

CHAPTER 99

[Engrossed Senate Bill No. 3282]
BUSINESS CORPORATIONS

AN ACT Relating to business corporations; amending section 2, chapter 58, Laws of 1969 ex. sess. as amended by section 4, chapter 16, Laws of 1979 and RCW 23A.08.025; amending section 36, chapter 53, Laws of 1965 and RCW 23A.08.330; amending section 37, chapter 53, Laws of 1965 and RCW 23A.08.340; amending section 43, chapter 53, Laws of 1965 and RCW 23A.08.400; amending section 48, chapter 53, Laws of 1965 as amended by section 24, chapter 16, Laws of 1979 and RCW 23A.08.450; amending section 51, chapter 53, Laws of 1965 as last amended by section 3, chapter 193, Laws of 1977 ex. sess. and RCW 23A.08.480; amending section 108, chapter 53, Laws of 1965 and RCW 23A.28-.250; amending section 124, chapter 53, Laws of 1965 and RCW 23A.32.160; amending section 135, chapter 53, Laws of 1965 as last amended by section 3, chapter 133, Laws of 1971 ex. sess. and RCW 23A.40.020; amending section 140, chapter 53, Laws of 1965 as amended by section 3, chapter 92, Laws of 1969 ex. sess. and RCW 23A.40.070; adding new sections to chapter 23A.08 RCW; adding a new section to chapter 23A.28 RCW; adding a new section to chapter 23A.40 RCW; repealing section 4, chapter 92, Laws of 1969 ex. sess., section 1, chapter 142, Laws of 1971 ex. sess., section 1, chapter 36, Laws of 1975 1st ex. sess. section 57, chapter 16, Laws of 1979 and RCW 23A.40.075; and providing an effective date.

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

Section 1. Section 2, chapter 58, Laws of 1969 ex. sess. as amended by section 4, chapter 16, Laws of 1979 and RCW 23A.08.025 are each amended to read as follows:

~~((For the purposes of this section, "agent" includes any person who is or was a director, trustee, officer, employee, or other agent of the corporation or is or was serving at the request of the corporation as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, or was a director, trustee, officer, employee, or agent of a corporation which was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation, and "expenses" includes attorneys' fees and any expense of establishing a right to indemnification under subsection (3) of this section.))~~

(1) As used in this section:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" includes attorneys' fees.

(d) "Official capacity" means: (i) When used with respect to a director, the office of director in the corporation, and (ii) when used with respect to a

person other than a director as contemplated in subsection (10) of this section, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be, made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative.

(2) A corporation shall have power to indemnify any person (~~(who was or is a party or is threatened to be)~~) made a party to any (~~(threatened, pending or completed action, suit or)~~) proceeding(~~(, whether civil, criminal, administrative or investigative)~~) (other than (~~(an action by or in the right of the corporation)~~) a proceeding referred to in subsection (3) of this section) by reason of the fact that he is or was (~~(an agent of the corporation)~~) a director against (~~(expenses,)~~) judgments, penalties, fines (~~(and amounts paid in)~~), settlements and reasonable expenses actually (~~(and reasonably)~~) incurred by him in connection with such (~~(action, suit or)~~) proceeding if (~~(he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful)~~):

(a) He conducted himself in good faith, and: (i) In the case of conduct in his own official capacity with the corporation, he reasonably believed his conduct to be in the corporation's best interests, or (ii) in all other cases, he reasonably believed his conduct to be at least not opposed to the corporation's best interests; and

(b) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

The termination of any (~~(action, suit or)~~) proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself(~~(, create a presumption)~~) be determinative that the person did not (~~(act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful)~~) meet the requisite standard of conduct set forth in this subsection.

(~~(2)~~) (3) A corporation shall have power to indemnify any person (~~(who was or is a party or is threatened to be)~~) made a party to any (~~(threatened, pending or completed action or suit)~~) proceeding by or in the right of the corporation (~~(to procure a judgment in its favor)~~) by reason of the fact that he is or was (~~(an agent of the corporation)~~) a director against

reasonable expenses actually ((and reasonably)) incurred by him in connection with ((the defense or settlement of such action or suit)) such proceeding if he ((acted)) conducted himself in good faith, and ((in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except)):

(a) In the case of conduct in his official capacity with the corporation, he reasonably believed his conduct to be in its best interests; or

(b) In all other cases, he reasonably believed his conduct to be at least not opposed to its best interests; PROVIDED, That no indemnification shall be made pursuant to this subsection in respect of any ((claim, issue or matter as to)) proceeding in which such person shall have been adjudged to be liable ((for negligence or misconduct in the performance of his duty)) to the corporation ((unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that an agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (1) and (2), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith).

(4) ((Any)) A director shall not be indemnified under subsection (2) or (3) of this section in respect of any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he shall have been adjudged to be liable on the basis that personal benefit was improperly received by him.

(5) Unless otherwise limited by the articles of incorporation:

(a) A director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) or (3) of this section shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(b) A court of appropriate jurisdiction, upon application of a director and such notice as the court shall require shall have authority to order indemnification in the following circumstances:

(i) If the court determines a director is entitled to reimbursement under (a) of this subsection, the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(ii) If the court determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or (3) of this section or has been adjudged liable under subsection (4) of this section, the court may order such indemnification as the court shall deem

proper, except that indemnification with respect to any proceeding referred to in subsection (3) of this section and with respect to any proceeding in which liability shall have been adjudged pursuant to subsection (4) of this section shall be limited to expenses.

A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(6) No indemnification under subsection ~~((s (1) and (2) above (unless ordered by a court)))~~ (2) or (3) of this section shall be made by the corporation ~~((only as))~~ unless authorized in the specific case ~~((upon))~~ after a determination that indemnification of the ~~((agent))~~ director is ~~((proper))~~ permissible in the circumstances because he has met the ~~((applicable))~~ standard of conduct set forth in ~~((subsections (1) and (2) above))~~ the applicable subsection. Such determination shall be made ~~((a) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the shareholders:~~

~~(5)):~~

(a) By the board of directors by a majority vote of a quorum consisting of directors not at the time parties to such proceeding; or

(b) If such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to such proceeding; or

(c) In a written opinion by legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services within the past three years for the corporation or any party to be indemnified, selected by the board of directors or a committee thereof by vote as set forth in (a) or (b) of this subsection, or if the requisite quorum of the full board cannot be obtained therefor and such committee cannot be established, by a majority vote of the full board (in which selection directors who are parties may participate); or

(d) By the shareholders.

Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by such legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in (c) of this subsection for the selection of such counsel. Shares held by directors who are parties to the proceeding shall not be voted on the subject matter under this subsection.

(7) Reasonable expenses incurred ((in defending a civil or criminal action suit or)) by a director who is party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such ((action, suit or)) proceeding ((as authorized in the manner provided in subsection (4) upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

~~(6) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs, executors and administrators of such a person.~~

~~(7)):~~

(a) After a determination, made in the manner specified by subsection (6) of this section, that the information then known to those making the determination (without undertaking further investigation for purposes thereof) does not establish that indemnification would not be permissible under subsection (2) or (3) of this section; and

(b) Upon receipt by the corporation of:

(i) A written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section; and

(ii) A written undertaking by or on behalf of the director to repay such amount if it shall ultimately be determined that he has not met such standard of conduct.

The undertaking required by (b)(ii) of this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Payments under this subsection may be authorized in the manner specified in subsection (6) of this section.

(8) No provision for the corporation to indemnify a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise (except as contemplated by subsection (11) of this section), shall be valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section shall limit the corporation's ability to reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(9) For purposes of this section, the corporation shall be deemed to have requested a director to serve an employee benefit plan where the performance by him of his duties to the corporation also imposes duties on, or otherwise involves services by, him to the plan or participants or beneficiaries of the plan; excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be deemed "fines"; and action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the corporation.

(10) Unless otherwise limited by the articles of incorporation:

(a) An officer of the corporation shall be indemnified as and to the extent provided in subsection (5) of this section for a director and shall be entitled to seek indemnification pursuant to subsection (5) of this section to the same extent as a director;

(b) A corporation shall have the power to provide indemnification including advances of expenses, to an officer, employee, or agent of the corporation to the same extent that it may indemnify directors pursuant to this section except that subsection (12) of this section shall not apply to any person other than a director; and

(c) A corporation, in addition, shall have the power to indemnify an officer who is not a director, as well as employees and agents of the corporation who are not directors, to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(11) A corporation shall have power to purchase and maintain insurance on behalf of any person who is, or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as an officer, employee or agent of another corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(12) Any indemnification of a director in accordance with this section, including any payment or reimbursement of expenses, shall be reported to the shareholders with the notice of the next shareholders' meeting or prior thereto in a written report containing a brief description of the proceedings involving the director being indemnified and the nature and extent of such indemnification.

NEW SECTION. Sec. 2. There is added to chapter 23A.08 RCW a new section to read as follows:

If the articles of incorporation or bylaws so provide, shareholders may participate in a meeting of the shareholders by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting.

Sec. 3. Section 36, chapter 53, Laws of 1965 and RCW 23A.08.330 are each amended to read as follows:

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The certificates of shares so transferred shall be surrendered and canceled, and new certificates therefor issued to such person or persons, as such trustee or trustees, in which new certificates, it shall appear that they are issued pursuant to said agreement. In the entry of transfer on the books of the corporation it shall also be noted that the transfer is made pursuant to said agreement. The trustee or trustees shall execute and deliver to the transferees voting trust certificates. Such voting trust certificates shall be transferable in the same manner and with the same effect as certificates of stock under the laws of this state.

The counterpart of the voting trust agreement deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

At any time within six months before the expiration of such voting trust agreement as originally fixed or extended under this paragraph, one or more holders of voting trust certificates may, by agreement in writing, extend the duration of such voting trust agreement, nominating the same or substitute trustee or trustees, for an additional period not exceeding ten years. Such extension agreement shall not affect the rights or obligations of persons not parties thereto and shall in every respect comply with and be subject to all the provisions of this title applicable to the original voting trust agreement.

Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts.

Sec. 4. Section 37, chapter 53, Laws of 1965 and RCW 23A.08.340 are each amended to read as follows:

((The)) All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed ((by)) under the direction of, a board of directors((: The powers and duties of the board of directors may be prescribed by the bylaws)) except as may be otherwise provided in this title or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this title shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

NEW SECTION. Sec. 5. There is added to chapter 23A.08 RCW a new section to read as follows:

A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matter presented;
- (2) Counsel, public accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or
- (3) A committee of the board upon which the director does not serve, duly designated in accordance with a provision in the articles of incorporation or bylaws, as to matters within its designated authority, which committee the director believes to merit confidence; so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

NEW SECTION. Sec. 6. There is added to chapter 23A.08 RCW a new section to read as follows:

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before

the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Sec. 7. Section 43, chapter 53, Laws of 1965 and RCW 23A.08.400 are each amended to read as follows:

If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, ~~((but)) except that no such committee shall have the authority ((of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law))~~ to: (1) Declare dividends or distributions, except at a rate or in periodic amount determined by the board of directors, (2) approve or recommend to shareholders actions or proposals required by this title to be approved by shareholders, (3) fill vacancies on the board of directors or any committee thereof, (4) amend the bylaws, (5) authorize or approve the reacquisition of shares unless pursuant to general formula or method specified by the board of directors, (6) fix compensation of any director for serving on the board of directors or on any committee, (7) approve a plan of merger, consolidation, or exchange of shares not requiring shareholder approval, (8) reduce earned or capital surplus, or (9) appoint other committees of the board of directors or the members thereof.

Sec. 8. Section 48, chapter 53, Laws of 1965 as amended by section 24, chapter 16, Laws of 1979 and RCW 23A.08.450 are each amended to read as follows:

In addition to any other liabilities imposed by law upon directors of a corporation:

(1) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this title or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the

amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this title or the restrictions in the articles of incorporation.

(2) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this title shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this title.

(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the corporation are not thereafter paid and discharged.

(4) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of any loan secured by shares of the corporation, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof, unless approved by the shareholders as provided in RCW 23A.08.440.

~~((A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.~~

~~A director shall not be liable under subsections (1), (2), or (3) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.)~~

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in

violation of this title, in proportion to the amounts received by them respectively.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

Sec. 9. Section 51, chapter 53, Laws of 1965 as last amended by section 3, chapter 193, Laws of 1977 ex. sess. and RCW 23A.08.480 are each amended to read as follows:

(1)(a) Every corporation (~~((hereafter))~~) organized under this title (~~((and any foreign corporation authorized to do business in the state of Washington, shall (a) within thirty days after issuance of its certificate of incorporation, or (b) within thirty days of the issuance of its certificate of authority,))~~) on or after January 1, 1981, shall file an (~~(annual)~~) initial report with the secretary of state containing the information described in subsections (2)(a) through (2)(~~(d)~~) (e) of this section.

(b) Every foreign corporation authorized to do business in the state of Washington shall, at the time it files its application for a certificate of authority, file an initial report with the secretary of state containing the information described in subsections (2)(a) through (2)(e) of this section.

(2) In addition, every corporation heretofore or hereafter organized under the laws of the territory or state of Washington and (~~(any))~~ every foreign corporation authorized to do business in Washington shall at the time it is required to pay its annual license fee and at such additional times as it may elect, file with the secretary of state an annual report (~~(, sworn to by its president and attested by its secretary,))~~) containing, as of the date of execution of the report:

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, 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.

(c) A brief (~~(statement))~~ description of the (~~(character of the affairs))~~ business, if any, which the corporation is (~~(actually))~~ conducting, or, in the case of a foreign corporation, which the corporation is (~~(actually))~~ conducting in this state.

(d) The address of the principal place of business of the corporation in the state.

(e) The names and respective addresses of the directors and officers of the corporation.

(3) (~~(The secretary of state shall file such annual report in his office for the fee of two dollars.))~~ Every report required by this section shall be executed by an officer or director on behalf of the corporation except that the

initial report of a domestic corporation may be executed by an incorporator. If the secretary of state finds that the annual report substantially conforms to law, he shall, when all the fees have been paid as in this title described, file the same.

~~(4) If any corporation shall fail to ((comply with the foregoing provisions of)) file a report required by this section ((and more than one year shall have elapsed from the date of the filing of the last report)),~~ service of process against such corporation may be made by serving duplicate copies upon the secretary of state. Upon such service being made, the secretary of state shall forthwith mail one of such duplicate copies of such process to such corporation at its registered office or its last known address, as shown by the records of his office.

~~((4) For every violation of))~~ (5) If any corporation shall fail to file a report required by this section there shall become due and owing to the state of Washington the sum of ((five)) twenty-five dollars if the required report is filed on or before the first of September in the year in which the report is required, or one hundred dollars if the report is not filed on or before that date, which sum shall be ((collected by)) paid to the secretary of state.

NEW SECTION. Sec. 10. There is added to chapter 23A.28 RCW a new section to read as follows:

(1) If a domestic corporation fails for a period of three consecutive years either to pay the annual license fee required by RCW 23A.40.060, or to file the annual report required by RCW 23A.08.480, it shall be dissolved and cease to exist on the second anniversary of the date of its first failure either to file an annual report or to pay an annual license fee. The secretary of state shall remove the names of all corporations so dissolved from the list of active corporations.

(2) Prior to such dissolution the corporation's existence will not be affected nor will any of its rights, duties and obligations be impaired, except as otherwise provided in RCW 23A.44.120.

Sec. 11. Section 108, chapter 53, Laws of 1965 and RCW 23A.28.250 are each amended to read as follows:

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state, or (2) by a decree of court ~~((when the court has not liquidated the assets and business of the corporation as provided in this title)),~~ or (3) by expiration of its period of duration, or (4) by reason of its failure for three consecutive years to pay its annual license fee and file its annual report as provided in section 10 of this 1980 act, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. The directors of any such corporation shall hold title to the

property of the corporation as trustees for the benefit of its creditors and shareholders. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

Sec. 12. Section 124, chapter 53, Laws of 1965 and RCW 23A.32.160 are each amended to read as follows:

(1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) The corporation has failed to pay any fees, or penalties prescribed by this title when they have become due and payable; or

(b) The corporation has failed to file any annual report prescribed by this title; or

(c) The corporation has failed to appoint and maintain a registered agent in this state as required by this title; or

~~((c))~~ (d) The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this title; or

~~((d))~~ (e) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this title; or

~~((e))~~ (f) A misrepresentation has been made of any material matter in any application, report, affidavit or other document submitted by such corporation pursuant to this title.

(2) Not less than thirty nor more than ninety days prior to July 1 of each year the secretary of state shall mail to each foreign corporation qualified to do business in this state, 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 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 file the annual reports required by this title.

(3) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (a) he shall have given the corporation not less than sixty days notice thereof by mail addressed to its registered office in this state, and (b) the corporation shall fail prior to revocation to pay such fees or penalties, or file the required statement of change of registered

agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

Sec. 13. Section 135, chapter 53, Laws of 1965 as last amended by section 3, chapter 133, Laws of 1971 ex. sess. and RCW 23A.40.020 are each amended to read as follows:

The secretary of state shall charge and collect for:

- (1) Filing articles of amendment and issuing a certificate of amendment, ten dollars;
- (2) Filing restated articles of incorporation, ten dollars;
- (3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifteen dollars;
- (4) Filing an application to reserve a corporate name, ten dollars;
- (5) Filing a notice of transfer of a reserved corporate name, five dollars;
- (6) Filing a statement of change of address of registered office, revocation, resignation, change of registered agent, or any combination, of these, two dollars;
- (7) Filing a statement of the establishment of a series of shares, ten dollars;
- (8) Filing a statement of cancellation of shares, ten dollars;
- (9) Filing a statement of reduction of stated capital, ten dollars;
- (10) Filing a statement of intent to dissolve, five dollars;
- (11) Filing a statement of revocation of voluntary dissolution proceedings, five dollars;
- (12) Filing articles of dissolution, five dollars;
- (13) Filing a certificate by a foreign corporation of the appointment of an agent residing in this state, or a certificate of the revocation of the appointment of such registered agent, or filing a notice of resignation by a registered agent, two dollars;
- (14) Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, five dollars;
- (15) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, five dollars;
- (16) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ten dollars;
- (17) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars;
- (18) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars;
- (19) Filing an annual report, five dollars;
- (20) Filing any other statement or report, five dollars;
- ~~((20))~~ (21) Such other filings as are provided for by this title.

NEW SECTION. Sec. 14. There is added to chapter 23A.40 RCW a new section to read as follows:

Not less than thirty nor more than ninety days prior to July 1st of each year 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 for three consecutive years 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.

Sec. 15. Section 140, chapter 53, Laws of 1965 as amended by section 3, chapter 92, Laws of 1969 ex. sess. and RCW 23A.40.070 are each amended to read as follows:

In the event any corporation, foreign or domestic, shall do business in this state without having paid its annual license fee when due, there shall become due and owing the state of Washington a penalty of twenty-five dollars and an additional license fee equivalent to one percent per month or fraction thereof computed upon each annual license fee from the date it should have been paid to the date when it is paid: PROVIDED, That the minimum additional license fee due under the provisions of this section shall be ((two)) ten dollars ((and fifty cents)).

A corporation organized under this title may at any time prior to its dissolution as provided in section 10 of this 1980 act, 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 23A.32.160, 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 and additional license fees specified in this section.

NEW SECTION. Sec. 16. Section 4, chapter 92, Laws of 1969 ex. sess., section 1, chapter 142, Laws of 1971 ex. sess., section 1, chapter 36, Laws of 1975 1st ex. sess., section 57, chapter 16, Laws of 1979 and RCW 23A.40.075 are each repealed.

NEW SECTION. Sec. 17. Sections 9, 10, 12, 13, 14, 15, and 16 of this 1980 act shall take effect on January 1, 1981.

Passed the Senate February 22, 1980.

Passed the House February 18, 1980.

Approved by the Governor March 10, 1980.

Filed in Office of Secretary of State March 10, 1980.