited liability company has been appointed agent without consent, that person, corporation, or limited liability company may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records a registered agent in accordance with Article 4 of chapter 23.95 RCW.~~

\* \* \* \* \*

## **RCW 23B.15.080**

### **CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION**

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#### ***CURRENT SECTION***

(1) A foreign corporation registered to transact business in this state may change its registered agent by delivering to the secretary of state for filing a statement of change in accordance with RCW 23.95.430.

(2) A registered agent of a foreign corporation may change its information on file with the secretary of state in accordance with RCW 23.95.435 or 23.95.440.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §176 (eff. 7-1-90)**

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (a) Its name;
- (b) If the current registered office is to be changed, the street address of its new registered office;
- (c) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (d) That, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3103 (1989)**

*Section 15.08 Change of Registered Office of Registered Agent or Foreign Corporation.*

A foreign corporation that changes its registered agent or registered office, or both, must file a statement with the secretary of state containing the information set forth in Proposed subsection 15.08(a). A registered agent, typically a corporation service company, that changes the street address of its business office (and thereby the street address of the registered office of all corporations for which it serves as registered agent) may notify the secretary of state by complying with Proposed subsection 15.08(b) rather than with Proposed subsection 15.08(a).

This section is patterned after Proposed section 5.02, relating to changes of registered office or registered agent of a domestic corporation.

##### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 2002, ch. 297, §44 (eff. 6-13-02)**

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (a) Its name;
- (b) If the current registered office is to be changed, the street address of its new registered office;
- (c) If the current registered agent is to be changed, the name of its new registered agent and the new agent's ~~written~~ consent, either on the statement or attached to it in the manner and form as the secretary of state may prescribe, to the appointment; and

(d) That, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation ~~in writing of the change and signing, either manually or in facsimile, of the change either (a) in a record or (b) if the corporation has designated an address, location, or system to which the notices may be electronically transmitted and the registered agent electronically transmits the notice to the corporation at the designated address, location, or system, in an electronically transmitted record,~~ and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

**CARC COMMENTARY**

See CARC Comment to 2002 Amendment of RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2137 (eff. 1-1-16)**

(1) A foreign corporation ~~authorized registered~~ to transact business in this state may change its ~~registered office or~~ registered agent by delivering to the secretary of state for filing a statement of change in accordance with RCW 23.95.430, that sets forth:

~~(a) Its name;~~

~~(b) If the current registered office is to be changed, the street address of its new registered office;~~

~~(c) If the current registered agent is to be changed, the name of its new registered agent and the new agent's consent, either on the statement or attached to it in the manner and form as the secretary of state may prescribe, to the appointment; and~~

~~(d) That, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.~~

~~(2) If a A registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation of the change either (a) in a record or (b) if the corporation has designated an address, location, or system to which the notices may be electronically transmitted and the registered agent electronically transmits the notice to the corporation at the designated address, location, or system, in an electronically transmitted record, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change of a foreign corporation may change its information on file with the secretary of state in accordance with RCW 23.95.435 or 23.95.440.~~

\* \* \* \* \*



**RCW 23B.15.090**  
**RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION**

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***CURRENT SECTION***

**The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation in accordance with RCW 23.95.445.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §177 (eff. 7-1-90)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY** Senate Journal 51<sup>st</sup> Legis. 3103-04 (1989)  
*Section 15.09 Resignation of Registered Agent of Foreign Corporation.*

Proposed section 15.09 permits the registered agent of a foreign corporation to resign by following the procedure set forth in the section, which is designed to maximize the probabilities that the corporation is advised of the resignation of the agent. This section is principally used by compensated registered agents who are corporation service companies and who desire to resign as registered agent as a result of nonpayment of fees. Proposed section 15.09 is patterned after Proposed section 5.03, relating to the resignation of a registered agent of a domestic corporation.

\* \* \* \* \*

**Laws 2015, ch. 176, §2138 (eff. 1-1-16)**

~~(1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.~~

~~(2) After filing the statement, the secretary of state shall mail a copy of the statement to the foreign corporation at its principal office address shown in its most recent annual report, or in the application for certificate of authority if no annual report has been filed.~~

~~(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty first day after the date on which the statement was filed in accordance with RCW 23.95.445.~~

\* \* \* \* \*



# RCW 23B.15.100

## SERVICE ON FOREIGN CORPORATION

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### *CURRENT SECTION*

**Service of any process, notice, or demand required or permitted by law to be served upon the foreign corporation may be made in accordance with RCW 23.95.450.**

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### *HISTORY AND COMMITTEE COMMENTARY*

**ORIGINAL SECTION** Laws 1989, ch. 165, §178 (eff. 7-1-90)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY** Senate Journal 51<sup>st</sup> Legis. 3104 (1989)

*Section 15.10 Service On Foreign Corporation.*

Service on the registered agent is the typical method of service of process on a qualified foreign corporation. Proposed subsection 15.10(a). But if the corporation fails to appoint or maintain a registered agent, or if the agent cannot be found at the registered office, Proposed subsection 15.10(b) authorizes service on the secretary of state. Service may be effected in the same way on a corporation which has withdrawn from the state or whose certificate of authority has been revoked. Proposed subsections 15.10(c) and (d) provide rules regarding service on the secretary of state, while Proposed subsection 15.10(e) makes clear that the method of service provided by this section does not preclude the use of other means of effecting service of process. Service of process may also be effected, for example, under a "long-arm" statute or under other special statutes authorizing service in some other manner.

Proposed section 15.10 is patterned after Proposed section 5.04, relating to service of process on domestic corporations.

\* \* \* \* \*

**Laws 2015, ch. 176, §2139 (eff. 1-1-16)**

~~(1) The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom Service of any process, notice, or demand required or permitted by law to be served upon the foreign corporation may be served.~~

~~(2) The secretary of state shall be an agent of a foreign corporation upon whom any process, notice, or demand may be served, if:~~

~~(a) The corporation is authorized to transact business in this state, and it fails to appoint or maintain a registered agent in this state, or its registered agent cannot with reasonable diligence be found at the registered office;~~

~~(b) The corporation's authority to transact business in this state has been revoked under RCW 23B.15.310; or~~

~~(c) The corporation has been authorized to transact business in this state and has withdrawn under RCW 23B.15.200.~~

~~(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at its principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.~~

~~(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the~~

~~secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.~~

(5) This section does not limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law made in accordance with RCW 23.95.450.

\* \* \* \* \*

# RCW 23B.15.200

## WITHDRAWAL OF FOREIGN CORPORATION

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### *CURRENT SECTION*

**A foreign corporation registered to transact business in this state may not withdraw from this state until it delivers a statement of withdrawal to the secretary of state for filing in accordance with RCW 23.95.530.**

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### *HISTORY AND COMMITTEE COMMENTARY*

**ORIGINAL SECTION** Laws 1989, ch. 165, §179 (eff. 7-1-90)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY** Senate Journal 51<sup>st</sup> Legis. 3104 (1989)

*Section 15.20 Withdrawal of Foreign Corporation.*

A foreign corporation that ceases to transact business within a state may withdraw from the state only by obtaining a certificate of withdrawal. A foreign corporation that ceases to transact business in the state but fails to obtain a certificate of withdrawal will continue to be (1) subject to service of process on its registered agent or on the secretary of state pursuant to Proposed section 15.10 and (2) liable for fees under this title.

The certificate of withdrawal provided by this section is recognition by the state that the foreign corporation has ceased to transact business in the state.

The application for certificate of withdrawal must appoint the secretary of state as the withdrawing corporation's agent for service of process in any proceeding based on a cause of action which arose during the time it was authorized to transact business in the state. The application must also set forth a mailing address to which the secretary of state may forward any process received, and the corporation must agree to notify the secretary of state of any change in that address. There is no time limit on the obligation to advise the secretary of state of changes of mailing address. To ensure that the appointment of the secretary of state is unqualified and meets the precise requirements of this section, the secretary of state may require that an application for certificate of withdrawal be on a prescribed form. See section 1.21.

Service of process on the secretary of state effects service on the corporation under Proposed subsection 15.20(c).

\* \* \* \* \*

**Laws 2015, ch. 176, §2140 (eff. 1-1-16)**

~~(1) A foreign corporation authorized registered to transact business in this state may not withdraw from this state until it ~~obtains a certificate~~ delivers a statement of withdrawal ~~from~~ to the secretary of state.~~

~~(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260, and must set forth:~~

~~(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;~~

~~(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;~~

~~(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;~~

- ~~(d) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under (c) of this subsection; and~~
- ~~(e) A commitment to notify the secretary of state in the future of any change in its mailing address.~~
- ~~(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under RCW 23B.15.100 is service on the foreign corporation for filing in accordance with RCW 23.95.530.~~

\* \* \* \* \*

## **RCW 23B.15.300**

### **REVOCATION – GROUNDS**

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#### ***CURRENT SECTION***

**The secretary of state may terminate the registration of a registered foreign corporation under the circumstances and procedures specified in RCW 23.95.550.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §180 (eff. 7-1-90)**

The secretary of state may commence a proceeding under RCW 23B.15.310 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation does not deliver its completed annual report to the secretary of state within sixty days after it is due;
- (2) The foreign corporation does not pay within sixty days after they are due any fees or penalties, imposed by this title;
- (3) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;
- (4) The foreign corporation does not inform the secretary of state under RCW 23B.15.080 or 23B.15.090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- (5) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or
- (6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3104 (1989)**

###### ***Section 15.30 Grounds For Revocation.***

Proposed section 15.30 authorizes the administrative revocation of the certificate of authority of a foreign corporation on the grounds specified. Administrative revocation is effective only upon compliance with the procedure specified in Proposed section 15.31. A foreign corporation that believes the administrative revocation is unwarranted may obtain judicial review of the secretary of state's determination pursuant to Proposed section 1.26.

If a qualified foreign corporation has dissolved or merged into another corporation, the secretary of state may proceed to revoke its certificate of authority to transact business solely on the basis of a certificate from the secretary of state or other official of the state of incorporation. Proposed subsection 15.30(6). This subdivision provides a simple and inexpensive method to eliminate the names of corporations that are no longer in existence from the records of the secretary of state, thereby making available the corporate names for use by other entities.

Proposed section 15.30 is patterned after Proposed section 14.20, relating to the administrative dissolution of domestic corporations. See the Comment to Proposed section 14.20 for a fuller description of the policies underlying Proposed section 15.30.

##### **AMENDMENTS TO ORIGINAL SECTION**

###### **Laws 1990, ch. 178, §9 (eff. 7-1-90) (amends only preamble and subsections (1) – (4))**

The secretary of state may ~~commence a proceeding under RCW 23B.15.310 to~~ revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation does not deliver its completed annual report to the secretary of state ~~within sixty days after~~ when it is due;
- (2) The foreign corporation does not pay ~~within sixty days after they are due~~ any license fees or penalties, imposed by this title, when they become due;
- (3) The foreign corporation is without a registered agent or registered office in this state ~~for sixty days or more~~;
- (4) The foreign corporation does not inform the secretary of state under RCW 23B.15.080 or 23B.15.090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued ~~within sixty days of the change, resignation, or discontinuance~~;

\* \* \* \* \*

**Laws 1991, ch. 72, §39 (eff. 7-28-91)** (*amends only subsection (1) as amended in 1990*)

The secretary of state may revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

**CARC COMMENTARY**

See CARC Comment to 1991 Amendment to RCW 23B.01.210.

\* \* \* \* \*

**Laws 2015, ch. 176, §2141 (eff. 1-1-16)**

The secretary of state may terminate the registration ~~revoke the certificate of authority~~ of a foreign registered corporation ~~authorized to transact business in this state if~~:

- ~~(1) The foreign corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;~~
- ~~(2) The foreign corporation does not pay any license fees or penalties, imposed by this title, when they become due;~~
- ~~(3) The foreign corporation is without a registered agent or registered office in this state;~~
- ~~(4) The foreign corporation does not inform the secretary of state under RCW 23B.15.080 or 23B.15.090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;~~
- ~~(5) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or~~
- ~~(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger under the circumstances and procedures specified in RCW 23.95.550.~~

\* \* \* \* \*



## **RCW 23B.15.310**

### **REVOCAION – PROCEDURE AND EFFECT**

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**REPEALED** Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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#### ***CURRENT SECTION***

(1) If the secretary of state determines that one or more grounds exist under RCW 23B.15.300 for revocation of a certificate of authority, the secretary of state shall give the foreign corporation written notice of the determination by first-class mail, postage prepaid.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under RCW 23B.15.100 is service on the foreign corporation.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §181 (eff. 7-1-90)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY** Senate Journal 51<sup>st</sup> Legis. 3105 (1989)

*Section 15.31 Procedure For and Effect of Revocation.*

The procedure for revocation of a certificate of authority in Proposed section 15.31 establishes a simple method of completing the revocation while at the same time ensuring that the foreign corporation is advised of the contemplated action and has an opportunity to contest it in appropriate situations. In most situations, revocation by the secretary of state will not be contested.

After revocation, the secretary of state is appointed the foreign corporation's agent for service of process; upon receipt of service, the secretary of state under Proposed section 15.10 must forward the process to the secretary of the corporation at its principal office as shown in the records of the secretary of state. Revocation, however, does not of itself terminate the authority of the foreign corporation's registered agent, so that process served on that agent by a third person who was unaware of the revocation may be effective.

Proposed section 15.31 is patterned after Proposed section 14.21, relating to the administrative dissolution of a domestic corporation. See the Comment to Proposed section 14.21 for a fuller statement of the policies underlying Proposed section 15.31.

The Committee decided not to adopt RMA section 15.32 (Appeal From Revocation) on the ground that that provision overlapped the general judicial review provision in Proposed section 1.26.

\* \* \* \* \*

## **RCW 23B.16.010**

### **CORPORATE RECORDS**

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#### ***CURRENT SECTION***

- (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all corporate actions approved by the shareholders or board of directors by executed consent without a meeting, and a record of all corporate actions approved by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.**
- (2) A corporation shall maintain appropriate accounting records.**
- (3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.**
- (4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.**
- (5) A corporation shall keep a copy of the following records at its principal office:**
  - (a) Its articles or restated articles of incorporation and all amendments to them currently in effect;**
  - (b) Its bylaws or restated bylaws and all amendments to them currently in effect;**
  - (c) The minutes of all shareholders' meetings, and records of all corporate actions approved by shareholders without a meeting, for the past three years;**
  - (d) The financial statements described in RCW 23B.16.200(1), for the past three years;**
  - (e) All communications in the form of a record to shareholders generally within the past three years;**
  - (f) A list of the names and business addresses of its current directors and officers; and**
  - (g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23.95.255.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §182 (eff. 7-1-90)**

- (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.**
- (2) A corporation shall maintain appropriate accounting records.**
- (3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.**
- (4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.**
- (5) A corporation shall keep a copy of the following records at its principal office:**
  - (a) Its articles or restated articles of incorporation and all amendments to them currently in effect;**

- (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (c) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (d) The financial statements described in RCW 23B.16.200(1), for the past three years;
- (e) All written communications to shareholders generally within the past three years;
- (f) A list of the names and business addresses of its current directors and officers; and
- (g) Most recent annual report delivered to the secretary of state under RCW 23B.16.220.

**OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3105-06 (1989)**

*Section 16.01 Corporate Records.*

Proposed section 16.01 describes in general terms the records every corporation must keep or maintain, the form in which they may be maintained, and, to a limited extent, where the records must be kept.

Proposed subsection 16.01(a) requires a corporation to "keep" as permanent records the minutes of meetings of its shareholders and board of directors, and a record of actions taken by unanimous consent by its shareholders or board of directors. (In view of the requirements of Proposed sections 7.04 and 8.21, cautious counsel may well advise the corporation to keep the written consents related to such actions.) In addition, each corporation must "keep" a record of all actions taken by a committee of the board of directors when exercising the authority of the board of directors for the corporation; this includes, for example, action taken by an executive committee between meetings of the board and final action of a special litigation committee authorized to act on behalf of the board. Proposed subsection 16.01(a) does not require a record of actions taken by a committee when the committee is not exercising the authority of the board of directors, e.g., when the committee is discussing policy and formulating recommendations for action by the board of directors. Also, it does not require either minutes or a record of committee deliberations under any circumstances. Committee meetings are preserved as forums for open and frank discussion and discussion of sensitive corporate data without fear of recordation or disclosure.

Proposed section 16.01 also does not address the amount of detail that should appear in the minutes of meeting of shareholders or the board of directors--the content of minutes is largely fixed by tradition and no inference about their content should be drawn from the section's treatment of the records of committee deliberation and action.

Proposed subsections 16.01(b) and (c) require the corporation to "maintain" appropriate accounting and shareholder records. The word "maintain" is used to denote current records only and does not require the corporation to keep on hand as permanent records, data, or information of historical interest only; the periods for which these records, data, or information should be kept is not addressed by the Proposed Act.

Proposed subsection 16.01(b) relates to accounting records. The word "appropriate" is used to indicate that the nature of the financial records to be kept is dependent to some extent on the nature of the corporation's business; the phrase "adequate records" is used in some state statutes to convey essentially the same meaning. "Appropriate" records are generally records that permit financial statements to be prepared which fairly present the financial position and transactions of the corporation. In some very small businesses operating on a cash basis, however, "appropriate" accounting records may consist only of a check register, vouchers, and receipts.

Proposed subsection 16.01(c) requires the corporation to maintain such records of its shareholders as will permit it to compile a list of shareholders when required. These records may consist of stubs from which certificates have been detached in the case of corporations with a few shareholders or of elaborate electronic data retrievable only by modern technology in the case of large, publicly held corporations. The record may be retained by the corporation or an agent, who traditionally is the transfer agent but may be another agent.

Proposed subsection 16.01(d) generally authorizes corporations to retain records on microfilm, microfiche, computer memory or disc, or any other method that is convenient or appropriate under the circumstances. The basic requirement is that the method chosen must be capable of reduction to written form within a

reasonable time. In addition, in the case of the record of shareholders, the method must permit the development of an alphabetical list of shareholders of record as required by Proposed subsection 16.01(c).

Proposed subsection 16.01(e) requires certain basic records to be kept at the principal office of the corporation, including minutes of shareholders' meetings for the preceding three years and records of shareholder action taken without a meeting during the same period. This requirement is imposed because these records must be available for inspection by any shareholder at that office. See Proposed subsection 16.02(a). The "principal office" of the corporation is defined in Proposed section 1.40 to be the location of the executive offices of the corporation and its address must be set forth by the corporation in its annual report required by Proposed section 16.22. The Proposed Act does not generally specify where records other than those described in Proposed subsection 16.01(e) must be kept. They may be kept in one or more offices within or without the state; indeed, in the case of records kept in non-written form, it may be impossible to determine "where" they are located.

**AMENDMENTS TO ORIGINAL SECTION**

**Laws 1991, ch. 72, §40 (eff. 7-28-91)** (*amends only original subsection (5)(g) to read "Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220)*

\* \* \* \* \*

**Laws 2002, ch. 297, §45 (eff. 6-13-02)** (*amends only subsection (5)*)

(5) A corporation shall keep a copy of the following records at its principal office:

- (a) Its articles or restated articles of incorporation and all amendments to them currently in effect;
- (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (c) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (d) The financial statements described in RCW 23B.16.200(1), for the past three years;
- (e) All ~~written~~ communications in the form of a record to shareholders generally within the past three years;
- (f) A list of the names and business addresses of its current directors and officers; and
- (g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220.

**CARC COMMENTARY**

See CARC Comment to 2002 Amendment to RCW 23B.01.410.

\* \* \* \* \*

**Laws 2009, ch. 189, §54 (eff. 7-26-09)** (*amends only subsections (1) and (5)*)

(1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all corporate actions ~~taken~~approved by the shareholders or board of directors by executed consent without a meeting, and a record of all corporate actions ~~taken~~approved by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.

\* \* \*

(5) A corporation shall keep a copy of the following records at its principal office:

- (a) Its articles or restated articles of incorporation and all amendments to them currently in effect;
- (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (c) The minutes of all shareholders' meetings, and records of all ~~action~~ corporate actions approved taken by shareholders without a meeting, for the past three years;
- (d) The financial statements described in RCW 23B.16.200(1), for the past three years;
- (e) All communications in the form of a record to shareholders generally within the past three years;
- (f) A list of the names and business addresses of its current directors and officers; and
- (g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220.

**CARC COMMENTARY**

The term "corporate action" is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

\* \* \* \* \*

**Laws 2015, ch. 176, §2142 (eff. 1-1-16)** (*amends only subsection (5)(g)*)

(g) Its initial report or most recent annual report delivered to the secretary of state under RCW ~~23B.16.220~~  
23.95.255.

\* \* \* \* \*

## **RCW 23B.16.220**

### **INITIAL AND ANNUAL REPORTS FOR SECRETARY OF STATE**

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#### ***CURRENT SECTION***

**Each domestic corporation, and each foreign corporation registered to transact business in this state, shall deliver to the secretary of state for filing initial and annual reports in accordance with RCW 23.95.255.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 1989, ch. 165, §187 (eff. 7-1-90)**

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth:
- (a) The name of the corporation and the state or country under whose law it is incorporated;
  - (b) The street address of its registered office and the name of its registered agent at that office in this state;
  - (c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;
  - (d) The address of the principal place of business of the corporation in this state;
  - (e) The names and addresses of its directors, if the corporation has dispensed with or limited the authority of its board of directors pursuant to RCW 23B.08.010, in an agreement authorized under RCW 23B.07.320, or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;
  - (f) A brief description of the nature of its business; and
  - (g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.
- (2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.
- (3) A corporation's first annual report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual license fee, and at such additional times as the corporation elects.

##### **OFFICIAL LEGISLATIVE HISTORY Senate Journal 51<sup>st</sup> Legis. 3109-10 (1989)**

###### *Section 16.22 Annual Report For Secretary of State.*

The requirement relating to the annual report that each corporation must submit to the secretary of state has been modified in Proposed section 16.22 in an effort to make it a limited information document for use by the secretary of state, members of the general public, and shareholders. The purpose of the annual report is to show the location of the principal place of business of the corporation, and the names and business addresses of its directors and principal officers. It permits members of the general public to ascertain the identity of the corporation and communicate directly with it.

The annual report is required of both domestic corporations and foreign corporations qualified to transact business in the state. The failure to file the annual report, like the failure to satisfy other mandatory requirements of the Act, is a ground for administrative dissolution or revocation of the certificate of authority to transact business.

##### **AMENDMENTS TO ORIGINAL SECTION**

###### **Laws 1991, ch. 72, §41 (eff. 7-28-91)**

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing ~~an initial and~~ annual reports that sets forth:

- (a) The name of the corporation and the state or country under whose law it is incorporated;
  - (b) The street address of its registered office and the name of its registered agent at that office in this state;
  - (c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;
  - (d) The address of the principal place of business of the corporation in this state;
  - (e) The names and addresses of its directors, if the corporation has dispensed with or limited the authority of its board of directors pursuant to RCW 23B.08.010, in an agreement authorized under RCW 23B.07.320, or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;
  - (f) A brief description of the nature of its business; and
  - (g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.
- (2) Information in ~~the an initial report or an~~ annual report must be current as of the date the ~~annual~~-report is executed on behalf of the corporation.
- (3) A corporation's ~~first annual initial~~ report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual corporate license fee, and at such additional times as the corporation elects.

**CARC COMMENTARY**

“Section 4” refers to RCW 23B.07.320. See comment to 1993 amendment thereof.

\* \* \* \* \*

**Laws 2001, ch. 307, §1 (eff. 5-1-01) (adds subsection (4))**

(4)(a) The secretary of state may allow a corporation to file an annual report through electronic means. If allowed, the secretary of state shall adopt rules detailing the circumstances under which the electronic filing of such reports shall be permitted and how such reports may be filed.

(b) For purposes of this section only, a person executing an electronically filed annual report may deliver the report to the office of the secretary of state without a signature and without an exact or conformed copy, but the person's name must appear in the electronic filing as the person executing the filing, and the filing must state the capacity in which the person is executing the filing.

**CARC COMMENTARY**

See CARC comment to 2002 amendment of RCW 23B.01.410.

\* \* \* \* \*

**Laws 2015, ch. 176, §2143 (eff. 1-1-16)**

~~(1) Each domestic corporation, and each foreign corporation authorized registered to transact business in this state, shall deliver to the secretary of state for filing initial and annual reports that set forth:~~

- ~~(a) The name of the corporation and the state or country under whose law it is incorporated;~~
- ~~(b) The street address of its registered office and the name of its registered agent at that office in this state;~~
- ~~(c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;~~
- ~~(d) The address of the principal place of business of the corporation in this state;~~
- ~~(e) The names and addresses of its directors, [or] if the corporation has dispensed with or limited the authority of its board of directors pursuant to RCW 23B.08.010, in an agreement authorized under RCW 23B.07.320, or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;~~
- ~~(f) A brief description of the nature of its business; and~~
- ~~(g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.~~



~~(2) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the corporation.~~

~~(3) A corporation's initial report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual corporate license fee, and at such additional times as the corporation elects.~~

~~(4)(a) The secretary of state may allow a corporation to file an annual report through electronic means. If allowed, the secretary of state shall adopt rules detailing the circumstances under which the electronic filing of such reports shall be permitted and how such reports may be filed.~~

~~(b) For purposes of this section only, a person executing an electronically filed annual report may deliver the report to the office of the secretary of state without a signature and without an exact or conformed copy, but the person's name must appear in the electronic filing as the person executing the filing, and the filing must state the capacity in which the person is executing the filing in accordance with RCW 23.95.255.~~

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**Title 23B Title 23B RCW  
Washington Business Corporation Act**

**Chapter 23B.17 RCW  
MISCELLANEOUS PROVISIONS**

- 23B.17.010**      **Application to Existing Corporations.**
- 23B.17.015**      **Alternative Quorum and Voting Requirements.**
- 23B.17.020**      **Transactions Involving Interested Shareholders. [REPEALED]**
- 23B.17.030**      **Limitation on Liability of Directors – Indemnification.**



**Title 23B RCW  
Washington Business Corporation Act**

**Chapter 23B.18 RCW  
NONADMITTED ORGANIZATIONS**

- 23B.18.010** Ownership and Enforcement of Notes Secured by Real Estate Mortgages.
- 23B.18.020** Mortgage Foreclosure.
- 23B.18.030** Transacting Business.
- 23B.18.040** Service of Process.
- 23B.18.050** Service of Process – Procedure. [REPEALED]
- 23B.18.060** Venue.



**RCW 23B.18.020**  
**MORTGAGE FORECLOSURE**

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***CURRENT SECTION***

Such nonadmitted organizations shall have the right to foreclose such mortgages under the laws of this state or to receive voluntary conveyance in lieu of foreclosure, and in the course of such foreclosure or of such receipt of conveyance in lieu of foreclosure, to acquire the mortgaged property, and to hold and own such property and to dispose thereof. Such nonadmitted organizations however, shall not be allowed to hold, own, and operate said property for a period exceeding five years. In the event said nonadmitted organizations do hold, own, and operate said property for a period in excess of five years, it shall be forthwith required to appoint an agent as required by RCW 23B.15.070 and Article 4 of chapter 23.95 RCW for foreign corporations doing business in this state.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §192 (eff. 7-1-90)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

\* \* \* \* \*

**Laws 2015, ch. 176, §2144 (eff. 1-1-16)**

Such nonadmitted organizations shall have the right to foreclose such mortgages under the laws of this state or to receive voluntary conveyance in lieu of foreclosure, and in the course of such foreclosure or of such receipt of conveyance in lieu of foreclosure, to acquire the mortgaged property, and to hold and own such property and to dispose thereof. Such nonadmitted organizations however, shall not be allowed to hold, own, and operate said property for a period exceeding five years. In the event said nonadmitted organizations do hold, own, and operate said property for a period in excess of five years, it shall be forthwith required to appoint an agent as required by RCW 23B.15.070 and Article 4 of chapter 23.95 RCW for foreign corporations doing business in this state.

\* \* \* \* \*





**RCW 23B.18.030**  
**TRANSACTIONING BUSINESS**

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***CURRENT SECTION***

The activities authorized by RCW 23B.18.010 and 23B.18.020 by such nonadmitted organizations shall not constitute "transacting business" within the meaning of chapter 23B.15 RCW or Article 5 of chapter 23.95 RCW.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §193 (eff. 7-1-90)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**  
None.

\* \* \* \* \*

**Laws 2015, ch. 176, §2145 (eff. 1-1-16)**  
The activities authorized by RCW 23B.18.010 and 23B.18.020 by such nonadmitted organizations shall not constitute "transacting business" within the meaning of chapter 23B.15 RCW or Article 5 of chapter 23.95 RCW.

\* \* \* \* \*



**RCW 23B.18.040**  
**SERVICE OF PROCESS**

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***CURRENT SECTION***

**In any action in law or equity commenced by the obligor or obligors, it, his, her, or their assignee or assignees against the said nonadmitted organizations on the said notes secured by said real estate mortgages purchased by said nonadmitted organizations, service of all legal process may be made in accordance with RCW 23.95.450.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §194 (eff. 7-1-90)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

\* \* \* \* \*

**Laws 2015, ch. 176, §2146 (eff. 1-1-16)**

In any action in law or equity commenced by the obligor or obligors, it, his, her, or their assignee or assignees against the said nonadmitted organizations on the said notes secured by said real estate mortgages purchased by said nonadmitted organizations, service of all legal process may be ~~had by serving the secretary of state of the state of Washington~~ made in accordance with RCW 23.95.450.

\* \* \* \* \*



**RCW 23B.18.050**  
**SERVICE OF PROCESS – PROCEDURE**

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**REPEALED** Laws 2015, ch. 176, §2149 (eff. 1-1-16)

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***CURRENT SECTION***

Duplicate copies of legal process against said nonadmitted organizations shall be served upon the secretary of state by registered mail. At the time of service the plaintiff shall pay to the secretary of state twenty-five dollars taxable as costs in the action and shall also furnish the secretary of state the home office address of said nonadmitted organization. The secretary of state shall forthwith send one of the copies of process by certified mail to the said nonadmitted organization to its home office. The secretary of state shall keep a record of the day, month, and year of service upon the secretary of state of all legal process. No proceedings shall be had against the nonadmitted organization nor shall it be required to appear, plead, or answer until the expiration of forty days after the date of service upon the secretary of state.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 1989, ch. 165, §195 (eff. 7-1-90)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

\* \* \* \* \*



## **RCW 23B.19.020**

### **DEFINITIONS**

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#### ***CURRENT SECTION***

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who is the beneficial owner of voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation; provided, however, that the term "acquiring person" does not include any person who (a) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation on March 23, 1988; (b) acquired its voting shares of the target corporation solely by gift, inheritance, or in a transaction in which no consideration is exchanged; (c) equals or exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional voting shares of the target corporation; (d) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation prior to the time the target corporation had a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or (e) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation amended its articles of incorporation to provide that the corporation shall be subject to the provisions of this chapter. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person. For the purpose of determining whether a person is an acquiring person, the number of voting shares of the target corporation that are outstanding shall include voting shares beneficially owned by the person through application of subsection (4) of this section, but shall not include any other unissued voting shares of the target corporation which may be issuable pursuant to any agreement, arrangement, or understanding; or upon exercise of conversion rights, warrants, or options; or otherwise. (2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Announcement date," when used in reference to any significant business transaction, means the date of the first public announcement of the final, definitive proposal for such a significant business transaction.

(4) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, member, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a

trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) the spouse or a parent or sibling of a person or a child, grandchild, sibling, parent, or spouse of any thereof, of a person or an individual having the same home as a person.

(5) (a)(i) "Beneficial owner" when used with respect to any shares means a person who individually or with or through any of its affiliates or associates:

(A) Has or shares:

(I) The power to vote, or to direct the voting of, the shares, directly or indirectly;

(II) The power to dispose, or to direct the disposition of, the shares, directly or indirectly;

(III) The right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; or

(IV) The right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing; or

(B) Has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(ii)(A) A person is not the beneficial owner of shares under (a)(i)(A)(III) of this subsection with respect to shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange.

(B) A person is not the beneficial owner of any shares under (a)(i)(A)(IV) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(C) A person is not the beneficial owner of any shares under (a)(i)(B) of this subsection if the agreement, arrangement, or understanding for the purpose of voting the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(b) The terms "beneficial ownership," "beneficially own," and "beneficially owned" have meanings correlative to the meaning of "beneficial owner."

(6) "Common shares" means any shares other than preferred shares.

(7) "Consummation date," with respect to any significant business transaction, means the date of consummation of such a significant business transaction,



or, in the case of a significant business transaction as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such a significant business transaction.

(8) "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of voting shares entitled to cast votes comprising ten percent or more of the voting power of a domestic or foreign corporation shall create a rebuttable presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(9) "Domestic corporation" means an issuer of voting shares which is organized under chapter 23B.02 RCW or any predecessor provision.

(10) "Exchange act" means the federal securities exchange act of 1934, as amended.

(11) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(12) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(13) "Preferred shares" means any class or series of shares of a target corporation which under the bylaws or articles of incorporation of such a corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

(14) "Share acquisition time" means the time at which a person first becomes an acquiring person of a target corporation.

(15) "Shares" means any:

(a) Shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

(b) Security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

**(16) "Significant business transaction" means:**

**(a) A merger, share exchange, or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger, share exchange, or consolidation would be, an affiliate or associate of the acquiring person;**

**(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of**

**all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;**

**(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition time. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, termination for cause under applicable common law principles, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption is rebuttable. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;**

**(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;**

**(e) The liquidation or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;**

(f) A reclassification of securities, including, without limitation, any shares split, shares dividend, or other distribution of shares in respect of stock, or any reverse shares split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation.

(17) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(18) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(19) "Target corporation" means:

(a) Every domestic corporation, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or

(ii) The corporation's articles of incorporation have been amended to provide that such a corporation shall be subject to the provisions of this chapter, if the corporation did not have a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act on the effective date of that amendment; and

(b) Every foreign corporation required to register to transact business in this state pursuant to chapter 23B.15 RCW and, Article 5 of chapter 23.95 RCW, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act;

(ii) The corporation's principal executive office is located in the state;

(iii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;

(iv) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with

its subsidiaries, employs more than one thousand residents of the state; and  
(v) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to the comparable provision to RCW 23B.07.070 of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

(20) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a corporation.

(21) "Voting shares" means shares of all classes of a corporation entitled to vote generally in the election of directors.

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §198 (eff. 7-1-90)**

The definitions in this section apply throughout this chapter.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who beneficially owns ten percent or more of the outstanding voting shares of the target corporation. The term "acquiring person" does not include a person who (a) beneficially owns ten percent or more of the outstanding voting shares of the target corporation on March 23, 1988; (b) acquires its shares by gift, inheritance, or in a transaction in which no consideration is exchanged; or (c) exceeds the

ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional shares of the target corporation. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) if having the same residence as a person, the person's relative, spouse, or spouse's relative.

(4) "Beneficial ownership," when used with respect to any shares, means ownership by a person:

(a) Who, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or

(b) Who, individually or with or through any of its affiliates or associates, has (i) the right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not the beneficial owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or (ii) the right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing. A person is not the beneficial owner of any shares under (b)(ii) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report; or

(c) Who has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in (b)(ii) of this subsection, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(5) "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ten percent or more of a domestic or foreign corporation's outstanding voting shares shall create a presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(6) "Exchange act" means the federal securities exchange act of 1934, as amended.

(7) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(8) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(9) "Significant business transaction" means:

(a) A merger or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets,

determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition date. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption may be rebutted by clear and convincing evidence. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The adoption of a plan or proposal for the sale of assets, liquidation, or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any stock split, stock dividend, or other distribution of stock in respect of stock, or any reverse stock split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation; or

(h) An agreement, contract, or other arrangement providing for any of the transactions in this subsection.

(10) "Share acquisition date" means the date on which a person first becomes an acquiring person of a target corporation.

(11) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(12) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(13) "Target corporation" means:

(a) Every domestic corporation organized under chapter 23B.02 RCW or any predecessor provision if, as of the share acquisition date, the corporation's principal executive office is located in the state and either a majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(b) Every foreign corporation required to have a certificate of authority to transact business in this state pursuant to chapter 23B.15 RCW, if, as of the share acquisition date:

- (i) The corporation's principal executive office is located in the state;
- (ii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;
- (iii) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and
- (iv) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to RCW 23B.07.070 for a domestic corporation and the comparable provision of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the domestic or foreign corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the domestic or foreign corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a domestic or foreign corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a domestic or foreign corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1996, ch. 155, §1 (eff. 6-6-96)**

The definitions in this section apply throughout this chapter.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who beneficially owns ten percent or more of the outstanding voting shares of the target corporation. The term "acquiring person" does not include a person who (a) beneficially ~~owns~~owned ten percent or more of the outstanding voting shares of the target corporation on March 23, 1988; (b) acquires its shares by gift, inheritance, or in a transaction in which no consideration is exchanged; ~~or~~ (c) exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional shares of the target corporation; (d) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation had a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or (e) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation amended its articles of incorporation to provide that the corporation shall be subject to the provisions of this chapter. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person. For the purpose of determining whether a person is an acquiring person, the number of voting shares of the target corporation that are outstanding shall include shares beneficially owned by the person through application

of subsection (4) of this section, but shall not include any other unissued voting shares of the target corporation which may be issuable pursuant to any agreement, arrangement, or understanding; or upon exercise of conversion rights, warrants, or options; or otherwise.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Announcement date," when used in reference to any significant business transaction, means the date of the first public announcement of the final, definitive proposal for such a significant business transaction.

(4) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, member, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) if having the same residence as a person, the person's relative, spouse, or spouse's relative the spouse or a parent or sibling of a person or a child, grandchild, sibling, parent, or spouse of any thereof, of a person or an individual having the same home as a person.

(5) "Beneficial ownership," when used with respect to any shares, means ownership by a person:

(a) Who, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or

(b) Who, individually or with or through any of its affiliates or associates, has (i) the right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not the beneficial owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or (ii) the right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing. A person is not the beneficial owner of any shares under (b)(ii) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report; or

(c) Who has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in (b)(ii) of this subsection, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(6) "Common shares" means any shares other than preferred shares.

(7) "Consummation date," with respect to any significant business transaction, means the date of consummation of such a significant business transaction, or, in the case of a significant business transaction as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such a significant business transaction.

(8) ~~(8)~~ "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ten percent or more of a domestic or foreign corporation's outstanding voting shares shall create a rebuttable presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(9) "Domestic corporation" means an issuer of voting shares which is organized under chapter 23B.02 RCW or any predecessor provision.

(10) ~~(10)~~ "Exchange act" means the federal securities exchange act of 1934, as amended.

(11) ~~(11)~~ "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.



~~(128)~~ "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

~~(13) "Preferred shares" means any class or series of shares of a target corporation which under the bylaws or articles of incorporation of such a corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.~~

~~(14) "Shares" means any:~~

~~(a) Shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and~~

~~(b) Security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.~~

~~(159) "Significant business transaction" means:~~

~~(a) A merger, share exchange, or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger, share exchange, or consolidation would be, an affiliate or associate of the acquiring person;~~

~~(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;~~

~~(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition ~~date~~time. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, termination for cause under applicable common law principles, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption ~~may be rebutted by clear and convincing evidence is rebuttable~~. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;~~

~~(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;~~

~~(e) The adoption of a plan or proposal for the sale of assets, liquidation, or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;~~

~~(f) A reclassification of securities, including, without limitation, any stock-shares split, stock-shares dividend, or other distribution of stock-shares in respect of stock, or any reverse stock-shares split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding,~~

whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation; ~~or~~

~~(h) An agreement, contract, or other arrangement providing for any of the transactions in this subsection.~~

~~(169)~~ "Share acquisition ~~date~~time" means the ~~date on time at~~ which a person first becomes an acquiring person of a target corporation.

~~(174)~~ "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

~~(182)~~ "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

~~(193)~~ "Target corporation" means:

~~(a) Every domestic corporation organized under chapter 23B.02 RCW or any predecessor provision if, as of the share acquisition date, the corporation's principal executive office is located in the state and either a majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state, if:~~

~~(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or~~

~~(ii) The corporation's articles of incorporation have been amended to provide that such a corporation shall be subject to the provisions of this chapter, if the corporation did not have a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act on the effective date of that amendment; and~~

~~(b) Every foreign corporation required to have a certificate of authority to transact business in this state pursuant to chapter 23B.15 RCW, if, as of the share acquisition date:~~

~~(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act;~~

~~(ii) The corporation's principal executive office is located in the state;~~

~~(iii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;~~

~~(iv) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and~~

~~(v) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.~~

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to ~~RCW 23B.07.070 for a domestic corporation and~~ the comparable provision to RCW 23B.07.070 of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the ~~domestic or foreign~~ corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the ~~domestic or foreign~~ corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a ~~domestic or foreign~~

corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a ~~domestic or foreign~~ corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

(20) "Voting shares" means shares of a corporation entitled to vote generally in the election of directors.

***CARC COMMENTARY***

The proposed amendment to current 19.020(1)(a) corrects a grammatical error.

As discussed below, the Committee recommends that the definition of a "target corporation" be amended to provide that in order to be classified as a "target corporation" any foreign corporation, or any domestic corporation (other than one electing to be a target corporation) must have a class of voting shares registered with SEC pursuant to sections 12 or 15 of the Exchange Act. The proposed addition to current 19.020(1)(d) excludes from the term "acquiring person" anyone who was a beneficial owner of 10 percent or more of the outstanding voting shares of a target corporation prior to the time a class of its voting shares was registered with the SEC. The Committee believes that the corporation's registration of a class of voting shares subsequent to a person's acquisition of 10 percent or more of its outstanding voting shares should not retroactively curtail that person's rights to enter a significant business transaction with the corporation.

As discussed below, the Committee recommends that the definition of a domestic "target corporation" be amended to provide that a domestic corporation may amend its articles of incorporation and thereby become a target corporation on the effective date of such amendment (even if it does not then have a class of voting shares registered with the SEC). The proposed addition to current 19.020(1)(e) excludes from the term "acquiring person" anyone who was beneficial owner of 10 percent or more of the outstanding voting shares of a target corporation prior to the time its articles of incorporation were amended to make it a target corporation. The Committee believes that shareholder action to amend the corporation's articles of incorporation subsequent to a person's acquisition of 10 percent or more of its outstanding voting shares should not retroactively curtail that person's right to enter a significant business transaction with the corporation.

The last sentence added to current 19.020(1) is derived from N.Y. Bus. Corp. L. §912 (a)(10). The sentence eliminates an incongruity in the current statute: an acquiring person is treated under current RCW 23B.19.020(4) as the beneficial owner of unissued target shares from which the acquiring person (or any affiliate or associate) has a right to acquire from the target; but such unissued shares are not included in the target's outstanding shares for purposes of calculating the percentage interest the acquiring person owns.

Regarding the proposed addition, as new RCW 23B.19.020(3), of a definition for "announcement date": the term appears once in the current RCW 23B Ch. 19, in 19.030(2), which prescribes conditions in order for an acquiring person to claim inadvertence in becoming an acquiring person. Current RCW 23B.19.030(2)(b) refers to a five-year period "preceding the date of the first public announcement of the significant business transaction..." The Committee was concerned that this language was ambiguous regarding this basic measuring date. The new added definition refines that concept by tying the measurement to "the first public announcement of the final, definitive proposal for the significant business transaction..." The definition is derived from N.Y. Bus. Corp.L. §(a)(2). The new definition is also used in proposed fair price provisions in RCW 23B.19.040(2).

Regarding the proposed amendments to current RCW 23B.19.020(3): The proposed amendment of current 19.020(3)(a) includes as an organization which is an “associate” of a person a limited liability company of which the person is a member.

The proposed amendment of 19.020(3)(d) substitutes part of the definition of a “related person” from RCW 23B.08.700(3) (concerning directors’ conflicting interest transactions) for the current language. The Committee believes the related person definition is very similar to the current subparagraph (d) and avoids some of its ambiguities (*e.g.*, who is a person’ relative?).

Regarding the proposed additions, as new RCW 23B.19.020(6), (7), (13), and (14), of definitions for “common shares,” “consummation date,” “preferred shares,” and “shares”: these definitions (all of which are fairly standard) are derived from N.Y. Bus. Corp.L. §912 (a)(6), (7), (12), and (14). The terms are used in the Committee’s proposed substitute for RCW 23B.17.020 (transactions with an interested shareholder), which is to be repealed. The substitute appears as an addition to RCW 23B.19.040.

Regarding the proposed amendment of current RCW 23B.19.020(5): The proposed amendment clarifies the current provision by stating explicitly that the presumption that a person owning 10 percent or more of a corporation’s voting shares has control of the corporation is rebuttable. The Committee believes this amendment does not alter the substance of the original provision.

Regarding the proposed addition, as RCW 23B.19.020(9), of a definition for “domestic corporation:” as discussed below, the Committee recommends that the criteria for a target domestic corporation be amended. The proposed definition was added to simplify redrafting of that provision.

Regarding the proposed amendments to current RCW 23B.10.020(9): The proposed additions to current 19.020(9)(a) acknowledge that a corporate acquisition may be consummated in Washington (see RCW 23B.11.020) and in other states by a share exchange.

The proposed amendments to current 19.020(9)(c) add an exception for an employee terminated for cause to the list of employee terminations not presumed to be a result of the acquiring person’s acquisition of shares.

The proposed amendments to current 19.020(9)(e) delete the words “the adoption of a plan or proposal for” from the current provision, on grounds that no other subsection in current 19.020(9) is triggered by adoption of a plan. The words “sale of assets” were deleted as related to a transaction that without liquidation or dissolution could not provide the acquiring person with funds.

The proposed amendments to current 19.020(9)(f) replace the word “stock” in the current provision with the word “shares.” “Stock” is not used in RCW 23B to modify the words currently in the first several clauses of 19.020(9)(f). See, *e.g.* RCW 23B.06.230 (“share dividend”).

The proposed amendment deleted current 19.020(h) as surplusage.

Regarding the proposed amendment to current RCW 23B.19.020(1) substituting “time” for “date,” and “time at” for “date on”; this amendment, and a correlative proposed amendment to RCW 23B.19.040(1)(a), are designed to resolve an ambiguity as to whether the exception in 19.040(1) is applicable if an acquiring person acquired shares from the target corporation in a friendly transaction and on the same date executes an agreement involving a significant business transaction. Compare *Siegman v. Columbia Pictures Entertainment Inc.*, 576 A.2d 625 (Del. Ch.

1989); 1993 WL 10969 (Del. Ch. 1993) (holding that the word “date” in an exception to the Delaware business combination statute similar to that in 19.040 meant “time.”)

Regarding the proposed amendments to current RCW 23B.19.020(13) regarding the definition of “target corporation”: RCW Ch. 19 applies to “target corporations” which in the current statute are defined as both domestic corporations (meeting certain economic standards) and foreign corporations (meeting certain other economic standards). The Committee considered whether application of the anti-takeover provision to Washington domestic corporations needs an economic nexus in order to fit within the Supreme Court’s opinion in *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987). In *CTS*, the Indiana statute applied only to Indiana corporations that met an economic nexus test. The subsequent case law that follows the “internal affairs” doctrine appears to remove the necessity for an economic nexus test for domestic corporations. See, e.g. *WLR Foods, Inc. v. Tyson Foods*, 861 F.Supp. 1277, *aff’d* 65 F.3d 1172 (4<sup>th</sup> Cir. 1995) (upholding a Virginia “affiliated transactions” as applied to a Virginia corporation; statute had no economic nexus test.) The Committee deleted the current requirements that a domestic target corporation had to have its principal executive office in Washington and either a majority of its (and its subsidiaries) employees had to be residents in Washington. (As noted above, the Committee also moved the first clause in the current law to a definition of a domestic corporation.) The effect of removing the economic nexus tests from the requirements from the requirements for a domestic target corporation was that the revised statute was applicable to domestic corporations that had a class of voting stock registered with the SEC. Current 23B.19.030(1) accomplished this by making the chapter inapplicable to domestic corporations that did not have such a class of voting stock. The Committee then combined the language remaining with the registered voting shares limitation and framed the remaining criterion in positive terms. The Committee also recommends that target domestic corporations be expanded to include domestic corporations whose articles of incorporation provide that they are subject to the section (even if they have no class of voting shares registered with the SEC). Thus the shareholders of any domestic corporation may amend its articles of incorporation to become a target corporation and be subject to RCW 23B Ch. 19.

The proposed amendments to current RCW 23B.19.020(13)(b) and the first two undesignated paragraphs thereafter are purely formal: no change in substance is intended. The last unnumbered paragraph had been designated as subsection (c) since it applies to both foreign and domestic corporations.

Regarding the proposed addition as RCW 23B.19.020(20) of a definition for “voting shares:” the current statute uses throughout the term “voting shares” without ever defining the term. The proposed addition is derived from N.Y. Bus. Corp. L. §912(a)(17).

\* \* \* \* \*

**Laws 2015, ch. 176, §2147 (eff. 1-1-16) (amends only subsection (19)(b))**

(b) Every foreign corporation required to ~~have a certificate of authority~~ register to transact business in this state pursuant to chapter 23B.15 RCW and Article 5 of chapter 23.95 RCW, if:

\* \* \* \* \*

**Laws 2016, ch. 216, §1 (eff. 6-9-16)**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who ~~beneficially owns~~ is the beneficial owner of voting shares entitled to cast votes comprising ten percent or more of the outstanding voting shares voting power of the target corporation. ~~The; provided, however, that the term "acquiring~~

person" does not include ((a)) any person who (a) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the (outstanding voting shares voting power of the target corporation on March 23, 1988; (b) acquires its shares acquired its voting shares of the target corporation solely by gift, inheritance, or in a transaction in which no consideration is exchanged; (c) equals or exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional voting shares of the target corporation; (d) beneficially was the owner of owned voting shares entitled to cast votes comprising ten percent or more of the outstanding voting shares voting power of the target corporation prior to the time the target corporation had a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or (e) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation amended its articles of incorporation to provide that the corporation shall be subject to the provisions of this chapter. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person. For the purpose of determining whether a person is an acquiring person, the number of voting shares of the target corporation that are outstanding shall include voting shares beneficially owned by the person through application of subsection (4) of this section, but shall not include any other unissued voting shares of the target corporation which may be issuable pursuant to any agreement, arrangement, or understanding; or upon exercise of conversion rights, warrants, or options; or otherwise. (2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Announcement date," when used in reference to any significant business transaction, means the date of the first public announcement of the final, definitive proposal for such a significant business transaction.

(4) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, member, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) the spouse or a parent or sibling of a person or a child, grandchild, sibling, parent, or spouse of any thereof, of a person or an individual having the same home as a person.

(5) ~~"Beneficial ownership," when used with respect to any shares, means ownership by a person:~~

~~(a) Who, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or~~

~~(b) Who, individually or with or through any of its affiliates or associates, has (i) the right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not the beneficial owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or (ii) the right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing. A person is not the beneficial owner of any shares under (b)(ii) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report; or~~

~~(c) Who has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in (b)(ii) of this subsection, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.~~

(a)(i) "Beneficial owner" when used with respect to any shares means a person who individually or with or through any of its affiliates or associates:

(A) Has or shares:

(I) The power to vote, or to direct the voting of, the shares, directly or indirectly;

(II) The power to dispose, or to direct the disposition of, the shares, directly or indirectly;

(III) The right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; or

(IV) The right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing; or

(B) Has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(ii)(A) A person is not the beneficial owner of shares under (a)(i)(A)(III) of this subsection with respect to shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange.

(B) A person is not the beneficial owner of any shares under (a)(i)(A)(IV) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(C) A person is not the beneficial owner of any shares under (a)(i)(B) of this subsection if the agreement, arrangement, or understanding for the purpose of voting the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(b) The terms "beneficial ownership," "beneficially own," and "beneficially owned" have meanings correlative to the meaning of "beneficial owner."

(6) "Common shares" means any shares other than preferred shares.

(7) "Consummation date," with respect to any significant business transaction, means the date of consummation of such a significant business transaction, or, in the case of a significant business transaction as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such a significant business transaction.

(8) "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ~~ten percent or more of a domestic or foreign corporation's outstanding voting shares~~ voting shares entitled to cast votes comprising ten percent or more of the voting power of a domestic or foreign corporation shall create a rebuttable presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(9) "Domestic corporation" means an issuer of voting shares which is organized under chapter 23B.02 RCW or any predecessor provision.

(10) "Exchange act" means the federal securities exchange act of 1934, as amended.

(11) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(12) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(13) "Preferred shares" means any class or series of shares of a target corporation which under

the bylaws or articles of incorporation of such a corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

(14) "Share acquisition time" means the time at which a person first becomes an acquiring person of a target corporation.

(15) "Shares" means any:

(a) Shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

(b) Security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

~~(15)~~ (16) "Significant business transaction" means:

(a) A merger, share exchange, or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger, share exchange, or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation

(i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition time. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bonafide voluntary retirement, transfer, resignation, termination for cause under applicable common law principles, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption is rebuttable. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The liquidation or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any shares split, shares dividend, or other distribution of shares in respect of stock, or any reverse shares split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the



outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation.

~~(16) "Share acquisition time" means the time at which a person first becomes an acquiring person of a target corporation.~~

(17) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(18) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(19) "Target corporation" means:

(a) Every domestic corporation, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or

(ii) The corporation's articles of incorporation have been amended to provide that such a corporation shall be subject to the provisions of this chapter, if the corporation did not have a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act on the effective date of that amendment; and

(b) Every foreign corporation required to register to transact business in this state pursuant to chapter 23B.15 RCW and, Article 5 of chapter 23.95 RCW, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act;

(ii) The corporation's principal executive office is located in the state;

(iii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;

(iv) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(v) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to the comparable provision to RCW 23B.07.070 of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

(20) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a corporation.

(21) "Voting shares" means shares of all classes of a corporation entitled to vote generally in the election of directors.

***CARC COMMENTARY***

The proposed amendments to current 19.020(1) are designed to resolve an ambiguity as to when a person becomes an acquiring person of a target corporation with more than one class of voting stock. Because the Washington Business Corporation Act permits corporations to allocate equity ownership and voting control disproportionately among different classes of stock, it is possible for a person to beneficially own shares of a target corporation with more than one class of voting stock that represent less than 10% of the total number of outstanding voting shares of a corporation, yet which shares represent more than 10% of the total voting power of outstanding voting shares. Conversely, it is also possible for a person to beneficially own shares that represent more than 10% of the total number of outstanding voting shares of a corporation, yet which shares represent less than 10% of the total voting power of outstanding voting shares. The proposed amendments would clarify that a person is an acquiring person when it is the beneficial owner of shares representing 10% or more of the total number of votes entitled to be cast by all of the outstanding voting shares of a target corporation. The Committee believes this clarification is consistent with the legislative intent articulated in 19.010 regarding attempts to gain control of or influence otherwise publicly held corporations.

The proposed amendments to current 19.020(5) clarify that the terms "beneficial ownership," "beneficially own" and "beneficially owned" have correlative meanings when used in RCW 23B.19.

The proposed amendments to current 19.020(5)(a) clarify that a person is a beneficial owner of shares when it has or shares voting or dispositive power with respect to the shares.

The proposed amendments to current 19.020(5)(b) and 19.020(5)(c) are technical corrections.

The proposed amendments to current 19.020(8) are conforming changes. See commentary on proposed amendments to 19.020(1).

The proposed addition of the definition of "voting power" as RCW 23B.19.020(20) is consistent with the use described in the commentary on proposed amendments to 19.020(1).

The proposed amendments to the definition of "voting shares" in current 19.020(20) are conforming changes. See commentary on proposed amendments to 19.020(1).

\* \* \* \* \*

## **RCW 23B.19.030**

# **TRANSACTION EXCLUDED FROM CHAPTER – INADVERTANT ACQUISITION**

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### ***CURRENT SECTION***

**This chapter does not apply to a significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation, and (2) would not at any time within the five-year period preceding the announcement date of the significant business transaction have been an acquiring person but for the inadvertent acquisition.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §199 (eff. 7-1-9)**

This chapter does not apply to:

- (1) A significant business transaction of a target corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to section 12 of the exchange act; or
- (2) A significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (a) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding voting shares of the target corporation, and (b) would not at any time within the five-year period preceding the date of the first public announcement of the significant business transaction have been an acquiring person but for the inadvertent acquisition.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1996, ch. 155, §2 (eff. 6-6-95)**

This chapter does not apply to:

- ~~(1) A significant business transaction of a target corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to section 12 of the exchange act; or~~
- ~~(2) A~~ a significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (~~a~~a1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding voting shares of the target corporation, and (~~b~~b2) would not at any time within the five-year period preceding the announcement date ~~of the first public announcement~~ of the significant business transaction have been an acquiring person but for the inadvertent acquisition.

#### ***CARC COMMENTARY***

Regarding the proposed amendments to RCW 23B.19.03: as noted above, it is (and was) a fundamental requisite for the classification of a foreign or domestic corporation that it have a class of voting shares registered with the SEC. This requisite is now stated positively in the requirements for each type of target corporation. The Committee thus deleted the negative statement in 23B.19.030(1). The Committee also extended the coverage of the statute modestly by

including corporations whose obligation to register voting shares arises under section 15 of the Exchange Act.

The proposed amendment to current RCW 23B.19.030(2) substitutes the proposed term “announcement date” for the “date of the first public announcement” for reasons discussed above.

\* \* \* \* \*

**Laws 2016, ch. 216, §2 (eff. 6-9-16)**

This chapter does not apply to a significant business of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of ~~ten percent or more of the outstanding voting shares~~ voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation, and (2) would not at any time within the five-year period preceding the announcement date of the significant business transaction have been an acquiring person but for the inadvertent acquisition.

***CARC COMMENTARY***

The proposed amendments to current 19.030 are conforming changes. See commentary on proposed amendments to 19.020(1).

\* \* \* \* \*

## **RCW 23B.19.040**

### **APPROVAL OF SIGNIFICANT BUSINESS TRANSACTION REQUIRED – VIOLATION**

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#### ***CURRENT SECTION***

**(1)(a) Notwithstanding anything to the contrary contained in this title, a target corporation shall not for a period of five years following the acquiring person's share acquisition time engage in a significant business transaction unless:**

**(i) It is exempted by RCW 23B.19.030;**

**(ii) The significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation; or**

**(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and approved at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the votes entitled to be cast by the outstanding voting shares of the target corporation, except shares beneficially owned by or under the voting control of the acquiring person.**

**(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition time, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.**

**(2) Except for a significant business transaction approved under subsection (1) of this section or exempted by RCW 23B.19.030, in addition to any other requirement, a target corporation shall not engage at any time in any significant business transaction described in RCW 23B.19.020(((15))) (16) (a) or (e) with any acquiring person of such a corporation other than a significant business transaction that either meets all of the conditions of (a), (b), and (c) of this subsection or meets the conditions of (d) of this subsection:**

**(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:**

**(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of voting shares entitled to cast votes comprising five percent or more of the voting power of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is**

higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of voting shares entitled to cast votes comprising five percent or more of the voting power of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding

shares, including common shares, of the target corporation in a significant business transaction is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(d) The significant business transaction is approved at an annual meeting of shareholders, or special meeting of shareholders called for such a purpose, no earlier than five years after the acquiring person's share acquisition time, by a majority of the votes entitled to be counted within each voting group entitled to vote separately on the transaction. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares as to which an acquiring person has beneficial ownership or voting control may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares as to which an acquiring person has beneficial ownership or voting control shall, however, be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing not to be covered under RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A significant business transaction that is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW 23B.19.030 is void.

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 1989, ch. 165, §200 (eff. 7-1-90)**

(1)(a) Notwithstanding any provision of this title, a target corporation shall not engage in any significant business transaction for a period of five years following the acquiring person's share acquisition date unless the significant business transaction or the purchase of shares made by the acquiring person on the share acquisition date is approved prior to the acquiring person's share acquisition date by a majority of the members of the board of directors of the target corporation.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition date, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) A target corporation that engages in a significant business transaction that violates subsection (1) of this section and that is not exempt under RCW 23B.19.010 shall have its certificate of incorporation or certificate of authority to transact business in this state revoked under RCW 23B.14.200 or 23B.15.300 for domestic or foreign target corporations, respectively. In addition, such significant transaction shall be void.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### **AMENDMENTS TO ORIGINAL SECTION**

##### **Laws 1996, ch. 155, §3 (eff. 6-6-96)**

(1)(a) Notwithstanding ~~any provision of this title~~ anything to the contrary contained in this title, except under subsection (2) of this section and RCW 23B.19.030, a target corporation shall not engage in any

significant business transaction for a period of five years following the acquiring person's share acquisition ~~date-time~~ unless the significant business transaction or the purchase of shares made by the acquiring person ~~on the share acquisition date~~ is approved prior to the acquiring person's share acquisition ~~date-time~~ by a majority of the members of the board of directors of the target corporation.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition ~~date-time~~, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2)-Notwithstanding anything to the contrary contained in this title, except under subsection (1) of this section and RCW 23B.19.030, a target corporation shall not engage at any time in any significant business transaction with any acquiring person of such a corporation other than a significant business transaction that meets all of the following conditions:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest; (ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and



(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a business combination is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing not to be covered under RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A target corporation that engages in a significant business transaction that ~~violates~~ is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW 23B.19.010 shall have its certificate of incorporation or certificate of authority to transact business in this state revoked under RCW 23B.14.200 or 23B.15.300 for domestic or foreign target corporations, respectively. In addition, such significant transaction shall be ~~23B.19.030~~ is void.

#### **CARC COMMENTARY**

Regarding the proposed amendments to current RCW 23B.19.040: The proposed amendment to current 19.040(10(a) recognizes that RCW 23B.19.030 (related to an acquiring person becoming such by inadvertence) must be an exception to the broad opening (notwithstanding) clause. It also adds an exception to the notwithstanding clause for a significant business transaction meeting the conditions set forth in new paragraph 2.

For reasons set forth above, the proposed amendments to current 19.040(1)(a) and (b) substitute “time” and “date” in every clause therein related to share acquisition date.

The proposed amendments add, as a new subsection 19,040(2), the fair price exception found in N.Y. Bus. Corp.L. §912(c)(3). In a general sense, the proposed amendment is recommended by the Committee as a replacement for current RCW 23B.17.020 (the repeal of which is recommended in a later section of this bill). The Committee’s review of RCW 23B Ch. 19 resulted from its receipt of numerous comments regarding ambiguities in its provisions, and major inconsistencies between its provisions and those in current RCW 23B.17.020. The Committee initially attempted to modify the latter to make it consistent with RCW 23B Ch. 19. As it proceeds with that task, and as it examined business combination statutes elsewhere (few had free-standing fair price provisions), the Committee changed its objective to producing an integrated business combination – fair price series of provisions. N.Y. Bus. Corp.L. §912 was chosen as a model (in substantial part because it was the model for most business combination statutes). Under the proposed addition, and assuming the requirements of RCW 23B.19.030, or of RCW 23B.19.040(1), are not met, an acquiring person can effect a significant business transaction with a target corporation only if the acquiring person pays a statutorily defined “fair price” in the transaction. The fair price is the greatest of the following: (1) the highest price per share paid by the acquiring person after he or she became owner of 5 percent or more of the voting shares of the target corporation, and either within the 5 year period prior to the announcement date of the significant business transaction, or within the 5 year period prior to the date on which the person became and acquiring person; (2) the market value of the shares on the announcement date of the significant business transaction; or (3) the market value of the shares on the date of the acquiring persons’ share acquisition time. Holders of all outstanding shares of any class or series are entitled to receive the fair price for their shares (whether or not acquiring person has previously acquired shares of that class or series.) The proposed amendments represent a considerable refinement of the limited fair price provision in RCW 23B.17.020(3)(c). The Committee has

added, as new RCW 23B.19.040(2)(d), a subsection to the New York fair price provisions that exempts from proposed subsections (2)(a) to (2)(c) corporations that have opted out of the coverage of current RCW 23B.17.020.

The proposed amendment to current RCW 19.040(2) deletes from the action provisions the present concept of the corporate “death penalty” for domestic corporations which violate the section. The current statute provides that a significant business transaction made by a target corporation which violates the statute results in its certificate of incorporation (or, in the case of a foreign corporation, its certificate of authority) being revoked as well as the transaction being void. The system in the present statute did not strike the Committee as logical or proportionate. If the transaction is void, why was the corporation dissolved; if dissolved, could it be reinstated? If a domestic corporation is dissolved it is a significantly greater penalty than revoking the certificate of authority for a foreign corporation. Accordingly, the Committee concluded that making a significant business transaction in violation of the section “void” was adequate to accomplish the purpose of the statute. That section would apply equally to foreign and domestic target corporations.

\* \* \* \* \*

**Laws 1997, ch. 19, §3 (eff. 7-27-97)**

(1)(a) Notwithstanding anything to the contrary contained in this title, ~~except under subsection (2) of this section and RCW 23B.19.030,~~ a target corporation shall not ~~engage in any significant business transaction~~ for a period of five years following the acquiring person’s share acquisition time ~~engage in a significant business transaction unless it is exempted by RCW 23B.19.030 or~~ unless the significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person’s share acquisition time by a majority of the members of the board of directors of the target corporation.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition time, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) ~~Notwithstanding anything to the contrary contained in this title, except under subsection (1) of this section and RCW 23B.19.030—~~Except for a significant business transaction approved under subsection (1) of this section or exempted by RCW 23B.19.030, in addition to any other requirement, a target corporation shall not engage at any time in any significant business transaction described in RCW 23B.19.020(15) (a) or (e) with any acquiring person of such a corporation other than a significant business transaction that either meets all of the ~~following~~ conditions of (a), (b), and (c) of this subsection or meets the conditions of (d) of this subsection:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other

than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a significant business combination transaction is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(d) The significant business transaction is approved at an annual meeting of shareholders, or special meeting of shareholders called for such a purpose, no earlier than five years after the acquiring person's share acquisition time, by a majority of the votes entitled to be counted within each voting group entitled to vote separately on the transaction. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares as to which an acquiring person has beneficial ownership or voting control may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares as to which an acquiring person has beneficial ownership or voting control shall, however, be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under \*RCW 23B.17.020(3)(d), expressly electing not to be covered under \*RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A significant business transaction that is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW 23B.19.030 is void.

**CARC COMMENTARY**

RCW 23B Chapter 19 was amended in 1996 with the adoption of SSB 6169. Unfortunately, the amendments to RCW 23B.19.040 as adopted and passed by the legislature in 1996 can be read to produce a conclusion that is at best ambiguous, and most likely reads in a manner inconsistent with the intent of the Corporate Act Revision Committee of the Washington State Bar Association (“CARC”) when presenting the proposal. The intent of the 1996 amendments to the RCW 23B (SSB 6169) was to remove conflicts and ambiguities between RCW 23B.17.020 and RCW 23B Chapter 19. There was an error in the draft of SSB 6169 as presented and adopted. The confusion results from the insertion of the phrase “except under subsection 2 of this section and RCW 23B.19.030” to the lead-in to 19.040 (1)(a). The concern is that this language potentially results in two exceptions to the restriction on a target corporation engaging in a significant business transaction. First, approval by the board; the second would be meeting the fair price provisions of subsection (2) of RCW 23B.19.040. In reviewing the various drafts, it appears that the Committee’s draft had a typo which was repeated in several drafts through the Bar Association review and approval process and then complicated by the Code Reviser’s effort to remove a perceived ambiguity with insertion of the word “and”. The initial CARC drafts had the provision “except under subsection (2) of this section 23B.19.030” and, at that point, 19.030 have several subsections including one for the inadvertent acquisition. As CARC revised 19.030 to remove the other subsections leaving just the inadvertent acquisition, we did not correct the reference. The phrase “subsection 2 of this section RCW 23B.19.030” placed in 23B.19.040 was itself confusing. The Code Reviser’s answer to this confusion, the impact of which we unfortunately did not appreciate in the proofreading process or at the hearing on SSB 6169, was to insert “and” between “this section” and “RCW 23B.19.030”.

The proposed corrections are in SB 5107. CARC, through the Bar Association review process, has proposed a series of revisions which would remove the ambiguity and clearly provide that the fair price provisions are additional requirements for a significant business transaction and not an alternative to the requirement of board approval of such a transaction within five years of becoming an acquiring person. The Committee also suggests restructuring the confusing New York “notwithstanding anything to the contrary ... except” language which was used as a reference to further clarify our intent. As further refinements, the fair price provisions are limited to those relevant significant business transactions in subsections (a) (mergers, etc.) and (e) (liquidations) of RCW 23B.19.020. Also new is the addition of subsection (d) to RCW 23B.19.040(2) providing for an exception to the fair price provisions with approval of the significant business transaction by a shareholder vote.

\* \* \* \* \*

**Laws 2007, ch. 45, §1 (eff. 7-22-07)(amends only subsection (1)(a)):**

(1)(a) Notwithstanding anything to the contrary contained in this title, a target corporation shall not for a period of five years following the acquiring person's share acquisition time engage in a significant business transaction unless:

(i) It is exempted by RCW 23B.19.030 or unless:

(ii) The significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation; or

(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and authorized at an annual or special meeting of shareholders, and not be written consent, by the affirmative vote of at least two-thirds of the outstanding voting shares, except shares beneficially owned by or under the voting control of the acquiring person.

**CARC COMMENTARY**

State takeover laws have been implemented in numerous states to protect corporations from hostile takeovers. These laws vary from state to state, and include a variety of mechanisms by which the ability to accomplish a business combination is limited. Washington's law (RCW 23B.19) is primarily a freeze-out statute, which bars, for five years after the acquiring person's share acquisition time, any significant business transaction with the acquiring person's share acquisition time, any significant business transaction with the acquiring person (a shareholder or group that has acquired ten percent or more of the corporation's shares). The legislative intent of the law is stated in RCW 23B.19.010. RCW 23B.19.040(1) currently provides the only way to bypass the five year bar is to obtain approval of the acquiring person's share acquisition or significant business transaction prior to the acquiring person's share acquisition time. Following the five-year period, the statute requires that certain fair price requirements be met in any such significant business transaction.

A survey of state laws recently published by Institutional Shareholder Services ("ISS") indicates that 32 states have adopted similar freeze-out statutes. CARC's review of those laws reveals that fewer than five of those states do not allow for post-acquisition circumvention of the bar imposed by the freeze-out statute – in other words, the "absolute bar" approach taken by the Washington statute is very much in the minority when compared to most other states. In the vast majority of states, the freeze-out can be circumvented and a significant business transaction with an otherwise barred shareholder can proceed if the significant business transaction is approved by both the board of directors and a supermajority of disinterested shareholders.

In the last five years there has been significant evolution in corporate governance and expectations of shareholders. The implementation of the Sarbanes-Oxley Act and the rise of large shareholder service and representation groups such as ISS has resulted in a reexamination of the impact of a number of state corporate act provisions. ISS, the largest and in many ways most influential advisor to large institutional shareholders, carefully considers, among other impacts, the impact of state takeover laws when reviewing proxy proposals. ISS also makes an assessment of each corporation's governance that it considers in recommending positions on proxy votes. It terms the assessment the "Corporate Governance Quotient" or "CGQ." A high CGQ favorably affects ISS's decision to vote in favor of a corporation's proposals to shareholders, while a low CGQ is an unfavorable factor. Based on our investigation, CARC understands that a corporation's anti-takeover position (through adoption of restrictive terms in the articles of incorporation or a shareholder rights plan such as a *poison pill*) will be an unfavorable element in the CGQ scoring. CARC also understands that incorporation in a state such as Washington, with freeze-out provisions that do not provide for post-acquisition circumvention, will also tend to lower the CGQ. Where possible, ISS recommends that corporations opt out of takeover statutes.

While we are aware of no circumstance where a Washington corporation has reincorporated to another to avoid Washington's takeover statute and improve its governance ratings, we note the possibility of that event, and that we are unable to assess whether the existence of the current law dissuades corporations that might otherwise think to reincorporate in Washington from doing so.

Several states, including Delaware, allow for the freeze-out provisions of takeover laws to be circumvented with shareholder and board of director approval of the business combination. Generally, a majority of the board members and two thirds of the disinterested shareholders need to approve of the business combination in order to obtain this after-the-fact exemption. Washington currently has no such provision for circumventing the freeze-out provision, and thus the only way to effect a significant business combination in Washington is to obtain the approval of the corporation's board of directors prior to becoming a ten percent beneficial owner. Using Delaware as a model, it would be relatively straight-forward to include such an after-the-fact approval provision in the Washington takeover law, specifically by amending RCW 23B.19.040(1)(a). CARC believes that an approach that allows after-the-fact circumvention of the

freeze-out only when there is a super-majority of disinterested shareholders in favor, would preserve the beneficial effect of the takeover statute and remain true to the original purposes set forth by the Legislature.

**Laws 2009, ch. 189, §56 (eff. 7-26-09)** *(amends only subsection (1)(a))*

(1)(a) Notwithstanding anything to the contrary contained in this title, a target corporation shall not for a period of five years following the acquiring person's share acquisition time engage in a significant business transaction unless:

(i) It is exempted by RCW 23B.19.030;

(ii) The significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation; or

(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and authorized approved at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting shares, except shares beneficially owned by or under the voting control of the acquiring person.

**CARC COMMENTARY**

The term "corporate action" is defined and used throughout the Washington Business Corporation Act for consistency and to clarify the distinction between the matter being approved versus the action of approving.

\* \* \* \* \*

**Laws 2016, ch. 216, §3 (eff. 6-9-16)** *(amends subsections (1)(a)(iii), (2), (2)(a)(i), and (2)(b)(i))*

(1)(a)(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and approved at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting shares votes entitled to be cast by the outstanding voting shares of the target corporation, except shares beneficially owned by or under the voting control of the acquiring person.

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(2) Except for a significant business transaction approved under subsection (1) of this section or exempted by RCW 23B.19.030, in addition to any other requirement, a target corporation shall not engage at any time in any significant business transaction described in RCW 23B.19.020~~(15)~~ (16) (a) or (e) with any acquiring person of such a corporation other than a significant business transaction that either meets all of the conditions of (a), (b), and (c) of this subsection or meets the conditions of (d) of this subsection:

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(2)(a)(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of ~~five percent or more of the outstanding voting shares~~ voting shares entitled to cast votes comprising five percent or more of the voting power of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

\*\*\*

(2)(b)(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of ~~five percent or more of the outstanding voting shares~~ voting shares entitled to cast votes comprising five percent or more of the voting power of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

\* \* \* \* \*

***CARC COMMENTARY***

The proposed amendments to current 19.040 are conforming changes. See commentary on proposed amendments to 19.020(1).

\* \* \* \* \*





**Title 23B RCW**  
**Washington Business Corporation Act**

**Chapter 23B.25 RCW**  
**SOCIAL PURPOSE CORPORATIONS**

- 23B.25.005**    **Becoming or ceasing to be a social purpose corporation.**
- 23B.25.010**    **Powers, rights, and obligations -- Definition -- Application of RCW 23B.03.010.**
- 23B.25.020**    **General social purposes.**
- 23B.25.030**    **Specific social purposes.**
- 23B.25.040**    **Articles of incorporation -- Required and optional provisions -- Notice -- Availability of copies.**
- 23B.25.050**    **Duties of director -- Standards -- Liabilities.**
- 23B.25.060**    **Duties of officer -- Standards -- Liabilities.**
- 23B.25.070**    **Shares -- Represented by certificate -- Not represented by certificate.**
- 23B.25.080**    **Instituting or maintaining proceedings -- Shareholders only.**
- 23B.25.090**    **Amendment to articles of incorporation -- Change to social purposes -- Voting requirements.**
- 23B.25.100**    **Plan of merger or share exchange -- Status as social purpose corporation -- Voting requirements.**
- 23B.25.110**    **Selling, leasing, exchanging, or disposing of property -- Voting requirements.**
- 23B.25.120**    **Shareholder dissent -- Payment of fair value, when.**
- 23B.25.130**    **Corporation converting to a social purpose corporation -- Conditions -- Election.**
- 23B.25.140**    **Corporation ceasing to be a social purpose corporation -- Conditions -- Election.**
- 23B.25.150**    **Social purpose report required -- Timing -- Information -- Failure to comply.**



## **RCW 23B.25.005 BECOMING OR CEASING TO BE A SOCIAL PURPOSE CORPORATION.**

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### ***CURRENT SECTION***

**(1) Any corporation may elect to be governed as a social purpose corporation by one of the following means:**

**(a) One or more persons may act as incorporator or incorporators of a social purpose corporation by delivering articles of incorporation that conform to the requirements of this chapter to the secretary of state for filing; or**

**(b) Any corporation which is not a social purpose corporation may elect to become a social purpose corporation by complying with RCW 23B.25.130.**

**(2) Any social purpose corporation may elect to cease to be governed as a social purpose corporation by complying with RCW 23B.25.140.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §1 (eff. 6-7-12)

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

Proposed chapter 23B.25 creates a new type of corporation in Washington, the “social purpose corporation,” designed to facilitate the organization of companies in Washington with greater flexibility for combining profitability with a broader social or environmental purpose.

Some commenters have expressed the belief that the use of the traditional corporate form in these situations can create the risk of potential liability for managers and the risk that investors will shift the company away from the social purpose. In addition, some commenters believe the traditional corporate form provides no means to ensure transparency or accountability with respect to the managers’ success in pursuing the social purpose. Proposed chapter 23B.25 retains for social purpose corporations the for-profit philosophy of the traditional corporation along with its statutory certainty and standardization, but seeks to address the issues noted above by (1) providing directors and officers considerable flexibility in their decisions and actions, both within and outside of the ordinary course of business, when prioritizing one or more of the purposes of the corporation over others, including, in appropriate circumstances, favoring the achievement of a social purpose or purposes over the economic interests of the shareholders; (2) anchoring the social purpose or purposes by requiring a supermajority vote to materially alter or eliminate the social purpose or purposes; and (3) facilitating transparency through communications to shareholders regarding the social purpose or purposes, including the corporation’s efforts intended to promote its social purpose or purposes.

Some forms of legislation adopted or considered in other states addressing alternative corporate forms are prescriptive rather than permissive in nature. However, consistent with the enabling nature of title 23B RCW, proposed chapter 23B.25 takes a permissive rather than prescriptive approach. Although each social purpose corporation must adopt the enumerated general social purpose, proposed chapter 23B.25 does not attempt to legislate corporate behavior. Rather, proposed chapter 23B.25 would enable each social purpose corporation to determine what

corporate behavior is applicable to it by so stating in its articles of incorporation. For example, while a social purpose corporation is free to include in its articles of incorporation a provision *requiring* the corporation's directors to consider the impacts of *any* corporate action (or *any* decision not to act) on the corporation's social purpose, a social purpose corporation is not required to have such a provision.

Proposed chapter 23B.25 expressly permits corporations to be formed to pursue one or more social purposes in addition to creating economic value for shareholders, pursuant to lawful acts or activities for which a corporation may otherwise be organized under title 23B RCW.

Proposed subsection 25.100(1)(b) expressly permits a corporation previously organized under title 23B RCW to elect to be governed as a social purpose corporation under proposed chapter 23B.25. The process a corporation previously organized under title 23B RCW must follow to elect to be governed as a social purpose corporation is addressed in proposed section 25.800. Proposed chapter 23B.25 does not apply to, nor is it intended to have an impact on, non-profit corporations, which continue to be the subject of chapter 24.03.

Proposed subsection 25.100(2) expressly permits a social purpose corporation to cease being governed by proposed chapter 23B.25. If a social purpose corporation elects to cease being governed by proposed chapter 23B.25, it will thereafter continue to exist as a traditional corporation organized under title 23B RCW. The process a social purpose corporation must follow to cease being governed under proposed chapter 23B.25 is addressed in proposed section 25.810.

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**23B.25.010**  
**POWERS, RIGHTS, AND OBLIGATIONS — DEFINITION —**  
**APPLICATION OF RCW 23B.03.010.**

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***CURRENT SECTION***

(1) Except as otherwise expressly stated in this chapter, the provisions of this title and all powers, rights, and obligations thereunder shall apply to social purpose corporations organized under this chapter, and references in this title to the term "corporation" shall be read to include social purpose corporations organized under this chapter.

(2) Subject to any limitations contained in the articles of incorporation, a social purpose corporation may engage in any lawful business under RCW 23B.03.010.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §2 (eff. 6-7-12)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

A social purpose corporation is a for-profit corporation formed or elected to pursue one or more social purposes in addition to creating economic value for shareholders. A social purpose corporation will be subject to all provisions of title 23B RCW, except as specifically provided in proposed chapter 23B.25.

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**23B.25.020**  
**GENERAL SOCIAL PURPOSES.**

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***CURRENT SECTION***

**Every corporation governed by this chapter must be organized to carry out its business purpose under RCW 23B.03.010 in a manner intended to promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation's activities upon any or all of (1) the corporation's employees, suppliers, or customers; (2) the local, state, national, or world community; or (3) the environment.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §3 (eff. 6-7-12)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**  
None.

***CARC COMMENTARY***

Each social purpose corporation must be organized to carry out its business in a manner intended to pursue a general social purpose. The general social purpose, which must be set forth in the articles of incorporation under proposed subsection 25.200(1)(c), is a means of aligning corporate and shareholder interests.

The general social purpose of every social purpose corporation is to promote positive short-term or long-term effects of, or minimize adverse short-term or long-term effects of, the corporation's activities upon certain constituencies. These constituencies must include one or more of (1) the corporation's employees, suppliers or customers; (2) the local, state, national or world community; or (3) the environment. The social purpose corporation must expressly state in its articles of incorporation which one or more of these constituencies will be included in its general social purpose.

For example, a social purpose corporation may designate that its general social purpose is "to promote positive short-term or long term effects of, or minimize adverse short-term or long-term effects of, the corporation's activities upon the local, state, national or world community."

The general social purpose is intended to create a directional performance requirement (promoting positive effects of, or minimizing adverse effect of, the corporation's activities upon the designated constituencies) without creating unnecessarily prescriptive performance requirements. A more prescriptive approach, which has been followed in other states, is outside the purposes of this proposed chapter as it could possibly lead to a proliferation of special interests seeking to prescribe or prohibit specific activities or levels of behavior.

Unless otherwise set forth in the social purpose corporation's articles of incorporation, the general social purpose is a supplement to the general purpose clause under RCW 23B.03.010(1) and does not narrow or limit the general purpose or lines of business in which the corporation may engage. The general social purpose does not alter the application of RCW 23B.03.040 to any social purpose corporation and the phrase in RCW 23B.03.040 that "corporate action may not be challenged on the ground that the corporation lacks or lacked power to act" applies to every social purpose corporation and is not affected by proposed chapter 23B.25 or the designation of a general social purpose.

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## **23B.25.030**

### **SPECIFIC SOCIAL PURPOSES.**

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#### ***CURRENT SECTION***

**In addition to the general social purpose set forth in RCW 23B.25.020, every corporation governed by this chapter may have one or more specific social purposes for which the corporation is organized.**

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#### ***HISTORY AND COMMITTEE COMMENTARY***

##### **ORIGINAL SECTION Laws 2012 c 215 §4 (eff. 6-7-12)**

Same as current.

##### **OFFICIAL LEGISLATIVE HISTORY**

None.

##### ***CARC COMMENTARY***

A social purpose corporation may designate one or more specific social purposes that directors and officers may consider in addition to creating economic value for shareholders when determining what is in the best interests of the social purpose corporation and its shareholders with respect to decisions about operations, policies and transactions.

If a social purpose corporation designates a specific social purpose or purposes, it is in addition to the general social purpose each social purpose corporation is required to designate under proposed section 25.120 and must be set forth in the articles of incorporation under proposed subsection 25.200(2)(a).

For example, a social purpose corporation that designated its general social purpose “to promote positive short-term or long term effects of, or minimize adverse short-term or long-term effects of, the corporation’s activities upon the local, state, national or world community,” may designate that its specific social purpose is “to produce products and services beneficial to persons in poverty,” or “to donate 50% of its profits to local charities.”

Under proposed chapter 23B.25, directors and officers of social purpose corporations are empowered to honor the social mission of the corporation envisioned by shareholders by adhering to all of the purposes to which the social purpose corporation is dedicated, including the general social purpose and any specific social purpose or purposes. Decisions and actions of the directors and officers properly made that consider one or more of those multiple (and potentially competing) purposes will be protected from claims of waste or other breach of fiduciary duties, with offsetting requirements of transparency detailed in proposed section 25.900.

Thus, within the limits set forth in proposed chapter 23B.25, the social purpose corporation form will permit (but not require) directors and officers to promote the general social purpose or one or more specific social purposes, even at the expense of creating economic value for shareholders, provided that such purposes are clearly specified in the articles of incorporation.

Similar to the effect of the general social purpose on the corporation’s general purpose, unless otherwise set forth in the social purpose corporation’s articles of incorporation, a social purpose corporation’s specific social purpose or purposes serve as a supplement to the general purpose clause under RCW 23B.03.010(1) and do not narrow or limit the general purpose or lines of business in which the corporation may engage. The specific social purpose or purposes do not

alter the application of RCW 23B.03.040 to any social purpose corporation and the phrase in RCW 23B.03.040 that “corporate action may not be challenged on the ground that the corporation lacks or lacked power to act” applies to every social purpose corporation and is not affected by proposed chapter 23B.25 or the designation of a specific social purpose or purposes.

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## **23B.25.040**

### **ARTICLES OF INCORPORATION — REQUIRED AND OPTIONAL PROVISIONS — NOTICE — AVAILABILITY OF COPIES.**

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#### ***CURRENT SECTION***

(1) In addition to the matters required to be set forth in the articles of incorporation pursuant to RCW 23B.02.020 (1) and (2), the articles of incorporation of a social purpose corporation must set forth:

- (a) A corporate name for the social purpose corporation that contains the words "social purpose corporation" or "SPC" as an abbreviation of those words;
- (b) A statement that the corporation is organized as a social purpose corporation governed by this chapter;
- (c) A statement setting forth the general social purpose or purposes for which the corporation is organized pursuant to RCW 23B.25.020;
- (d) If the corporation has designated one or more specific social purpose or purposes pursuant to RCW 23B.25.030, a statement setting forth such specific social purpose or purposes; and
- (e) A provision that states the following: "The mission of this social purpose corporation is not necessarily compatible with and may be contrary to maximizing profits and earnings for shareholders, or maximizing shareholder value in any sale, merger, acquisition, or other similar actions of the corporation."

(2) In addition to the matters that must be set forth in the articles of incorporation in accordance with subsection (1) of this section and the provisions that may be set forth in the articles of incorporation pursuant to RCW 23B.02.020 (5) and (6), the articles of incorporation of a social purpose corporation may contain the following provisions:

- (a) A provision requiring the corporation's directors or officers to consider the impacts of any corporate action or proposed corporate action upon one or more of the social purposes of the corporation;
- (b) A provision requiring the corporation to furnish to the shareholders an assessment of the overall performance of the corporation with respect to its social purpose or purposes, prepared in accordance with a third-party standard;
- (c) A provision requiring, for any or all corporate actions, the vote of a larger proportion or of all of the shares of any class or series, or the vote or quorum for taking action of a larger proportion or of all of the directors, than is otherwise required by this title or this chapter;
- (d) A provision requiring the approval of the shareholders for any corporate action, even though not otherwise required by this title; and
- (e) A provision limiting the duration of the corporation's existence to a specified date.

(3) Prior to the issuance of shares, the corporation shall furnish a prospective shareholder with a copy of the articles of incorporation in the form of a record.

(4) Prior to the transfer of shares, the transferor shareholder shall give notice of the transfer to the corporation. Within a reasonable time after receiving notice, the corporation shall provide the prospective transferee with a copy of the articles of incorporation in the form of a record.

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***HISTORY AND COMMITTEE COMMENTARY*****ORIGINAL SECTION Laws 2012 c 215 §5 (eff. 6-7-12)**

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

Under proposed subsection 25.200(1)(c), the social purpose corporation must expressly state in its articles of incorporation which one or more of the constituencies set forth in proposed section 25.120 will be included in its general social purpose. For example, a social purpose corporation may state that its general social purpose is “to promote positive short-term or long term effects of, or minimize adverse short-term or long-term effects of, the corporation’s activities upon the corporation’s employees, suppliers or customers,” or “to promote positive short-term or long term effects of, or minimize adverse short-term or long-term effects of, the corporation’s activities upon the local, state, national or world community and the environment.”

Under proposed subsection 25.200(1)(d), a social purpose corporation may set forth one or more specific social purposes that directors and officers may consider in addition to creating economic value for shareholders when determining what is in the best interests of the social purpose corporation and its shareholders with respect to decisions about operations, policies and transactions. The specific social purpose or purposes is in addition to the general social purpose required to be stated in the articles of incorporation under proposed subsection 25.200(1)(c) and must be consistent with the general social purpose. Although a social purpose corporation is not required to designate a specific social purpose, if it chooses to do so it must expressly include the specific social purpose or purposes in its articles of incorporation.

Proposed chapter 23B.25 is permissive rather than prescriptive in nature with respect to the performance requirements for directors and officers. Generally, directors and officers of a social purpose corporation may consider and give weight to one or more of the social purposes of the corporation as they deem relevant in discharging their duties as directors and officers (including when considering and making decisions to act or not to act). But generally they are not required to consider any of the social purposes of the corporation in discharging their duties.

CARC recognized that shareholders of some social purpose corporations may desire to be more prescriptive with respect to the performance requirements for directors and officers. Proposed subsection 25.200(2)(a) provides a means by which shareholders of a social purpose corporation can require directors and officers to consider the impacts of any corporate action or proposed corporate action upon one or more of the social purposes of the corporation by expressly including such requirements in the social purpose corporation’s articles of incorporation.

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## **23B.25.050**

### **DUTIES OF DIRECTOR — STANDARDS — LIABILITIES.**

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#### ***CURRENT SECTION***

(1) A director of a social purpose corporation shall discharge the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation in accordance with RCW 23B.08.300.

(2) Unless the articles of incorporation provide otherwise, in discharging his or her duties as a director, the director of a social purpose corporation may consider and give weight to one or more of the social purposes of the corporation as the director deems relevant.

(3) Any action taken as a director of a social purpose corporation, or any failure to take any action, that the director reasonably believes is intended to promote one or more of the social purposes of the corporation shall be deemed to be in the best interests of the corporation.

(4) A director of a social purpose corporation is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

(5) Nothing in this chapter creates any liability or grants any right in or for any person or any cause of action by or for any person, and a director shall not be responsible to any party other than the corporation and its shareholders.

(6) Nothing in this chapter alters the general standards for any director of a corporation that is not a social purpose corporation.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §6 (eff. 6-7-12)

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

Under proposed section 25.200, the general and specific social purposes, if any, of a social purpose corporation must be clearly set forth in the articles of incorporation filed with the Secretary of State. Once so set forth, directors and officers are afforded considerable flexibility in their decisions and actions, both within and outside of the ordinary course of business. Such decisions and actions need not necessarily favor any one purpose over any other (including creating economic value for shareholders), including when such decisions and actions involve transactions such as the sale or merger of the corporation.

Under proposed subsection 25.300(2), directors and officers of a social purpose corporation may consider and give weight to one or more of the social purposes of the corporation as they deem relevant in discharging their duties as directors and officers (including when considering and making decisions to act or not to act). However, unless otherwise set forth in the articles of

incorporation, directors are not required to consider any of the social purposes of the corporation in discharging their duties.

On the other hand, proposed RCW 23B.25.200(2)(a) permits the articles of incorporation of a social purpose corporation to contain a provision requiring the corporation's directors to consider the impacts of any corporate action or proposed corporate action upon one or more of the social purposes of the corporation. If the articles of incorporation contained such a provision, a director would be required to consider the social purpose or purposes of the corporation to the extent provided in the articles of incorporation in discharging his or her duties of a director.

Nothing in proposed chapter 23B.25 alters the standard of conduct for a director of a social purpose corporation under RCW 23B.08.300. Therefore, a director of a social purpose corporation is required to discharge his or her duties as a director in a manner he or she reasonably believes to be in the best interests of the corporation. However, proposed subsection 25.300(3) specifically provides that any action taken by a director, or the failure to take any action, is deemed to be in the best interests of the corporation if the director reasonably believes that such action or failure to act is intended to promote one or more of the social purposes of the corporation. This is true even if the director favors any one purpose over any other (including creating economic value for shareholders), including when such actions or failure to act involves transactions such as the sale or merger of the corporation.

Likewise, nothing in proposed chapter 23B.25 alters the standard of conduct for a director of a traditional corporation. Therefore, to the extent a director of a traditional corporation is entitled to consider and give weight to any purpose as he or she deems relevant in discharging his or her duties as a director, proposed chapter 23B.25 will not change that entitlement. Proposed chapter 23B.25 does not alter the general powers of a traditional corporation under RCW 23B.03.020 to make donations for the public welfare or for charitable, scientific, or educational purposes; to transact any lawful business that will aid governmental policy; or to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Although an issue that has historically been left to the courts to resolve, it is our expectation that a Washington court would hold that a director or officer of an insolvent social purpose corporation has the same duty as the director or officer of an insolvent traditional business corporation has. Thus, when a social purpose corporation cannot pay its debts as they come due in the ordinary course of business, its shareholders as well as its social purposes should become secondary considerations.

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**23B.25.060**

**DUTIES OF OFFICER — STANDARDS — LIABILITIES.**

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***CURRENT SECTION***

- (1) An officer of a social purpose corporation with discretionary authority shall discharge the officer's duties under that authority in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of the corporation in accordance with RCW 23B.08.420.**
- (2) Unless the articles of incorporation provide otherwise, in discharging his or her duties as an officer, the officer of a social purpose corporation may consider and give weight to one or more of the social purposes of the corporation as the officer deems relevant.**
- (3) Any action taken as an officer of a social purpose corporation, or any failure to take any action, that the officer reasonably believes is intended to promote one or more of the social purposes of the corporation shall be deemed to be in the best interests of the corporation.**
- (4) An officer of a social purpose corporation is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section.**
- (5) Nothing in this chapter creates any liability or grants any right in or for any person or any cause of action by or for any person, and an officer shall not be responsible to any party other than the corporation and its shareholders.**
- (6) Nothing in this chapter alters the general standards for any officer of a corporation that is not a social purpose corporation.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §7 (eff. 6-7-12)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

Proposed section 25.310 provides that a nondirector officer of a social purpose corporation with discretionary authority must meet the same standards of conduct required of directors of social purpose corporations under proposed section 25.300. The CARC commentary to proposed section 25.300 is generally applicable to nondirector officers as well as to directors.

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**23B.25.070**

**SHARES — REPRESENTED BY CERTIFICATE — NOT REPRESENTED BY CERTIFICATE.**

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***CURRENT SECTION***

(1) Shares issued by a social purpose corporation may but need not be represented by certificates.

(2) If shares are represented by certificates, in addition to the information required on certificates by RCW 23B.06.250 (2) and (3), each share certificate must state on its face the following language in a conspicuous manner:

"This entity is a social purpose corporation organized under Title 23B RCW of the Washington business corporation act. The articles of incorporation of this corporation state one or more social purposes of this corporation. The corporation will furnish the shareholder this information without charge on request in writing."

(3) If shares are not represented by certificates, within a reasonable time after the issue or transfer of such shares, the corporation shall send the shareholder a record containing the information required pursuant to RCW 23B.06.260(2) and the language required on certificates by subsection (2) of this section.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §8 (eff. 6-7-12)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**  
None.

***CARC COMMENTARY***  
None.

\* \* \* \* \*



**23B.25.080**

**INSTITUTING OR MAINTAINING PROCEEDINGS — SHAREHOLDERS ONLY.**

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***CURRENT SECTION***

**(1) No proceeding may be instituted or maintained in the right of any social purpose corporation under this title by any party other than a shareholder of the social purpose corporation.**

**(2) A person may not commence a proceeding in the right of a social purpose corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.**

**(3) Any proceeding instituted or maintained in the right of a social purpose corporation must comply with the procedure set forth in RCW 23B.07.400.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §9 (eff. 6-7-12)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

Proposed section 25.500 does not permit any person who was not a shareholder of the corporation when the transaction complained of occurred (or who did not become a shareholder through transfer by operation of law from a person who was a shareholder at that time) to serve as a derivative plaintiff. Proposed section 25.500 does not permit option holders or convertible debenture holders to serve as derivative plaintiffs.

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**23B.25.090**

**AMENDMENT TO ARTICLES OF INCORPORATION — CHANGE TO SOCIAL PURPOSES — VOTING REQUIREMENTS.**

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***CURRENT SECTION***

**If a proposed amendment to a social purpose corporation's articles of incorporation would materially change one or more of the social purposes of the corporation, in addition to approval in accordance with RCW 23B.10.030, the amendment to be adopted must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposed amendment, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this section.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §10 (eff. 6-7-12)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

Proposed section 25.600 is intended to “anchor” the mission of the social purpose corporation by requiring a 2/3 super-majority vote to materially alter or eliminate any of the social purposes of the social purpose corporation through amendment of the articles of incorporation. The articles of incorporation may require a greater vote than 2/3, but it may not decrease the requirement below 2/3.

Because of the social purpose or purposes, a social purpose corporation can be a significantly different corporate form from a traditional corporation with respect to shareholders’ expectations. By requiring a super-majority vote to materially change any of the social purposes, proposed section 25.600 is intended to protect the shareholder who believes (rightly or wrongly) that the social purpose or purposes will provide significant benefits independent of the creation of any economic value for shareholders, and perhaps even at the cost of the creation of economic value for shareholders.

\* \* \* \* \*



## **23B.25.100**

# **PLAN OF MERGER OR SHARE EXCHANGE — STATUS AS SOCIAL PURPOSE CORPORATION — VOTING REQUIREMENTS.**

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### ***CURRENT SECTION***

**(1) In addition to approval in accordance with RCW 23B.11.030, a plan of merger or share exchange pursuant to which a social purpose corporation would not be the surviving corporation must be approved by two-thirds of the voting group comprising all the votes of the corporation entitled to be cast on the plan, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed plan. The articles of incorporation may require a greater vote than that provided for in this subsection.**

**(2) The additional approval described in subsection (1) of this section is not required if the surviving corporation of the plan of merger or share exchange is a social purpose corporation governed by this chapter and includes a specific social purpose or purposes that do not materially differ from the disappearing corporation's specific social purpose or purposes, if any.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §1 1 (eff. 6-7-12)

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

Similar to proposed section 25.600, proposed section 25.610 is intended to “anchor” the mission of the social purpose corporation by requiring a 2/3 super-majority vote to materially alter or eliminate any of the social purposes of the social purpose corporation through merger or share exchange. The articles of incorporation may require a greater vote than 2/3, but it may not decrease the requirement below 2/3.

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**23B.25.110**

**SELLING, LEASING, EXCHANGING, OR DISPOSING OF PROPERTY —  
VOTING REQUIREMENTS.**

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***CURRENT SECTION***

(1) In addition to approval in accordance with RCW 23B.12.020, a proposed transaction in which the social purpose corporation is to sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed transaction. The articles of incorporation may require a greater vote than that provided for in this section.

(2) The additional approval described in subsection (1) of this section is not required if the acquirer of such property is a social purpose corporation governed by this chapter and includes a specific social purpose or purposes that do not materially differ from the disposing corporation's specific social purpose or purposes, if any.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §12 (eff. 6-7-12)  
Same as current.

**OFFICIAL LEGISLATIVE HISTORY**  
None.

***CARC COMMENTARY***

Similar to proposed sections 25.600 and 25.610, proposed section 25.620 is intended to “anchor” the mission of the social purpose corporation by requiring a 2/3 super-majority vote to materially alter or eliminate any of the social purposes of the social purpose corporation through a sale of assets. The articles of incorporation may require a greater vote than 2/3, but it may not decrease the requirement below 2/3.

\* \* \* \* \*



## 23B.25.120

### SHAREHOLDER DISSENT — PAYMENT OF FAIR VALUE, WHEN.

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#### *CURRENT SECTION*

In addition to the corporate actions set forth in RCW 23B.13.020(1), a shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

- (1) An election by a corporation to become a social purpose corporation, which has become effective, to which the corporation is a party if shareholder approval was required for the election by RCW 23B.25.130 or the articles of incorporation;
  - (2) An election to cease to be a social purpose corporation, which has become effective, to which the corporation is a party if shareholder approval was required for the election by RCW 23B.25.140 or the articles of incorporation, and the shareholder was entitled to vote on the election; and
  - (3) An amendment of the social purpose corporation's articles of incorporation that would materially change one or more of the social purposes of the corporation.
- 

#### *HISTORY AND COMMITTEE COMMENTARY*

**ORIGINAL SECTION** Laws 2012 c 215 §13 (eff. 6-7-12)

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

Proposed section 25.700 establishes that a shareholder of a social purpose corporation has the right to dissent from an election by a traditional corporation to become governed as a social purpose corporation under proposed chapter 23B.25, or from an election by a social purpose corporation to cease being governed as a social purpose corporation under proposed chapter 23B.25. In addition, a shareholder of a social purpose corporation has the right to dissent from an amendment to the articles of incorporation that would materially change one or more of the social purposes of the corporation. Proposed section 25.700 effectively adds these corporate actions to the list of corporate actions from which a shareholder is entitled to dissent, and obtain payment of the fair value of the shareholder's shares in the event of, set forth in RCW 23B.13.020(1).

By virtue of RCW 23B.13.020(1)(a) through (c), a shareholder of a social purpose corporation may also assert dissenters' rights in other corporate actions that would have the effect of materially altering or eliminating any of the social purposes of the social purpose corporation, such as through a merger or share exchange, a sale of assets or otherwise

Consistent with the dissenters' rights principles of title 23B RCW, generally only shareholders who are entitled to vote on a transaction are entitled to assert dissenters' rights with respect to the transaction. Two exceptions to this principle include (i) the election by a corporation to become a social purpose corporation under proposed section 25.700(1) and (ii) an amendment of the social purpose corporation's articles of incorporation that would materially change one or more of the social purposes of the corporation under proposed section 25.700(3), in which shareholders have the right to assert dissenters' rights even though they have no right to vote.

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## **23B.25.130**

### **CORPORATION CONVERTING TO A SOCIAL PURPOSE CORPORATION — CONDITIONS — ELECTION.**

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#### ***CURRENT SECTION***

**(1) Any corporation that is not a social purpose corporation may elect to become a social purpose corporation if, pursuant to the proposed election, each of the following conditions are met:**

**(a) Each share of the same class or series of the electing corporation shall, unless all shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share;**

**(b) The board of directors of the electing corporation must recommend the election to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the proposed election; and**

**(c) In addition to any other voting conditions imposed by the board of directors under subsection (2) of this section, the election must be approved by an affirmative vote of at least two-thirds of the voting group comprising all the votes of the electing corporation's shareholders entitled to be cast on the corporate action, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and each other voting group entitled under the articles of incorporation to vote separately on the corporate action.**

**(2) The board of directors of a corporation electing to become a social purpose corporation may condition its submission of the proposed election on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate group on the proposed election.**

**(3) To elect to become a social purpose corporation, an electing corporation must amend its articles of incorporation to include the matters required to be set forth in the articles of incorporation pursuant to RCW 23B.25.040(1).**

**(4) After an election to become a social purpose corporation is approved, and at any time prior to filing the articles of amendment to amend the electing corporation's articles of incorporation in compliance with subsection (3) of this section, the planned election may be abandoned by the electing corporation, subject to any contractual rights, without further shareholder approval, in the manner determined by the board of directors.**

**(5) The election to become a social purpose corporation shall be effective upon the later of the filing of the articles of amendment with the secretary of state or the effective date or time set forth in the articles of amendment.**

**(6) Upon the effective time of the election to become a social purpose corporation, the electing corporation shall thereafter be a social purpose corporation and shall be subject to all of the provisions of this chapter and the existence of the social purpose corporation shall be deemed to have commenced on the date the electing corporation was incorporated.**

**(7) The election to become a social purpose corporation shall not be deemed to affect any obligations or liabilities of the electing corporation incurred prior to its election to become a social purpose corporation or the personal liability of any person incurred prior to such election.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 2012 c 215 §14 (eff. 6-7-12)**

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

Proposed section 25.800 sets forth the process by which a corporation previously organized as a traditional corporation under title 23B RCW can elect to be governed as a social purpose corporation under proposed chapter 23B.25.

Because of the social purpose or purposes, a social purpose corporation can be a significantly different corporate form from a traditional corporation with respect to shareholders' expectations. Accordingly, subsection 25.800(c) requires a super-majority vote to make an election to become a social purpose corporation governed by proposed chapter 23B.25. The articles of incorporation may not decrease the requirement below 2/3.

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## **23B.25.140**

### **CORPORATION CEASING TO BE A SOCIAL PURPOSE CORPORATION — CONDITIONS — ELECTION.**

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#### ***CURRENT SECTION***

(1) Any social purpose corporation may elect to cease to be a social purpose corporation if, pursuant to the proposed election, each of the following conditions are met:

(a) Each share of the same class or series of the electing social purpose corporation shall, unless all shareholders of the class or series consent, be treated equally with respect to any cash, rights, securities, or other property to be received by, or any obligations or restrictions to be imposed on, the holder of that share;

(b) The board of directors of the electing social purpose corporation must recommend the election to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the proposed election; and

(c) In addition to any other voting conditions imposed by the board of directors under subsection (2) of this section, the election must be approved by an affirmative vote of at least two-thirds of the voting group comprising all the votes of the electing social purpose corporation's shareholders entitled to be cast on the corporate action, and by two-thirds of the holders of the outstanding shares of each class or series, voting as separate voting groups, and each other voting group entitled under the articles of incorporation to vote separately on the corporate action.

(2) The board of directors of a social purpose corporation electing to cease to be a social purpose corporation may condition its submission of the proposed election on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled to vote as a separate group on the proposed election.

(3) To elect to cease to be a social purpose corporation, an electing social purpose corporation must amend its articles of incorporation to remove the matters required to be set forth in the articles of incorporation pursuant to RCW 23B.25.040(1) (a) and (b).

(4) After an election to cease to be a social purpose corporation is approved, and at any time prior to the filing of the articles of amendment to amend the electing social purpose corporation's articles of incorporation in compliance with subsection (3) of this section, the planned election may be abandoned by the electing social purpose corporation, subject to any contractual rights, without further shareholder approval, in the manner determined by the board of directors.

(5) The election to cease to be a social purpose corporation shall be effective upon the later of the filing of the articles of amendment with the secretary of state or the effective date or time set forth in the articles of amendment.

(6) Upon the effective time of the election to cease to be a social purpose corporation, the electing social purpose corporation shall thereafter be a corporation which is not a social purpose corporation and shall be subject to all of the provisions of this title applicable to corporations generally and the existence of the corporation shall be

**deemed to have commenced on the date the electing social purpose corporation was incorporated.**

**(7) The election to cease to be a social purpose corporation shall not be deemed to affect any obligations or liabilities of the electing social purpose corporation incurred prior to its election to cease to be a social purpose corporation or the personal liability of any person incurred prior to such election.**

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### ***HISTORY AND COMMITTEE COMMENTARY***

#### **ORIGINAL SECTION Laws 2012 c 215 §15 (eff. 6-7-12)**

Same as current.

#### **OFFICIAL LEGISLATIVE HISTORY**

None.

#### ***CARC COMMENTARY***

Proposed section 25.810 sets forth the process by which a social purpose corporation can elect to cease being a social purpose corporation governed by proposed chapter 23B.25. If a social purpose corporation elects to cease being a social purpose corporation governed by proposed chapter 23B.25, it will thereafter continue to exist as a traditional corporation organized under title 23B RCW.

Because of the social purpose or purposes, a social purpose corporation can be a significantly different corporate form from a traditional corporation with respect to shareholders' expectations. Accordingly, subsection 25.810(c) requires a super-majority vote to make an election to cease being a social purpose corporation governed by proposed chapter 23B.25. The articles of incorporation may not decrease the requirement below 2/3.

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## **23B.25.150**

### **SOCIAL PURPOSE REPORT REQUIRED — TIMING — INFORMATION — FAILURE TO COMPLY.**

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#### ***CURRENT SECTION***

(1) The board of directors of a social purpose corporation shall cause a social purpose report to be furnished to the shareholders by making such report publicly accessible, free of charge, at the corporation's principal internet web site address, not later than four months after the close of the corporation's fiscal year, and such report shall remain available on that web site through the end of the corporation's fiscal year.

(2) The social purpose report shall include a narrative discussion concerning the social purpose or purposes of the corporation, including the corporation's efforts intended to promote its social purpose or purposes. The narrative discussion may include the following information:

(a) Identification and discussion of the short-term and long-term objectives of the corporation relating to its social purpose or purposes;

(b) Identification and discussion of the material actions taken by the corporation during the fiscal year to achieve its social purpose or purposes;

(c) Identification of material actions that the corporation expects to take in the future with respect to achievement of its social purpose or purposes; and

(d) A description of the financial, operating, or other measures used by the corporation during the fiscal year for evaluating its performance in achieving its social purpose or purposes.

(3) The requirements of subsection (1) of this section shall be satisfied if a social purpose corporation with an outstanding class of securities registered under section 12 of the securities exchange act of 1934 both complies with section 240.14a-16 of Title 17 of the code of federal regulations, as amended from time to time, with respect to the obligation of a corporation to furnish an annual report to shareholders pursuant to section 240.14a-3(b) of Title 17 of the code of federal regulations, and includes the information required by subsection (2) of this section in the annual report.

(4) The failure to furnish to shareholders a social purpose report required by subsection (1) of this section does not affect the validity of any corporate action.

(5) The superior court of the county in which the social purpose corporation's registered office is located may, after notice to the corporation, summarily order a social purpose report to be furnished to shareholders on application of any shareholder of a social purpose corporation if a social purpose report was not furnished to shareholders for at least two consecutive fiscal years.

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#### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2012 c 215 §16 (eff. 6-7-12)

Same as current.

**OFFICIAL LEGISLATIVE HISTORY**

None.

***CARC COMMENTARY***

Proposed section 25.900 is intended to provide transparency and communication to a social purpose corporation's shareholders with respect to the decision-making and actions of the corporation's directors and officers and the corporate actions taken by the social purpose corporation. Proposed subsection 25.900(2) requires the social purpose report to include a narrative discussion concerning the social purpose or purposes of the corporation, including the corporation's efforts intended to promote its social purpose or purposes. However, proposed section 25.900 is permissive rather than prescriptive in nature with respect to the form and content of the social purpose report.

The social purpose report is not intended to replace any financial or other information that is otherwise required to be reported or provided by a corporation.

If a social purpose report is not furnished for at least two consecutive fiscal years, a shareholder may compel a social purpose report to be furnished under proposed subsection 25.900(5). This provision is intended to provide the sole remedy for the failure to furnish to shareholders a social purpose report required by proposed subsection 25.900(1).

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**Chapter 23.95 RCW**  
**UNIFORM BUSINESS ORGANIZATIONS CODE**

**ARTICLE 1**  
**GENERAL PROVISIONS**

- 23.95.100**     **Short title.**
- 23.95.105**     **Definitions.**
- 23.95.110**     **Delivery of record.**
- 23.95.115**     **Rules and procedures.**



**RCW 23.95.100**  
**SHORT TITLE**

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***CURRENT SECTION***

**This chapter may be known and cited as the uniform business organizations code—  
general provisions.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1101 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: "(1) Parts I, II, III, IV, V, VI, VIII, and IX of this act take effect January 1, 2016.

(2) Part VII of this act takes effect upon the effective date of chapter 188, Laws of 2015." [2015 c 176 § 1803.]

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## **RCW 23.95.105**

### **DEFINITIONS**

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#### ***CURRENT SECTION***

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise or as set forth in RCW 23.95.400 or 23.95.600.

- (1) "Annual report" means the report required by RCW 23.95.255.
- (2) "Business corporation" means a domestic business corporation incorporated under or subject to Title 23B RCW or a foreign business corporation.
- (3) "Commercial registered agent" means a person listed under RCW 23.95.420.
- (4) "Domestic," with respect to an entity, means governed as to its internal affairs by the law of this state.
- (5) "Electronic transmission" means an electronic communication:
  - (a) Not directly involving the physical transfer of a record in a tangible medium; and
  - (b) That may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.
- (6) "Entity" means:
  - (a) A business corporation;
  - (b) A nonprofit corporation;
  - (c) A limited liability partnership;
  - (d) A limited partnership;
  - (e) A limited liability company; or
  - (f) A general cooperative association.
- (7) "Entity filing" means a record delivered to the secretary of state for filing pursuant to this chapter.
- (8) "Execute," "executes," or "executed" means:
  - (a) Signed with respect to a written record;
  - (b) Electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission; or
  - (c) With respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.
- (9) "Filed record" means a record filed by the secretary of state pursuant to this chapter.
- (10) "Foreign," with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.
- (11) "General cooperative association" means a domestic general cooperative association formed under or subject to chapter 23.86 RCW.
- (12) "Governor" means:
  - (a) A director of a business corporation;
  - (b) A director of a nonprofit corporation;
  - (c) A partner of a limited liability partnership;
  - (d) A general partner of a limited partnership;
  - (e) A manager of a manager-managed limited liability company;

- (f) A member of a member-managed limited liability company;**
- (g) A director of a general cooperative association; or**
- (h) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.**
- (13) "Interest" means:**
  - (a) A share in a business corporation;**
  - (b) A membership in a nonprofit corporation;**
  - (c) A share in a nonprofit corporation formed under chapter 24.06 RCW;**
  - (d) A partnership interest in a limited liability partnership;**
  - (e) A partnership interest in a limited partnership;**
  - (f) A limited liability company interest; or**
  - (g) A share or membership in a general cooperative association.**
- (14) "Interest holder" means:**
  - (a) A shareholder of a business corporation;**
  - (b) A member of a nonprofit corporation;**
  - (c) A shareholder of a nonprofit corporation formed under chapter 24.06 RCW;**
  - (d) A partner of a limited liability partnership;**
  - (e) A general partner of a limited partnership;**
  - (f) A limited partner of a limited partnership;**
  - (g) A member of a limited liability company; or**
  - (h) A shareholder or member of a general cooperative association.**
- (15) "Jurisdiction[,]" when used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.**
- (16) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.**
- (17) "Limited liability company" means a domestic limited liability company formed under or subject to chapter 25.15 RCW or a foreign limited liability company.**
- (18) "Limited liability limited partnership" means a domestic limited liability limited partnership formed under or subject to chapter 25.10 RCW or a foreign limited liability limited partnership.**
- (19) "Limited liability partnership" means a domestic limited liability partnership registered under or subject to chapter 25.05 RCW or a foreign limited liability partnership.**
- (20) "Limited partnership" means a domestic limited partnership formed under or subject to chapter 25.10 RCW or a foreign limited partnership. "Limited partnership" includes a limited liability limited partnership.**
- (21) "Noncommercial registered agent" means a person that is not a commercial registered agent and is:**
  - (a) An individual or domestic or foreign entity that serves in this state as the registered agent of an entity;**
  - (b) An individual who holds the office or other position in an entity which is designated as the registered agent pursuant to RCW 23.95.415(1)(b)(ii); or**



(c) A government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, that serves as the registered agent of an entity.

(22) "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to chapter 24.03 or 24.06 RCW or a foreign nonprofit corporation.

(23) "Nonregistered foreign entity" means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the secretary of state.

(24) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.

(25) "Organic rules" means the public organic record and private organic rules of an entity.

(26) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(27) "Principal office" means the principal executive office of an entity, whether or not the office is located in this state.

(28) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. "Private organic rules" includes:

(a) The bylaws of a business corporation and any agreement among shareholders pursuant to RCW 23B.07.320;

(b) The bylaws of a nonprofit corporation;

(c) The partnership agreement of a limited liability partnership;

(d) The partnership agreement of a limited partnership;

(e) The limited liability company agreement; and

(f) The bylaws of a general cooperative association.

(29) "Proceeding" means civil suit and criminal, administrative, and investigatory action.

(30) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(31) "Public organic record" means the record the filing of which by the secretary of state is required to form an entity and any amendment to or restatement of that record. The term includes:

(a) The articles of incorporation of a business corporation;

(b) The articles of incorporation of a nonprofit corporation;

(c) The certificate of limited partnership of a limited partnership;

(d) The certificate of formation of a limited liability company;

(e) The articles of incorporation of a general cooperative association; and

(f) The document under the laws of another jurisdiction that is equivalent to a document listed in this subsection.

- (32) "Receipt," as used in this chapter, means actual receipt. "Receive" has a corresponding meaning.
- (33) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.
- (34) "Registered agent" means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.
- (35) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a certificate of registration filed by the secretary of state.
- (36) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (37) "Transfer" includes:
- (a) An assignment;
  - (b) A conveyance;
  - (c) A sale;
  - (d) A lease;
  - (e) An encumbrance, including a mortgage or security interest;
  - (f) A change of record owner of interest;
  - (g) A gift; and
  - (h) A transfer by operation of law.
- (38) "Type of entity" means a generic form of entity:
- (a) Recognized at common law; or
  - (b) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.
- (39) "Writing" does not include an electronic transmission.
- (40) "Written" means embodied in a tangible medium.
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### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1102 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*

**RCW 23.95.110**  
**DELIVERY OF RECORD**

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***CURRENT SECTION***

**(1) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, United States mail, private courier service, and electronic transmission.**

**(2) Records may be delivered to the secretary of state by electronic transmission as authorized by the secretary of state pursuant to RCW 23.95.115(2). The secretary of state may deliver a record to an entity by electronic transmission if the entity has designated an address, location, or system to which the record may be electronically transmitted.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1103 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.115**  
**RULES AND PROCEDURES**

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***CURRENT SECTION***

**(1) The secretary of state has the power reasonably necessary to perform the duties required by this chapter, including adoption, amendment, or repeal of rules under chapter 34.05 RCW for the efficient administration of this chapter.**

**(2) The secretary of state may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1104 (eff. 1-1-16)**

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**Chapter 23.95 RCW**  
**UNIFORM BUSINESS ORGANIZATIONS CODE**

**ARTICLE 2**  
**FILING**

- 23.95.200**      **Entity filing requirements.**
- 23.95.205**      **Forms.**
- 23.95.210**      **Effective date and time.**
- 23.95.215**      **Withdrawal of filed record before effectiveness.**
- 23.95.220**      **Correcting filed record.**
- 23.95.225**      **Duty of secretary of state to file—Review of refusal to file.**
- 23.95.230**      **Evidentiary effect of copy of filed record.**
- 23.95.235**      **Certificate of existence or registration.**
- 23.95.240**      **Execution of entity filing.**
- 23.95.245**      **Execution and filing pursuant to judicial order.**
- 23.95.250**      **Delivery by secretary of state.**
- 23.95.255**      **Annual report for secretary of state.**
- 23.95.260**      **Fees.**
- 23.95.265**      **Waiver of penalty fees.**





**RCW 23.95.200**  
**ENTITY FILING REQUIREMENTS**

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***CURRENT SECTION***

- (1) To be filed by the secretary of state pursuant to this chapter, an entity filing must be received by the secretary of state, comply with this chapter, and satisfy the following:
- (a) The entity filing must be required or permitted by Title 23, 23B, 24, or 25 RCW.
  - (b) The entity filing must be delivered in written form unless and to the extent the secretary of state permits electronic delivery of entity filings pursuant to RCW 23.95.115(2).
  - (c) The words in the entity filing must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.
  - (d) The entity filing must be executed by or on behalf of a person authorized or required under this chapter or the entity's organic law to execute the filing.
  - (e) The entity filing must state the name and capacity, if any, of each individual who executed it, on behalf of either the individual or the person authorized or required to execute the filing, but need not contain a seal, attestation, acknowledgment, or verification.
- (2) When an entity filing is delivered to the secretary of state for filing, any fee required under this chapter and any fee, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the secretary of state or by that law.
- (3) The secretary of state may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.
- (4) A record filed under this chapter may be executed by an individual acting in a valid representative capacity.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1201 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.205**  
**FORMS**

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***CURRENT SECTION***

- (1) The secretary of state may provide forms for entity filings required or permitted to be made by Title 23, 23B, 24, or 25 RCW, but, except as otherwise provided in subsection (2) of this section, their use is not required.
- (2) The secretary of state may require that a cover sheet for an entity filing and an annual report be on forms prescribed by the secretary of state.
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1202 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.210**  
**EFFECTIVE DATE AND TIME**

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***CURRENT SECTION***

Except as otherwise provided in this chapter and subject to RCW 23.95.220(4), an entity filing is effective:

- (1) On the date of filing and at the time specified in the entity filing as its effective time;
- (2) Unless prohibited by the entity's organic law, at a specified delayed effective date and time, which may not be more than ninety days after the date of filing;
- (3) If a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified; or
- (4) If subsection (1), (2), or (3) of this section does not apply, on the date and at the time of its filing by the secretary of state as provided in RCW 23.95.225.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1203 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.215**  
**WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS**

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***CURRENT SECTION***

- (1) Except as otherwise provided in this chapter, a filed record may be withdrawn before it takes effect by delivering to the secretary of state for filing a statement of withdrawal.
- (2) A statement of withdrawal must:
- (a) Be executed by an individual acting in a valid representative capacity; and
  - (b) Identify the filed record to be withdrawn.
- (3) On filing by the secretary of state of a statement of withdrawal, the action or transaction evidenced by the original filed record shall not take effect.
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1204 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.220**  
**CORRECTING FILED RECORD**

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***CURRENT SECTION***

- (1) An entity may correct a filed record if:**
- (a) The filed record at the time of filing contained an inaccurate statement;**
  - (b) The filed record was defectively executed; or**
  - (c) The electronic transmission of the filed record to the secretary of state was defective.**
- (2) To correct a filed record, the entity must deliver to the secretary of state for filing a statement of correction.**
- (3) A statement of correction:**
- (a) May not state a delayed effective date;**
  - (b) Must be executed by the individual correcting the filed record;**
  - (c) Must identify the filed record to be corrected;**
  - (d) Must specify the inaccuracy or defect to be corrected; and**
  - (e) Must correct the inaccuracy or defect.**
- (4) A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction is effective when filed.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1205 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.225**

**DUTY OF SECRETARY OF STATE TO FILE—REVIEW OF REFUSAL TO FILE**

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***CURRENT SECTION***

- (1) The secretary of state shall file an entity filing that satisfies this chapter. The duty of the secretary of state under this section is ministerial.**
  - (2) The secretary of state shall record an entity filing on the date and at the time of its receipt. After filing an entity filing, the secretary of state shall deliver to the person that submitted the filing a copy of the filed record with an acknowledgment of the date and time of filing.**
  - (3) If the secretary of state refuses to file an entity filing, the secretary of state not later than fifteen business days after the filing is received, shall:
    - (a) Return the entity filing or notify the person that submitted the filing of the refusal; and**
    - (b) Provide a brief explanation in a record of the reason for the refusal.****
  - (4) If the secretary of state refuses to file an entity filing, the person that submitted the entity filing may petition the superior court to compel its filing. The entity filing and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.**
  - (5) The filing of or refusal to file an entity filing does not:
    - (a) Affect the validity or invalidity of the entity filing in whole or in part;**
    - (b) Relate to the correctness or incorrectness of information contained in the entity filing;****or**
    - (c) Create a presumption that the information contained in the filing is correct or incorrect.****
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1206 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.230**  
**EVIDENTIARY EFFECT OF COPY OF FILED RECORD**

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***CURRENT SECTION***

**A certification from the secretary of state accompanying a copy of a filed record is conclusive evidence that the copy is an accurate representation of the original record on file with the secretary of state.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1207 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.235**  
**CERTIFICATE OF EXISTENCE OR REGISTRATION**

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***CURRENT SECTION***

- (1) On request of any person, the secretary of state shall issue a certificate of existence for a domestic entity or a certificate of registration for a registered foreign entity.
- (2) A certificate under subsection (1) of this section must state:
- (a) The domestic entity's name or the registered foreign entity's name used in this state;
  - (b) In the case of a domestic entity:
    - (i) That its public organic record has been filed and has taken effect;
    - (ii) The date the public organic record became effective;
    - (iii) The period of the entity's duration if the records of the secretary of state reflect that the entity's period of duration is less than perpetual; and
    - (iv) That the records of the secretary of state do not reflect that the entity has been dissolved;
  - (c) In the case of a registered foreign entity, that it is registered to do business in this state;
  - (d) That all fees, interest, and penalties owed to this state by the domestic or foreign entity and collected through the secretary of state have been paid, if:
    - (i) Payment is reflected in the records of the secretary of state; and
    - (ii) Nonpayment affects the existence or registration of the domestic or foreign entity;
  - (e) That the most recent annual report required by RCW 23.95.255 has been delivered to the secretary of state for filing;
  - (f) That a proceeding is not pending under RCW 23.95.610; and
  - (g) Other facts reflected in the records of the secretary of state pertaining to the domestic or foreign entity which the person requesting the certificate reasonably requests.
- (3) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (1) of this section may be relied upon as conclusive evidence of the facts stated in the certificate.
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1208 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.240**  
**EXECUTION OF ENTITY FILING**

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***CURRENT SECTION***

- (1) Any person who executes a record the person knows is false in any material respect with the intent the record be an entity filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.**
- (2) A person that executes an entity filing as an agent or legal representative thereby affirms as a fact that the person is authorized to execute the entity filing.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1209 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.245**  
**EXECUTION AND FILING PURSUANT TO JUDICIAL ORDER**

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***CURRENT SECTION***

**(1) If a person required by the entity's organic law to execute a record that is to be an entity filing or to make an entity filing does not do so, any other person that is aggrieved may petition the superior court to order:**

- (a) The person to execute the record;**
- (b) The person to make the entity filing; or**
- (c) The secretary of state to file the entity filing unexecuted.**

**(2) If the petitioner under subsection (1) of this section is not the entity to which the entity filing pertains, the petitioner shall make the entity a party to the action.**

**(3) A filed record created under subsection (1)(c) of this section is effective without being executed.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1210 (eff. 1-1-16)**

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.250**  
**DELIVERY BY SECRETARY OF STATE**

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***CURRENT SECTION***

Except as otherwise provided by RCW 23.95.450 or by law of this state other than this chapter, the secretary of state may deliver a record to a person by delivering it:

- (1) In person to the person that submitted it for filing;
  - (2) To the address of the person's registered agent;
  - (3) To the principal office address of the person; or
  - (4) To another address the person provides to the secretary of state for delivery.
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1211 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



## **RCW 23.95.255**

### **ANNUAL REPORT FOR SECRETARY OF STATE**

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#### ***CURRENT SECTION***

**(1) A domestic entity other than a limited liability partnership or nonprofit corporation shall, within one hundred twenty days of the date on which its public organic record became effective, deliver to the secretary of state for filing an initial report that states the information required under subsection (2) of this section.**

**(2) A domestic entity or registered foreign entity shall deliver to the secretary of state for filing an annual report that states:**

**(a) The name of the entity and its jurisdiction of formation;**

**(b) The name and street and mailing addresses of the entity's registered agent in this state;**

**(c) The street and mailing addresses of the entity's principal office;**

**(d) In the case of a registered foreign entity, the street and mailing address of the entity's principal office in the state or country under the laws of which it is incorporated;**

**(e) The names of the entity's governors;**

**(f) A brief description of the nature of the entity's business;**

**(g) In the case of a business corporation, the names and addresses of the chairperson of its board of directors, if any, president, secretary, and treasurer, or individuals, however designated, performing the functions of such officers; and**

**(h) The entity's unified business identifier number.**

**(3) Information in an initial or annual report must be current as of the date the report is executed by the entity.**

**(4) Annual reports must be delivered to the secretary of state on a date determined by the secretary of state and at such additional times as the entity elects.**

**(5) If an initial or annual report does not contain the information required by this section, the secretary of state promptly shall notify the reporting entity in a record and return the report for correction.**

**(6) If an initial or annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the annual report becomes effective, the differing information in the initial or annual report is considered a statement of change under RCW 23.95.430.**

**(7) The secretary of state shall send to each domestic entity and registered foreign entity, not less than thirty or more than ninety days prior to the expiration date of the entity's annual renewal, a notice that the entity's annual report must be filed as required by this chapter and that any applicable annual renewal fee must be paid, and stating that if the entity fails to file its annual report or pay the annual renewal fee it will be administratively dissolved. The notice may be sent by postal or electronic mail [email] as elected by the entity, addressed to its registered agent within the state, or to an electronic address designated by the entity in a record retained by the secretary of state. Failure of the secretary of state to provide any such notice does not relieve a domestic entity or registered foreign entity from its obligations to file the annual report required by this chapter or to pay any applicable annual renewal fee. The option to receive the notice provided under this section by electronic mail [email] may be selected only when the secretary of state makes the option available.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1212 (eff. 1-1-16)**

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.260**  
**FEES**

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***CURRENT SECTION***

**(1) Except as provided in subsection (2) of this section, the secretary of state shall adopt rules in accordance with chapter 34.05 RCW setting:**

**(a) Fees for:**

**(i) Filing entity filings;**

**(ii) Furnishing copies or certified copies of any filed record under this chapter; and**

**(iii) Furnishing a certificate of existence or registration of an entity, or any other certificate;**

**(b) License or renewal fees authorized under Title 23, 23B, 24, or 25 RCW;**

**(c) Penalty fees; and**

**(d) Other miscellaneous charges.**

**(2) There is no fee for:**

**(a) A registered agent's consent to act as agent or statement of resignation;**

**(b) Filing articles of dissolution;**

**(c) Filing certificates of judicial dissolution;**

**(d) Filing statements of withdrawal; and**

**(e) Filing annual reports when submitted concurrently with the payment of annual license fees.**

**(3) The withdrawal under RCW 23.95.215 of a filed record before it is effective or the correction of a filed record under RCW 23.95.220 does not entitle the person on whose behalf the record was filed to a refund of the filing fee.**

**(4) The secretary of state shall establish the fee schedule authorized under this section in a manner that is consistent with the fee schedule applicable to the various entities that is in effect on January 1, 2016. The amounts of fees, charges, and penalties established under this section may be no greater than the amounts applicable to entity filings, penalties, and other charges in effect on January 1, 2016. Fees may be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This must be determined in a biennial cost study performed by the secretary of state.**

**(5) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law or deposited in the secretary of state's revolving fund as provided in RCW 43.07.130.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1213 (eff. 1-1-16)**

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.265**  
**WAIVER OF PENALTY FEES**

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***CURRENT SECTION***

The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees due from any entity previously in good standing which would otherwise be penalized or lose its active status. An entity desiring to seek relief under this section must, within fifteen days of discovery of the missed filing or lapse, notify the secretary of state in writing. The notification must include the name and mailing address of the entity, the governor or other entity official to whom correspondence should be sent, and a statement under oath by a governor or other entity official, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the entity has demonstrated good faith and a reasonable attempt to comply with the applicable statutes of this state, the secretary of state may issue an order allowing relief from the penalty. If the secretary of state determines the request does not comply with the requirements for relief, the secretary of state shall deny the relief and state the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1214 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

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**Chapter 23.95 RCW**  
**UNIFORM BUSINESS ORGANIZATIONS CODE**

**ARTICLE 3**  
**NAME OF ENTITY**

- 23.95.300** Permitted names.
- 23.95.305** Name requirements for certain types of entities.
- 23.95.310** Reservation of name.
- 23.95.315** Registration of name.



## **RCW 23.95.300**

### **PERMITTED NAMES**

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#### ***CURRENT SECTION***

**(1) The name of a domestic entity and the name under which a foreign entity may register to do business in this state, must be distinguishable on the records of the secretary of state from any:**

- (a) Name of an existing domestic entity which at the time is not administratively dissolved;**
- (b) Name of a foreign entity registered to do business in this state under Article 5 of this chapter;**
- (c) Name reserved under RCW 23.95.310; or**
- (d) Name registered under RCW 23.95.315.**

**(2) If an entity consents in a record to the use of its name and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable on the records of the secretary of state from any name in any category of names in subsection (1) of this section, the name of the consenting entity may be used by the person to which the consent was given.**

**(3) A name may not be considered distinguishable on the records of the secretary of state from the name of another entity by virtue of:**

- (a) A variation in the words, phrases, or abbreviations indicating the type of entity, such as "corporation," "corp.," "incorporated," "Inc.," "company," "co.," "social purpose corporation," "SPC," "S.P.C.," "professional corporation," "PC," "P.C.," "professional service," "PS," "P.S.," "Limited," "Ltd.," "limited partnership," "LP," "L.P.," "limited liability partnership," "LLP," "L.L.P.," "registered limited liability partnership," "RLLP," "R.L.L.P.," "limited liability limited partnership," "LLLLP," "L.L.L.P.," "registered limited liability limited partnership," "RLLLLP," "R.L.L.L.P.," "limited liability company," "LLC," "L.L.C.," "professional limited liability company," "PLLC," or "P.L.L.C.";**

**(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;**

**(c) Punctuation, capitalization, or special characters or symbols in the same name; or**

**(d) Use of abbreviation or the plural form of a word in the same name.**

**(4) An entity name may not contain language stating or implying that the entity is organized for a purpose other than those permitted by the entity's public organic record.**

**(5) This chapter does not control the use of assumed business names or "trade names."**

**(6) An entity may use a name that is not distinguishable from a name described in subsection (1) of this section if the entity delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the entity to use the name in this state.**

**(7) An entity may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed or authorized to transact business in this state and the proposed user entity:**

- (a) Has merged with the other entity; or**
  - (b) Has been formed by reorganization of the other entity.**
-

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1301 (eff. 1-1-16)**

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



## **RCW 23.95.305**

### **NAME REQUIREMENTS FOR CERTAIN TYPES OF ENTITIES**

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#### ***CURRENT SECTION***

**(1)(a) The name of a business corporation:**

**(i)(A) Except in the case of a social purpose corporation, must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd.," or words or abbreviations of similar import in another language; or**

**(B) In the case of a social purpose corporation, must contain the words "social purpose corporation" or the abbreviation "SPC" or "S.P.C."; and**

**(ii) Must not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state.**

**(b) The name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviation "P.S." or "P.C." The name may also contain either the words "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." The name of a professional service corporation organized to render dental services must contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C."**

**(2) The name of a nonprofit corporation:**

**(a) May include "club," "league," "association," "services," "committee," "fund," "society," "foundation," "guild," ". . . . ., a nonprofit corporation," ". . . . ., a nonprofit mutual corporation," or any name of like import;**

**(b) Except for nonprofit corporations formed prior to January 1, 1969, must not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof; and**

**(c) May only include the term "public benefit" or names of like import if the nonprofit corporation has been designated as a public benefit nonprofit corporation by the secretary of state in accordance with chapter 24.03 RCW.**

**(3) The name of a limited partnership may contain the name of any partner. The name of a partnership that is not a limited liability limited partnership must contain the words "limited partnership" or the abbreviation "LP" or "L.P." and may not contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." If the limited partnership is a limited liability limited partnership, the name must contain the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "LP" or "L.P."**

**(4) The name of a limited liability partnership must contain the words "limited liability partnership" or the abbreviation "LLP" or "L.L.P." If the name of a foreign limited liability partnership contains the words "registered limited liability partnership" or the abbreviation "R.L.L.P." or "RLLP," it may include those words or abbreviations in its foreign registration statement.**

**(5)(a) The name of a limited liability company:**

**(i) Must contain the words "limited liability company," the words "limited liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC"; and**

**(ii) May not contain any of the following words or phrases: "Cooperative," "partnership," "corporation," "incorporated," or the abbreviations "Corp.," "Ltd.," or "Inc.," or "LP," "L.P.," "LLP," "L.L.P.," "LLLLP," "L.L.L.P.," or any words or phrases prohibited by any statute of this state.**

**(b) The name of a professional limited liability company must contain either the words "professional limited liability company," or the words "professional limited liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC," provided that the name of a professional limited liability company organized to render dental services must contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."**

**(6) The name of a cooperative association organized under chapter 23.86 RCW may contain the words "corporation," "incorporated," or "limited," or the abbreviation "Corp.," "Inc.," or "Ltd."**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1302 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*

**RCW 23.95.310**  
**RESERVATION OF NAME**

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***CURRENT SECTION***

(1) A person may reserve the exclusive use of an entity name including the alternate name adopted pursuant to RCW 23.95.525 by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved. If the secretary of state finds that the entity name is available, the secretary of state shall reserve the name for the applicant's exclusive use for one hundred eighty days.

(2) The owner of a reserved entity name may transfer the reservation to another person that is not an individual by delivering to the secretary of state an executed notice in a record of the transfer which states the name and address of the transferee.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1303 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.315**  
**REGISTRATION OF NAME**

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***CURRENT SECTION***

(1) A foreign entity not registered to do business in this state under Article 5 of this chapter may register its name, or an alternate name adopted pursuant to RCW 23.95.525, if the name is distinguishable on the records of the secretary of state from the names that are not available under RCW 23.95.300.

(2) To register its name or an alternate name adopted pursuant to RCW 23.95.525, a foreign entity must deliver to the secretary of state for filing an application stating the entity's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to RCW 23.95.525. The application must be accompanied by a certificate of existence, or a document of similar import, from the entity's jurisdiction of formation. If the secretary of state finds that the name applied for is available, the secretary of state shall register the name for the applicant's exclusive use.

(3) The registration of a name under this section is effective upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(4) A foreign entity whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the secretary of state for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for the following calendar year.

(5) A foreign entity whose name registration is effective may register as a foreign entity under the registered name or consent in an executed record to the use of that name by another entity.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1304 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**Chapter 23.95 RCW**  
**UNIFORM BUSINESS ORGANIZATIONS CODE**

**ARTICLE 4**  
**REGISTERED AGENT OF ENTITY**

- 23.95.400**      **Definitions.**
- 23.95.405**      **Entities required to designate and maintain registered agent.**
- 23.95.410**      **Addresses in filing.**
- 23.95.415**      **Designation of registered agent.**
- 23.95.420**      **Listing of commercial registered agent.**
- 23.95.425**      **Termination of listing of commercial registered agent.**
- 23.95.430**      **Change of registered agent by entity.**
- 23.95.435**      **Change of name, address, type of entity, or jurisdiction of formation by noncommercial registered agent.**
- 23.95.440**      **Change of name, address, type of entity, or jurisdiction of formation by commercial registered agent.**
- 23.95.445**      **Resignation of registered agent.**
- 23.95.450**      **Service of process, notice, or demand on entity.**
- 23.95.455**      **Duties of registered agent.**
- 23.95.460**      **Jurisdiction and venue.**





## **RCW 23.95.400 DEFINITIONS**

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### ***CURRENT SECTION***

The definitions in this section apply throughout this section and RCW 23.95.405 through 23.95.460 unless the context clearly requires otherwise.

- (1) "Registered agent filing" means:
- (a) The public organic record of a domestic entity;
  - (b) An application of a domestic limited liability partnership; or
  - (c) A registration statement filed pursuant to RCW 23.95.510.
- (3) [(2)] "Represented entity" means:
- (a) A domestic entity; or
  - (b) A registered foreign entity.
- 

### ***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1401 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.405**  
**ENTITIES REQUIRED TO DESIGNATE AND MAINTAIN REGISTERED**  
**AGENT**

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***CURRENT SECTION***

**The following shall designate and maintain a registered agent in this state:**

- (1) A domestic entity; and**
  - (2) A registered foreign entity.**
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1402 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.410**  
**ADDRESSES IN FILING**

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***CURRENT SECTION***

**If a provision of this chapter other than RCW 23.95.445(1)(d) requires that a record state an address, the record must state:**

- (1) A street address in this state; and**
  - (2) A mailing address in this state, if different from the address described in subsection (1) of this section.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1403 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.415**  
**DESIGNATION OF REGISTERED AGENT**

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***CURRENT SECTION***

- (1) A registered agent filing must be executed by the represented entity and state:**
- (a) The name of the entity's commercial registered agent; or**
  - (b) If the entity does not have a commercial registered agent:**
    - (i) The name and address of the entity's noncommercial registered agent; or**
    - (ii) The title of an office or other position with the entity, if service of process, notices, and demands are to be sent to whichever individual is holding that office or position, and the address to which process, notices, or demands are to be sent.**
- (2) A registered agent shall not be appointed without having given prior consent in a record to the appointment. The consent shall be delivered to the secretary of state in such form as the secretary of state may prescribe. The consent shall be filed with or as a part of the record first appointing a registered agent. In the event any individual or entity has been appointed registered agent without consent, that individual or entity may deliver to the secretary of state a notarized statement attesting to that fact, and the name shall immediately be removed from the records of the secretary of state.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1404 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.420**  
**LISTING OF COMMERCIAL REGISTERED AGENT**

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***CURRENT SECTION***

**(1) A person may become listed as a commercial registered agent by delivering to the secretary of state for filing a commercial-registered-agent listing statement executed by the person which states:**

**(a) The name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;**

**(b) That the person is in the business of serving as a commercial registered agent in this state; and**

**(c) The address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.**

**(2) A commercial-registered-agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in RCW 23.95.450(5).**

**(3) If the name of a person delivering to the secretary of state for filing a commercial-registered-agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.**

**(4) The secretary of state shall note the filing of a commercial-registered-agent listing statement in the records maintained by the secretary of state for each entity represented by the agent at the time of the filing. The statement has the effect of amending the registered agent filing for each of those entities to:**

**(a) Designate the person becoming listed as a commercial registered agent as the commercial registered agent of each of those entities; and**

**(b) Delete the name and address of the former agent from the registered agent filing of each of those entities.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1405 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.425**

**TERMINATION OF LISTING OF COMMERCIAL REGISTERED AGENT**

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***CURRENT SECTION***

**(1) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the secretary of state for filing a commercial-registered-agent termination statement executed by the agent which states:**

**(a) The name of the agent as listed under RCW 23.95.420; and**

**(b) That the agent is no longer in the business of serving as a commercial registered agent in this state.**

**(2) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the 31st day after the day on which it is delivered to the secretary of state for filing.**

**(3) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial-registered-agent termination statement.**

**(4) When a commercial-registered-agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity pursuant to RCW 23.95.450. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1406 (eff. 1-1-16)**

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.430**  
**CHANGE OF REGISTERED AGENT BY ENTITY**

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***CURRENT SECTION***

**(1) A represented entity may change its registered agent or other information on file under RCW 23.95.415(1) by delivering to the secretary of state for filing a statement of change executed by the entity which states:**

**(a) The name of the entity; and**

**(b) The information required under RCW 23.95.415(1).**

**(2) The interest holders or governors of a domestic entity need not approve the filing of:**

**(a) A statement of change under this section; or**

**(b) A similar filing changing the registered agent or registered office, if any, of the entity in any other jurisdiction.**

**(3) A statement of change under this section designating a new registered agent must be accompanied by the new registered agent's consent in a record, either on the statement or attached to it in a manner and form as the secretary of state may prescribe, to the appointment.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1407 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.435**

**CHANGE OF NAME, ADDRESS, TYPE OF ENTITY, OR JURISDICTION  
OF FORMATION BY NONCOMMERCIAL REGISTERED AGENT**

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***CURRENT SECTION***

**(1) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under RCW 23.95.415(1), the agent shall deliver to the secretary of state for filing, with respect to each entity represented by the agent, a statement of change executed by the agent which states:**

- (a) The name of the entity;**
- (b) The name and address of the agent in effect with respect to the entity;**
- (c) If the name of the agent has changed, the new name; and**
- (d) If the address of the agent has changed, the new address.**

**(2) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the secretary of state for filing of a statement of change and the changes made in the statement.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1408 (eff. 1-1-16)**

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.440**

**CHANGE OF NAME, ADDRESS, TYPE OF ENTITY, OR JURISDICTION OF FORMATION BY COMMERCIAL REGISTERED AGENT**

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***CURRENT SECTION***

(1) If a commercial registered agent changes its name, its address as listed under RCW 23.95.420(1), its type of entity, or its jurisdiction of formation, the agent shall deliver to the secretary of state for filing a statement of change executed by the agent which states:

- (a) The name of the agent as listed under RCW 23.95.420(1);
- (b) If the name of the agent has changed, the new name;
- (c) If the address of the agent has changed, the new address; and
- (d) If the agent is an entity:
  - (i) If the type of entity of the agent has changed, the new type of entity; and
  - (ii) If the jurisdiction of formation of the agent has changed, the new jurisdiction of formation.

(2) The filing by the secretary of state of a statement of change under subsection (1) of this section is effective to change the information regarding the agent with respect to each entity represented by the agent.

(3) A commercial registered agent promptly shall furnish to each entity represented by it a notice in a record of the filing by the secretary of state of a statement of change relating to the name or address of the agent and the changes made in the statement.

(4) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under RCW 23.95.420. A cancellation under this subsection has the same effect as a termination under RCW 23.95.425. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in RCW 23.95.450 (2) or (3) on:

- (a) Each entity represented by the agent, stating that the agent has ceased to be the registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in RCW 23.95.450; and
  - (b) The agent, stating that the listing of the agent has been canceled under this section.
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1409 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.445**  
**RESIGNATION OF REGISTERED AGENT**

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***CURRENT SECTION***

**(1) A registered agent may resign as agent for a represented entity by delivering to the secretary of state for filing a statement of resignation executed by the agent which states:**

- (a) The name of the entity;**
- (b) The name of the agent;**
- (c) That the agent resigns from serving as registered agent for the entity; and**
- (d) The address of the entity to which the agent will send the notice required by subsection (3) of this section.**

**(2) A statement of resignation takes effect on the earlier of:**

- (a) The 31st day after the day on which it is filed by the secretary of state; or**
  - (b) The designation of a new registered agent for the represented entity.**
- (3) A registered agent promptly shall furnish to the represented entity notice in a record of the date on which a statement of resignation was filed.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1410 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.450**

**SERVICE OF PROCESS, NOTICE, OR DEMAND ON ENTITY**

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***CURRENT SECTION***

- (1) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.**
  - (2) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office must be as shown in the entity's most recent annual report filed by the secretary of state. Service is effected under this subsection on the earliest of:
    - (a) The date the entity receives the mail or delivery by the commercial delivery service;**
    - (b) The date shown on the return receipt, if executed by the entity; or**
    - (c) Five days after its deposit with the United States postal service or commercial delivery service, if correctly addressed and with sufficient postage or payment.****
  - (3) If process, notice, or demand cannot be served on an entity pursuant to subsection (1) or (2) of this section, service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.**
  - (4) The secretary of state shall be an agent of the entity for service of process if process, notice, or demand cannot be served on an entity pursuant to subsection (1), (2), or (3) of this section.**
  - (5) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under RCW 23.95.420 that it will accept.**
  - (6) Service of process, notice, or demand may be made by other means under law other than this chapter.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1411 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.455**  
**DUTIES OF REGISTERED AGENT**

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***CURRENT SECTION***

The only duties under this chapter of a registered agent that has complied with this chapter are:

- (1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;
  - (2) To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;
  - (3) If the agent is a noncommercial registered agent, to keep current the information required by RCW 23.95.415(1) in the most recent registered agent filing for the entity; and
  - (4) If the agent is a commercial registered agent, to keep current the information listed for it under RCW 23.95.420(1).
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1412 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.460**  
**JURISDICTION AND VENUE**

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***CURRENT SECTION***

**The designation or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or a proceeding involving the entity.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1413 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**Chapter 23.95 RCW**  
**UNIFORM BUSINESS ORGANIZATIONS CODE**

**ARTICLE 5**  
**FOREIGN ENTITIES**

- 23.95.500**      **Governing law.**
- 23.95.505**      **Registration to do business in this state.**
- 23.95.510**      **Foreign registration statement.**
- 23.95.515**      **Amendment of foreign registration statement.**
- 23.95.520**      **Activities not constituting doing business.**
- 23.95.525**      **Noncomplying name of foreign entity.**
- 23.95.530**      **Withdrawal of registration of registered foreign entity.**
- 23.95.535**      **Withdrawal deemed on conversion to domestic entity.**
- 23.95.540**      **Withdrawal on dissolution or conversion.**
- 23.95.545**      **Transfer of registration.**
- 23.95.550**      **Termination of registration.**
- 23.95.555**      **Action by attorney general.**



**RCW 23.95.500**  
**GOVERNING LAW**

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***CURRENT SECTION***

**(1) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign entity registered to do business in this state, or govern the liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the foreign entity.**

**(2) A foreign entity is not precluded from registering to do business in this state because of any difference between the law of the entity's jurisdiction of formation and the law of this state.**

**(3) Registration of a foreign entity to do business in this state does not authorize the foreign entity to engage in any activity or exercise any power that a domestic entity of the same type may not engage in or exercise in this state. Except as otherwise provided in this chapter or other applicable law of this state, a foreign entity is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic entity of the same type.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1501 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.505**  
**REGISTRATION TO DO BUSINESS IN THIS STATE**

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***CURRENT SECTION***

- (1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.
- (2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.
- (3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.
- (4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.
- (5) A foreign entity that transacts business in this state without a certificate of registration is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of registration, in an amount equal to all fees which would have been imposed by this chapter upon the entity had it applied for and received a certificate of registration to transact business in this state and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.
- (6) The failure of a foreign entity to register to do business in this state does not: (a) Impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.
- (7) A limitation on the liability of an interest holder or governor of a foreign entity is not waived solely because the foreign entity does business in this state without registering.
- (8) RCW 23.95.500 (1) and (2) applies even if a foreign entity fails to register under this Article 5.
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1502 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.510**  
**FOREIGN REGISTRATION STATEMENT**

---

***CURRENT SECTION***

**(1) To register to do business in this state, a foreign entity must deliver a foreign registration statement to the secretary of state for filing. The statement must be executed by the entity and state:**

**(a) The name of the foreign entity and, if the name does not comply with RCW 23.95.300, an alternate name adopted pursuant to RCW 23.95.525;**

**(b) The type of entity and, if it is a foreign limited partnership, whether it is a foreign limited liability limited partnership;**

**(c) The entity's jurisdiction of formation;**

**(d) The street and mailing addresses of the entity's principal office and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of the office;**

**(e) The information required by RCW 23.95.415(1);**

**(f) The names and addresses of the entity's governors and, if the entity is a business corporation or nonprofit corporation, the names and addresses of its officers;**

**(g) The date of the entity's formation and period of duration;**

**(h) The nature of the entity's business or purposes to be conducted or promoted in this state; and**

**(i) The date on which the entity first did, or intends to do, business in this state.**

**(2) The foreign entity shall deliver with the registration statement a certificate of existence, or a document of similar import, issued no more than sixty days before the date of submission of the registration statement and duly authenticated by the secretary of state or other official having custody of the entity's records in the entity's jurisdiction of formation.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1503 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.515**  
**AMENDMENT OF FOREIGN REGISTRATION STATEMENT**

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***CURRENT SECTION***

**A registered foreign entity shall promptly deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:**

- (1) The name of the entity;**
  - (2) The type of entity, including, if it is a foreign limited partnership, whether the entity became or ceased to be a foreign limited liability limited partnership;**
  - (3) The entity's jurisdiction of formation;**
  - (4) An address required by RCW 23.95.510(1)(d); or**
  - (5) The information required by RCW 23.95.415(1).**
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1504 (eff. 1-1-16)**

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



## **RCW 23.95.520**

### **ACTIVITIES NOT CONSTITUTING DOING BUSINESS**

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#### ***CURRENT SECTION***

**(1) Activities of a foreign entity that do not constitute doing business in this state under this chapter include, but are not limited to:**

**(a) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding, or settling claims or disputes;**

**(b) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;**

**(c) Maintaining accounts in financial institutions;**

**(d) Maintaining offices or agencies for the transfer, exchange, and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;**

**(e) Selling through independent contractors;**

**(f) Soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become binding contracts and where the contracts do not involve any local performance other than delivery and installation;**

**(g) Creating or acquiring indebtedness, mortgages, or security interests in property;**

**(h) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts;**

**(i) Conducting an isolated transaction that is completed within thirty days and that is not in the course of repeated transactions of a like nature;**

**(j) Owning, without more, property;**

**(k) Doing business in interstate commerce; and**

**(l) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with subsection (2) of this section.**

**(2) In addition to those acts that are specified in subsection (1) of this section, a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.90 RCW shall not be deemed to transact business in the state solely because it:**

**(a) Owns and controls an incorporated branch campus in this state;**

**(b) Pays the expenses of tuition or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof;**  
**or**

**(c) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution.**

**(3) A person does not do business in this state solely by being an interest holder or governor of a domestic entity or foreign entity that does business in this state.**

**(4) This section does not apply in determining the contacts or activities that may subject a foreign entity to service of process, taxation, or regulation under law of this state other than this chapter.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1505 (eff. 1-1-16)**

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*

**RCW 23.95.525**  
**NONCOMPLYING NAME OF FOREIGN ENTITY**

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***CURRENT SECTION***

**(1) A foreign entity whose name does not comply with RCW 23.95.300 for an entity of its type may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with RCW 23.95.300. A registered foreign entity that registers under an alternate name under this subsection need not comply with chapter 19.80 RCW. After registering to do business in this state with an alternate name, a registered foreign entity shall do business in this state under:**

- (a) The alternate name;**
  - (b) Its entity name, with the addition of its jurisdiction of formation clearly identified; or**
  - (c) An assumed or fictitious name the entity is authorized to use under chapter 19.80 RCW.**
- (2) If a registered foreign entity changes its name to one that does not comply with RCW 23.95.300, it may not do business in this state until it complies with subsection (1) of this section by amending its foreign registration statement to adopt an alternate name that complies with RCW 23.95.300.**
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1506 (eff. 1-1-16)  
Same as current.

NOTES:  
Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.530**  
**WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN**  
**ENTITY**

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***CURRENT SECTION***

**(1) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be executed by the entity and state:**

- (a) The name of the entity and its jurisdiction of formation;**
- (b) That the entity is not doing business in this state and that it withdraws its registration to do business in this state;**
- (c) That the entity revokes the authority of its registered agent to accept service on its behalf in this state; and**
- (d) An address to which service of process may be made under subsection (3) of this section.**

**(2) The statement of withdrawal must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260.**

**(3) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made pursuant to RCW 23.95.450.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1507 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.535**  
**WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC ENTITY**

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***CURRENT SECTION***

**A registered foreign entity that converts to any type of domestic entity is deemed to have withdrawn its registration on the effective date of the conversion.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1508 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.540**  
**WITHDRAWAL ON DISSOLUTION OR CONVERSION**

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***CURRENT SECTION***

**(1) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign person not subject to this chapter shall deliver a statement of withdrawal to the secretary of state for filing. The statement must be executed by the dissolved or converted entity and state:**

**(a) In the case of a foreign entity that has completed winding up:**

**(i) Its name and jurisdiction of formation; and**

**(ii) That the foreign entity surrenders its registration to do business in this state; and**

**(b) In the case of a foreign entity that has converted to a domestic or foreign person not subject to chapter 176, Laws of 2015:**

**(i) The name of the converting foreign entity and its jurisdiction of formation;**

**(ii) The type of person to which it has converted and its jurisdiction of formation;**

**(iii) That it surrenders its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf; and**

**(iv) A mailing address to which service of process may be made under subsection (2) of this section.**

**(2) After a withdrawal is effective under this section, service of process in any action or proceeding based on a cause of action arising during the time the foreign entity was registered to do business in this state may be made pursuant to RCW 23.95.450.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1509 (eff. 1-1-16)**

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.545**  
**TRANSFER OF REGISTRATION**

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***CURRENT SECTION***

**(1) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the secretary of state to do business in this state, the foreign entity shall deliver to the secretary of state for filing an application for transfer of registration. The application must be executed by the surviving or converted entity and state:**

- (a) The name of the registered foreign entity before the merger or conversion;**
  - (b) The type of entity it was before the merger or conversion;**
  - (c) The name of the applicant entity and, if the name does not comply with RCW 23.95.300, an alternate name adopted pursuant to RCW 23.95.525(1);**
  - (d) The type of entity of the applicant entity and its jurisdiction of formation; and**
  - (e) The following information regarding the applicant entity, if different than the information for the foreign entity before the merger or conversion:
    - (i) The street and mailing addresses of the principal office of the entity and, if the law of the entity's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and**
    - (ii) The information required pursuant to RCW 23.95.415(1).****
- (2) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in this state is transferred without interruption to the entity into which it has merged or to which it has been converted.**
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1510 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.550**  
**TERMINATION OF REGISTRATION**

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***CURRENT SECTION***

- (1) The secretary of state may terminate the registration of a registered foreign entity in the manner provided in subsections (2) and (3) of this section if:
- (a) The entity does not pay any fee, interest, or penalty required to be paid to the secretary of state under this chapter or law of this state other than this chapter;
  - (b) The entity does not deliver to the secretary of state for filing an annual report when it is due;
  - (c) The entity does not have a registered agent as required by RCW 23.95.405;
  - (d) The entity does not deliver to the secretary of state for filing a statement of change under RCW 23.95.430 if change occurs in the name or address of the entity's registered agent;
  - (e) A governor, officer, or agent of the entity executed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or
  - (f) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the entity's records in the entity's jurisdiction of formation stating that it has been dissolved or disappeared as the result of a merger.
- (2) If the secretary of state determines that one or more grounds for termination exist under subsection (1) of this section, the secretary of state shall deliver a notice of the determination to the registered foreign entity's registered agent or, if the entity does not have a registered agent, to the entity's principal office. The notice must state the grounds for termination under subsection (1) of this section.
- (3) If the entity does not cure each ground for termination stated in the notice within sixty days after the notice is effective, the secretary of state shall terminate the registration of the foreign entity by filing a statement of termination that recites the ground or grounds for termination and the effective date of termination and delivering a copy of the statement of termination to the foreign entity.
- (4) The authority of a registered foreign entity to do business in this state ceases on the effective date of termination shown on the statement of termination.
- (5) The termination of a foreign entity's registration does not terminate the authority of the registered agent of the foreign entity.
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1511 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.555**  
**ACTION BY ATTORNEY GENERAL**

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***CURRENT SECTION***

**The attorney general may maintain an action to enjoin a foreign entity from doing business in this state in violation of this chapter.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1512 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**Chapter 23.95 RCW**  
**UNIFORM BUSINESS ORGANIZATIONS CODE**

**ARTICLE 6**  
**ADMINISTRATIVE DISSOLUTION**

- 23.95.600** Domestic entity—Definition.
- 23.95.605** Grounds.
- 23.95.610** Procedure and effect.
- 23.95.615** Reinstatement.
- 23.95.620** Judicial review of denial of reinstatement.
- 23.95.625** Entity name not distinguishable from name of governmental entity.



**RCW 23.95.600**  
**DOMESTIC ENTITY—DEFINITION**

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***CURRENT SECTION***

**For the purposes of this Article 6, the term "domestic entity" does not include a domestic limited liability partnership.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1601 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.605**  
**GROUND**

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***CURRENT SECTION***

The secretary of state may commence a proceeding under RCW 23.95.610 to dissolve a domestic entity administratively if:

- (1) The entity does not pay any fee, interest, or penalty required to be paid to the secretary of state when due;
  - (2) The entity does not deliver an annual report to the secretary of state not later than one hundred twenty days after it is due;
  - (3) The entity does not have a registered agent in this state for thirty consecutive days; or
  - (4) The entity's period of duration stated in its public organic record expired.
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1602 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.610**  
**PROCEDURE AND EFFECT**

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***CURRENT SECTION***

**(1) If the secretary of state determines that one or more grounds exist under RCW 23.95.605 for administratively dissolving a domestic entity, the secretary of state shall serve the entity pursuant to RCW 23.95.250 with notice in a record of the secretary of state's determination.**

**(2) If a domestic entity, not later than sixty days after service of the notice required by subsection (1) of this section, does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state shall administratively dissolve the entity by executing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the statement and serve a copy on the entity pursuant to RCW 23.95.250.**

**(3) A domestic entity that is dissolved administratively continues its existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under RCW 23.95.615.**

**(4) The administrative dissolution of a domestic entity does not terminate the authority of its registered agent.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1603 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.615  
REINSTATEMENT**

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***CURRENT SECTION***

**(1) A domestic entity that is dissolved administratively under RCW 23.95.610 may apply to the secretary of state for reinstatement not later than five years after the effective date of dissolution. The application must be executed by the entity and state:**

**(a) The name of the entity and a statement that the name satisfies RCW 23.95.300; if the name does not satisfy RCW 23.95.300, the entity must deliver with its application an amendment to its public organic record changing its name;**

**(b) The address of the principal office of the entity and the name and address of its registered agent;**

**(c) The effective date of the entity's administrative dissolution; and**

**(d) That the grounds for dissolution did not exist or have been cured.**

**(2) To be reinstated, an entity must pay the full amount of all annual license or renewal fees which would have been assessed during the period of administrative dissolution had the entity been in active status, plus a penalty fee established by the secretary of state by rule, and the license or renewal fee for the year of reinstatement.**

**(3) If the secretary of state determines that an application under subsection (1) of this section contains the information required by subsection (1) of this section, is satisfied that the information is correct, and determines that all payments required to be made to the secretary of state by subsection (2) of this section have been made, the secretary of state shall:**

**(a) Cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the secretary of state's determination and the effective date of reinstatement;**

**(b) File the statement; and**

**(c) Serve a copy of the statement on the entity.**

**(4) When reinstatement under this section is effective as provided in RCW 23.95.210:**

**(a) It relates back to and takes effect as of the effective date of the administrative dissolution; and**

**(b) The domestic entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred, except for the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had reason to know of the reinstatement.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION Laws 2015 c 176 § 1604 (eff. 1-1-16)**

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.620**  
**JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT**

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***CURRENT SECTION***

- (1) If the secretary of state denies a domestic entity's application for reinstatement following administrative dissolution, the secretary of state shall serve the entity with a notice in a record that explains the reasons for denial.**
- (2) An entity may seek judicial review of denial of reinstatement in the superior court not later than thirty days after service of the notice of denial.**
- 

***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1605 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.625**

**ENTITY NAME NOT DISTINGUISHABLE FROM NAME OF GOVERNMENTAL ENTITY**

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***CURRENT SECTION***

(1) Any county, city, town, district, or other political subdivision of the state, or the state of Washington or any department or agency of the state, may apply to the secretary of state for the administrative dissolution, or the termination of registration, of any entity using a name that is not distinguishable from the name of the applicant for dissolution. The application must state the precise legal name of the governmental entity and its date of formation and the applicant shall mail a copy to the entity's registered agent. If the name of the entity is not distinguishable from the name of the applicant, then, except as provided in subsection (4) of this section, the secretary of state shall commence proceedings for administrative dissolution under RCW 23.95.610 or termination of registration under RCW 23.95.550.

(2) A name may not be considered distinguishable by virtue of the items specified in RCW 23.95.300(3).

(3)(a) The following are not distinguishable for purposes of this section:

(i) "City of Anytown" and "City of Anytown, Inc."; and

(ii) "City of Anytown" and "Anytown City."

(b) The following are distinguishable for purposes of this section:

(i) "City of Anytown" and "Anytown, Inc.";

(ii) "City of Anytown" and "The Anytown Company"; and

(iii) "City of Anytown" and "Anytown Cafe, Inc."

(4) If the entity that is the subject of the application was formed or registered before the formation of the applicant as a governmental entity, then this section applies only if the applicant for dissolution provides a certified copy of a final judgment of a court of competent jurisdiction determining that the applicant holds a superior property right to the name than does the entity.

(5) The duties of the secretary of state under this section are ministerial.

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1606 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**Chapter 23.95 RCW**  
**UNIFORM BUSINESS ORGANIZATIONS CODE**

**ARTICLE 7**  
**MISCELLANEOUS PROVISIONS**

- 23.95.700**      **Reservation of power to amend or repeal.**
- 23.95.705**      **Supplemental principles of law.**
- 23.95.710**      **Relation to electronic signatures in global and national commerce act.**
- 23.95.715**      **Savings.**



**RCW 23.95.700**  
**RESERVATION OF POWER TO AMEND OR REPEAL**

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***CURRENT SECTION***

**The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign entities subject to this chapter are governed by the amendment or repeal.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1701 (eff. 1-1-16)

Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.705**  
**SUPPLEMENTAL PRINCIPLES OF LAW**

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***CURRENT SECTION***

**Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1702 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*





**RCW 23.95.710**  
**RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
**NATIONAL COMMERCE ACT**

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***CURRENT SECTION***

**This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Sec. 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).**

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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1703 (eff. 1-1-16)  
Same as current.

**NOTES:**

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**RCW 23.95.715**  
**SAVINGS**

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***CURRENT SECTION***

**The repeal of a statute by chapter 176, Laws of 2015 does not affect:**

- (1) The operation of the statute or any action taken under it before its repeal;**
  - (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;**
  - (3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation before its repeal; or**
  - (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.**
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***HISTORY AND COMMITTEE COMMENTARY***

**ORIGINAL SECTION** Laws 2015 c 176 § 1704 (eff. 1-1-16)

Same as current.

NOTES:

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

\* \* \* \* \*



**Washington Business Corporation Act  
(RCW 23B)  
Sourcebook**

**Volume II**



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**Washington Business Corporation Act  
(RCW 23B)**

**Sourcebook**

**Original Act – Legislative History  
Amendments – CARC Commentary  
Significant Washington Decisions**

**Volume II**

